



**TO:** The Honorable the Members of the Board of Regents

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

**SUBJECT:** Proposed Amendment to Section 83.4 of the Regulations of the Commissioner of Education Relating to Moral Character

**DATE:** June 10, 2013

**AUTHORIZATION(S):**

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

#### **SUMMARY**

##### **Issue for Decision (Consent Agenda)**

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 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 June 2013 meeting. A copy of the proposed amendment and a statement of emergency facts and circumstances are attached. Supporting materials are available upon request to the Secretary of the Board of Regents.

##### **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 digital 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), which conducts a state criminal history records check and then forwards the images 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.

In an effort to close potential gaps that may exist (such as the ability of a person to submit false fingerprints), the Department began a review of the fingerprinting process. The proposed amendment enhances 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. In addition to shifting the burden to the teacher or school administrator in Part 83 proceedings, such an amendment would serve as a deterrent for individuals who may be inclined to submit false information relative to a criminal history background check.

### **Recommendation**

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 July 22, 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 and to ensure that the proposed amendment that was adopted at the April Regents meeting remains continuously in effect until it can be adopted as a permanent rule at the July Regents meeting.

### **Timetable for Implementation**

If the proposed regulatory amendment is adopted by the Board of Regents as an emergency rule at its June 2013 meeting, the proposed amendment will become effective on July 21, 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 digital 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), which conducts a state criminal history records check and then forwards the images 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.

In an effort to close potential gaps that may exist (such as the ability of a person to submit false fingerprints), the Department began a review of the fingerprinting process. As part of this review, the Department has determined there are no provisions to expeditiously address actions related to fingerprint fraud. As such, individuals with

serious criminal histories, whose presence in the classroom or school poses a danger to the safety of students and/or staff, may be able to evade the criminal history record check process and gain 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. In addition to shifting the burden to the teacher or school administrator in Part 83 proceedings, such an amendment would serve as a deterrent for individuals who may be inclined to submit false information relative to a criminal history background check.

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.

Emergency action is also needed for the preservation of the general welfare in order to ensure that the proposed amendment continuously remains in effect until it can be adopted as a permanent rule. The proposed amendment was adopted as an emergency rule at the April 22-23, 2013 Regents meeting, effective April 23, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 8, 2013. Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for permanent adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the July 22-23, 2013 Regents meeting. Furthermore, pursuant to SAPA, the earliest

effective date of the proposed amendment, if adopted at the July meeting, would be August 7, 2013, the date a Notice of Adoption would be published in the State Register. However, the April emergency rule will expire on July 21, 2013, 90 days from its filing with the Department of State on April 23, 2013. A lapse in the effective date of the rule may disrupt the revocation or suspension of 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.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the April 22-23, 2013 Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption on a permanent basis at the July 22-23, 2013 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by SAPA.

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 July 22, 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.