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8 NY ADC II C 87 Notes

8 NYCRR II C 87 Notes

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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER C. TEACHERS
PART 87. CRIMINAL HISTORY RECORD CHECK FOR PROSPECTIVE SCHOOL EMPLOYEES AND
APPLICANTS FOR CERTIFICATION

Current through April 30, 2011

(Statutory authority: Education Law, §§ 207, 305[3][a], [b], 30[a],
[b], [e], 1604[39], [40], 1709[39], [40], 1804[9], [10], 1950[4]
[II], [mm], 2503[18], [19], 2554[25], [26], 2854[3][a-2], [a-3], 3001, 3001-d,
3004, 3004-b[1], [2], 3004-c, 3006, 3009, 3010, 3035[1], [3], [3-a], [4]; L.
2000, ch. 180, L. 2001, ch. 147)

8 NY ADC II C 87 Notes

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New York Codes, Rules and Regulations

8 NY ADC 87.10

8 NYCRR 87.10

8 N.Y. Comp. Codes R. & Regs. 87.10

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER C. TEACHERS
PART 87. CRIMINAL HISTORY RECORD CHECK FOR PROSPECTIVE SCHOOL EMPLOYEES AND
APPLICANTS FOR CERTIFICATION

Current through April 30, 2011

* Section 87.10.* Special requirements for nonpublic or private elementary or secondary schools that elect to fingerprint and seek clearance from the department for prospective employees beginning July 1, 2007.

(a) Beginning July 1, 2007, any nonpublic or private elementary or secondary school that elects to submit to the department requests for criminal history record review for prospective employees shall notify the assistant commissioner of the Office of Teaching Initiatives, or his designee, on forms to be provided by the department of its intent to elect to fingerprint and seek clearance from the department for prospective employees through the department's TEACH online services system. Upon receipt of such election form, the assistance commissioner shall begin accepting fingerprints for prospective employees of that nonpublic or private elementary or secondary school for the purpose of clearance of employment.

(b) Any nonpublic or private elementary or secondary school that elects to submit requests for criminal history record review to the department for prospective employees shall do so with respect to each such prospective employee, in accordance with section 3001-d of the Education Law.

(c) Any nonpublic or private elementary or secondary school that elects to submit requests for criminal history record review to the department shall also develop a policy for the safety of the children who have contact with an employee holding conditional appointment or emergency conditional appointment.

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8 NY ADC 87.10

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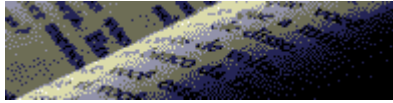
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Administrative
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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER C. TEACHERS
PART 87. CRIMINAL HISTORY RECORD CHECK FOR PROSPECTIVE SCHOOL EMPLOYEES AND
APPLICANTS FOR CERTIFICATION

Current through April 30, 2011

* Section 87.9.* Special requirements for certain individuals seeking employment with or previously cleared for licensure and/or employment by the city school district of the City of New York.

(a) Individuals who seek employment with the city school district of the City of New York and have applied for certification or hold certification pursuant to Part 80 of this Title, or have received a clearance for employment by the department, and are also in the SED criminal history file, may authorize the city school district of the city of New York, on a form or in an equivalent manner prescribed by the department, to request from the department that the content of their criminal history record be forwarded by the department to the city school district of the City of New York.

(b) For individuals who have consented under the requirements of subdivision (a) of this section and become employed with the city school district of the City of New York, the department shall send summary information to the city school district of the City of New York concerning subsequent criminal history notifications received by the department from DCJS.

(c) Upon separation from employment with the city school district of the City of New York of an individual who has consented under the requirements of subdivision (a) of this section, the city school district of the City of New York shall notify the department on forms or an equivalent manner prescribed by the department of the name and other identifying information of such individual who was separated from employment and the date of the separation.

(d)

(1) Where the applicant for certification or prospective school employee is not in the SED criminal history file but has been previously cleared for licensure and/or employment by the city school district of the City of New York after fingerprinting and a criminal history record check, such applicant for certification or prospective school employee shall not be required to be fingerprinted for clearance for employment or clearance for certification by the department, provided that the following conditions are met:

(i) the applicant for certification or prospective school employee has requested and authorized the city school district of the City of New York to forward a copy of his or her criminal history record to the department and authorized the city school district of the City of New York to forward subsequent criminal history notifications received from DCJS to the department;

(ii) the applicant for certification or prospective school employee must have been fingerprinted by the city school district of the City of New York on or after July 1, 1990 and such fingerprints must remain on file with DCJS;

(iii) the department finds that the criminal history record received from the city school district of the City of New York is complete and sufficient for determining clearance for certification or

clearance for employment; and

(iv) the city school district of the City of New York has agreed to provide to the department any subsequent criminal history notifications for the applicant for certification or prospective school employee upon receipt of such information from DCJS.

(2) Where the applicant for certification or prospective school employee has met the conditions of paragraph (1) of this subdivision, the department's criminal history record check shall be a review of the criminal history record on the individual transmitted to the department by the city school district of the City of New York, which shall be the criminal history record obtained by the school district from the FBI dating from the school district's past request for this information and all convictions of crimes and any pending criminal charges maintained on the individual by DCJS.

8 NY ADC 87.9

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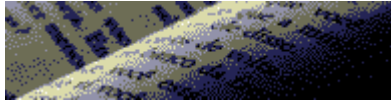
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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER C. TEACHERS
PART 87. CRIMINAL HISTORY RECORD CHECK FOR PROSPECTIVE SCHOOL EMPLOYEES AND
APPLICANTS FOR CERTIFICATION

Current through April 30, 2011

* Section 87.8. * Fees.

(a) The fee for the criminal history record search prescribed in sections 87.3 and 87.4 of this Part shall be in an amount equal to the fees established, pursuant to law, by DCJS and the Federal Bureau of Investigation for processing the criminal history information request. The fee shall be payable to the New York State Education Department and paid by money order or check of a covered school or check from a provider of contracted services to a covered school or a certified check or by credit card.

(b) In the case of an applicant for certification or licensure, as prescribed in section 87.3 of this Part, the applicant for certification or licensure shall pay the fee.

(c) In the case of a prospective school employee, as prescribed in section 87.4 of this Part, the prospective school employee shall pay the fee, unless the covered school agrees to pay the fee or the prospective school employee is exempt from paying the fee in accordance with the requirements of paragraph (d)(1) of this section in which case the entity prescribed in such paragraph shall pay the fee.

(d) The prospective school employee shall not be liable for paying the fee prescribed in subdivision (a) of this section if he or she meets the requirements of this subdivision, in which case the entity prescribed in this subdivision shall pay the fee.

(1) A prospective school employee shall not be responsible for the fee prescribed in subdivision (a) of this section, if such fee is associated with an employee participation in a public assistance employment program, pursuant to title 9-B of article V 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 and Disability Assistance. In such cases, the fee shall be paid by the social services district making such employment placement or assignment and the cost of such fee, if not subject to full reimbursement under such Federal block grant, shall be deemed to be an employment services administrative expense.

(2) A prospective school employee may submit a request to the governing body of the covered school, on a form prescribed by the department, that the fees imposed for conducting a criminal history records check be waived and paid by the governing body instead. The governing body of the covered school may grant such a request if the 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 the fee on behalf of the prospective school employee.

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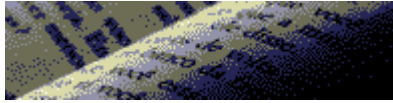
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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER C. TEACHERS
PART 87. CRIMINAL HISTORY RECORD CHECK FOR PROSPECTIVE SCHOOL EMPLOYEES AND
APPLICANTS FOR CERTIFICATION

Current through April 30, 2011

* Section 87.7.* Removal from the SED criminal history file.

Where individuals have been separated from employment at a covered school and have not become employed in the same or another covered school within 12 months of such separation, the department shall notify DCJS of such separation for the purpose of destroying the fingerprints of such person. Upon request of such person, the department shall notify DCJS prior to the expiration of such 12- month period for the purpose of destroying his or her fingerprints and the department shall so notify DCJS.

Such individuals shall be removed from the SED criminal history file.

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8 NYCRR 87.6

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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER C. TEACHERS
PART 87. CRIMINAL HISTORY RECORD CHECK FOR PROSPECTIVE SCHOOL EMPLOYEES AND
APPLICANTS FOR CERTIFICATION

Current through April 30, 2011

* Section 87.6.* Procedures for subsequent criminal history notifications.

(a) For individuals who are in the SED fingerprint file, the department shall send a notification of the arrest, which shall state the date of the arrest and the court of jurisdiction, to the employing covered school concerning subsequent criminal history notifications received by the department from DCJS, provided that the department's records indicate that the individual is employed by the covered school.

(b) For applicants for or holders of certification pursuant to Part 80 of this Title, for whom subsequent criminal history notifications reveal an arrest for a crime, the department shall transmit such information to the department's assistant commissioner of the Office of Teaching Initiatives for a determination of good moral character pursuant to Part 83 of this Title.

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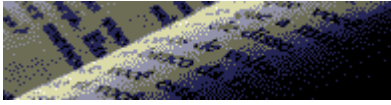
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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER C. TEACHERS
PART 87. CRIMINAL HISTORY RECORD CHECK FOR PROSPECTIVE SCHOOL EMPLOYEES AND
APPLICANTS FOR CERTIFICATION

Current through April 30, 2011

* Section 87.5.* Due process procedures.

(a) Procedures for clearance for employment.

(1) Where the criminal history record check reveals no criminal record, the department shall issue a clearance for employment to the covered school, and shall notify the prospective school employee of such clearance for employment.

(2) Where the prospective school employee or the covered school on behalf of the prospective school employee requests conditional clearance for employment, and the criminal history record from the FBI has not yet been received by the department, and the criminal history record obtained from DCJS reveals no criminal record, the department shall issue a conditional clearance for employment to the covered school, and shall notify the prospective school employee of such conditional clearance for employment. Where conditional clearance is requested for a prospective school employee for whom a criminal history record has been obtained from both DCJS and the FBI, the department shall proceed to determine whether to grant or deny clearance for employment in accordance with this subdivision.

(3) If the department does not make the determination on conditional clearance for employment within 15 business days after receiving the prospective school employee's fingerprints, the department shall issue a notification to the prospective school employee and the covered school which contains a good faith estimate of the amount of additional time that is needed to make the determination on conditional clearance for employment.

(4) Initial notification and department determination.

(i) Where the criminal history record check reveals that the prospective school employee was convicted of a crime or has a pending criminal charge, the department shall review such record and any related information obtained by the department pursuant to the review of such criminal history record, if any, and apply the standards for the granting or denial of a license or employment application set forth in Correction Law, section 752 and shall consider the factors specified in Correction Law, section 753. Such review shall be conducted in accordance with section 296(16) of the Executive Law.

(ii) Where the department determines that a clearance for employment shall be granted, the department shall promptly issue such clearance for employment to the covered school, and shall notify the prospective school employee of such clearance for employment.

(iii) Where the prospective school employee or the covered school on behalf of the prospective school employee requests conditional clearance for employment, and the criminal history record from the FBI has not yet been received by the department, and the criminal history record obtained from DCJS reveals that the prospective school employee was convicted of a crime or has a pending

criminal charge, the department shall review such record and apply the standards for the granting or denial of a license or employment application set forth in Correction Law, section 752 and shall consider the factors specified in Correction Law, section 753. Such review shall be conducted in accordance with section 296(16) of the Executive Law.

(iv) Where the department determines that a conditional clearance for employment shall be granted, the department shall promptly issue such conditional clearance for employment to the covered school, and shall notify the prospective school employee of such conditional clearance for employment.

(v) Where the department determines that the criminal history record indicates that there is a basis to deny a clearance for employment, the department shall issue an initial notification of a possible denial of clearance to the prospective school employee by certified mail, return receipt requested, which shall contain the basis for this notification, including but not limited to a description of the criminal charges or convictions involved. The notification shall state that a clearance for employment shall be denied unless the prospective school employee submits a response with satisfactory information indicating why clearance should be granted, such information is mailed by regular first class mail or certified mail or is hand delivered to the State Education Department within 25 calendar days from the date the notification was mailed, and the prospective school employee demonstrates to the satisfaction of the department that clearance for employment should be granted. However, in the case of a prospective school employee who is requesting a conditional clearance for employment, or who has already received such conditional clearance for employment, the notification shall state that the response from the prospective school employee must be mailed by regular first class mail or certified mail or be hand delivered to the State Education Department within 10 calendar days from the date the notification was mailed. Such notification shall advise the prospective school employee of the address to which the response must be submitted.

(vi) For a response to be considered, the prospective school employee must mail by regular first class mail or certified mail or submit by hand delivery a response to the department's initial notification of a possible denial of clearance within 25 calendar days of the mailing of the notification of possible denial of clearance. However, in the case of a prospective school employee who is also requesting a conditional clearance for employment, or who has already received such conditional clearance for employment, for a response to be considered, the prospective school employee must mail by regular first class mail or certified mail or submit by hand delivery, a response to the department's initial notification of a possible denial of clearance within 10 calendar days of the mailing of the notification of possible denial of clearance. Such response shall be submitted to the department at the address specified in the notification of possible denial of clearance, together with any affidavits or other relevant written information and written argument which the prospective school employee wishes the department to consider in support of the position that clearance for employment should be granted, including, where applicable, information in regard to his or her good conduct and rehabilitation.

(vii) Where the prospective school employee does not submit a response within the timeframe prescribed in subparagraph (vi) of this paragraph, the department shall make a determination denying clearance for employment and notification of such denial, along with the basis for such determination, shall be transmitted to the prospective school employee by certified mail, return receipt requested. In the case of a prospective school employee requesting conditional clearance for employment, such determination shall also deny the conditional clearance for employment. In the case of a prospective school employee who has already been granted conditional clearance for employment, such determination shall also terminate the conditional clearance for employment. Such notification shall state that the prospective school employee may appeal the determination to the executive director of the Office of Teaching Initiatives of the State Education Department at the address specified in the notification, in accordance with paragraph (5) of this subdivision, and shall include instructions for such an appeal. Notification of the denial of clearance for employment and denial or termination of conditional clearance for employment shall also be given to the covered school.

(viii) Where the prospective school employee submits a response within the timeframe prescribed in subparagraph (vi) of this paragraph, the department shall, upon review of the prospective school employee's criminal history record, related information obtained by the department pursuant to the review of such criminal history record, and information and written argument provided by the prospective school employee in his or response, make a determination on whether clearance for employment shall be granted or denied. In such review, the department shall apply the standards for the granting or denial of a license or employment application set forth in Correction Law, section 752 and shall consider the factors specified in Correction Law, section 753. Such review shall be conducted in accordance with the requirements of section 296(16) of the Executive Law. Where the

department's determination is that clearance for employment is denied, the decision shall include the basis for such determination, and shall state that the prospective employee may appeal the department's determination to the assistant commissioner of the Office of Teaching Initiatives of the State Education Department at the address specified in the determination, in accordance with paragraph (5) of this subdivision, and shall include instructions for such an appeal. A copy of the determination that clearance for employment is denied, or notice that such clearance is granted, as the case may be, shall be transmitted to the prospective school employee. Where clearance for employment is denied, such determination shall be sent to the prospective school employee by certified mail, return receipt requested. Where clearance for employment is granted, such determination shall be sent to the prospective school employee by regular first class mail. Where clearance for employment is denied and the prospective school employee also requested conditional clearance for employment, such determination shall also deny the conditional clearance for employment. Where clearance for employment is denied and the prospective school employee has already been granted conditional clearance for employment, such determination shall also terminate the conditional clearance for employment. In addition, the covered school shall be notified of the denial or granting of clearance.

(ix) Where clearance for employment is denied prior to the department obtaining information from the FBI, and subsequent information is obtained from the FBI which forms an additional basis to deny clearance for employment, and the prospective school employee has already appealed the department's determination in accordance with paragraph (5) of this subdivision, the department shall notify the prospective school employee of this additional information and request that the prospective school employee respond. For a response to be considered, the prospective school employee must mail by regular first class mail or certified mail or submit by hand delivery a response to the department's notification of this additional information within 25 calendar days of the mailing of the notification. After a review of the information provided by the FBI and the response of the prospective school employee, if any, the department shall either notify the prospective school employee that no change in the original denial of clearance determination will be issued by the department based upon the information obtained from the FBI or issue to the prospective school employee modified determinations denying clearance for employment and denying or terminating conditional clearance for employment, which includes the information obtained from the FBI. The notification of no change in the original denial of clearance determination and the modified determinations shall be sent to the prospective school employee by regular first class mail. The modified determinations shall not affect the validity of the original determinations denying clearance for employment, and denying or terminating conditional clearance for employment.

(5) Appeal of department's determination.

(i) A prospective school employee who was denied clearance for employment by a determination of the department pursuant to paragraph (4) of this subdivision, may appeal that determination to the assistant commissioner of the Office of Teaching Initiatives of the State Education Department, provided that such appeal is mailed by regular first class mail or certified mail or is hand delivered to the address specified in the department's determination within 25 calendar days of the mailing of such determination denying clearance. Such appeal shall be heard by the assistant commissioner of the Office of Teaching Initiatives or a State review officer designated by the assistant commissioner who did not participate in the department's determination.

(ii) Where the department has modified original determinations denying clearance for employment and denying or terminating conditional clearance for employment based upon additional information obtained from the FBI, as prescribed in subparagraph (4)(ix) of this subdivision, the subject of the appeal shall be the modified determinations. In that case, the prospective school employee may submit additional appeal papers addressing the modified determinations, provided that they are mailed by regular first class mail or certified mail or hand delivered to the address specified in the department's modified determinations within 25 calendar days of the mailing of such modified determinations.

(iii) Such appeal papers, submitted within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph, may include any affidavits or other relevant written information and written argument which the prospective school employee wishes the assistant commissioner, or a State review officer designated by the assistant commissioner, to consider in support of the position that clearance for employment should be granted, including, where applicable, information in regard to his or her good conduct and rehabilitation. The prospective school employee may request oral argument and must do so in the appeal papers submitted within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph. Such oral argument shall be conducted in accordance with the requirements of subparagraph (iv) of this paragraph.

(iv) A prospective school employee may request oral argument as part of the appeal of the

department's determination denying clearance for employment. The department shall notify the prospective school employee of the time and location of such oral argument. Such argument shall be heard before the assistant commissioner, or a State review officer designated by the assistant commissioner. At the oral argument, the prospective school employee may present additional affidavits or other relevant written information and written argument which the prospective school employee wishes the assistant commissioner, or the State review officer designated by the assistant commissioner, to consider in support of the position that clearance for employment should be granted, including, where applicable, written information in regard to his or her good conduct and rehabilitation. No testimony shall be taken at the oral argument and no transcript of oral argument shall be made. The prospective school employee may make an audio tape recording of the oral argument. However, such audio tape recording or transcript thereof shall not be part of the record upon which the assistant commissioner or a State review officer designated by the assistant commissioner makes the determination on whether clearance for employment shall be granted or denied.

(v) Where a timely request for an appeal is received, upon review of the prospective school employee's criminal history record, related written information obtained by the department pursuant to the review of such criminal history record, written information and written argument submitted by the prospective school employee in this appeal within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph, and written information provided at oral argument if requested by the prospective school employee, the assistant commissioner of the Office of Teaching Initiatives or a State review officer designated by the assistant commissioner who did not participate in the department's determination, shall make a determination of whether clearance for employment shall be granted or denied. In such appeal, the assistant commissioner or his or her designee shall apply the standards for the granting or denial of a license or employment application set forth in Correction Law, section 752 and shall consider the factors specified in Correction Law, section 753. Such appeal shall be conducted in accordance with the requirements of section 296(16) of the Executive Law. Where the determination of the assistant commissioner, or his or her designee, is that clearance for employment is denied, his or her decision shall include the findings of facts and conclusions of law upon which the determination is based. A copy of the determination that clearance for employment is denied, or notice that such clearance is granted, as the case may be, shall be transmitted to the prospective school employee by regular first class mail. In addition, the covered school shall be notified of the denial or granting of clearance.

(b) Procedures for clearance for certification. Where the criminal history record reveals conviction of a crime, or an arrest for a crime, the department shall transmit the criminal history record and related information to the department's assistant commissioner of the Office of Teaching Initiatives for a determination of good moral character pursuant to Part 83 of this Title, which procedure shall determine the clearance for certification.

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8 NY ADC 87.5

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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER C. TEACHERS
PART 87. CRIMINAL HISTORY RECORD CHECK FOR PROSPECTIVE SCHOOL EMPLOYEES AND
APPLICANTS FOR CERTIFICATION

Current through April 30, 2011

* Section 87.4.* Requirements for covered schools and prospective school employees.

The requirements of this section shall apply to all prospective school employees, as defined in section 87.2 of this Part, appointed to compensated positions in a board of cooperative educational services, charter school or school district by official action of the governing body of such covered school on or after July 1, 2001. The requirements of this section shall also apply to all prospective school employees appointed to compensated positions in a nonpublic or private elementary or secondary school on or after July 1, 2007, if such school elects to fingerprint and seek clearance for prospective employees from the department. The requirements of this section shall not apply to prospective school employees, as defined in section 87.2 of this Part, appointed to compensated positions in a board of cooperative educational services, charter school or school district by official action of the governing body of such covered school prior to July 1, 2001, notwithstanding the fact that such prospective school employees are not required to provide services until on or after July 1, 2001. These requirements shall also not apply to prospective school employees, as defined in section 87.2 of this Part, appointed to compensated positions in a nonpublic or private elementary or secondary school by official action of the governing body of such covered school prior to July 1, 2007, notwithstanding the fact that such prospective school employees are not required to provide services until on or after July 1, 2007. The requirements of this section shall apply to all prospective school employees, as defined in section 87.2 of this Part, who commence providing services at a board of cooperative educational services, charter school or school district on or after July 1, 2001, or in a nonpublic or private elementary or secondary school on or after July 1, 2007, when such prospective school employees are: employees of a provider of contracted services to the covered school, or workers who are placed within the covered school under a public assistance employment program pursuant to title 9-B of article V of the Social Services Law, directly or through contract, or in compensated positions at the covered school not appointed by official action of the governing body of such covered school.

(a) Requirements for covered schools.

(1) Covered schools shall not employ or utilize a prospective school employee, as defined in section 87.2 of this Part, unless such prospective school employee has been granted a clearance for employment by the department, or unless the covered school has made an emergency conditional appointment.

(2) Except as provided in section 87.9(d) of this Part, covered schools shall require all prospective school employees who are not in the SED criminal history file to be fingerprinted for purposes of a criminal history record check by authorized personnel of a designated fingerprinting entity. In such cases, either the covered school or prospective school employee shall cause the designated

fingerprinting entity to transmit a sufficient number of fingerprints to the department for the purpose of a criminal history record check and clearance for employment along with the consent form and the fee required by section 87.8 of this Part.

(3) Where a covered school requests clearance for employment on behalf of a prospective school employee who is not in the SED criminal history file, the covered school may also request a conditional clearance for employment on behalf of such prospective school employee upon a form prescribed by the department, which shall be completed and signed by the prospective school employee.

(4) Where the prospective school employee is already in the SED criminal history file, the covered school shall request the clearance for employment on forms or in an equivalent manner prescribed by the department. The covered school may also request a conditional clearance for employment on behalf of such prospective school employee upon a form prescribed by the department, which shall be completed and signed by the prospective school employee. No fee shall be payable to the department for such request for clearance.

(5) Covered schools shall notify the department on forms or an equivalent manner prescribed by the department of the name and other identifying information of a prospective school employee who was fingerprinted pursuant to section 3004-b or 3035 of the Education Law and has been separated from employment with the covered school or ceased providing services for the covered school and the date of the separation from such employment or the cessation of such services.

(b) Requirements for prospective school employees.

(1) Except as provided in section 87.9(d) of this Part, where the prospective school employee is not already in the SED criminal history file, the prospective school employee shall:

(i) consent to the department making a request for his or her criminal history record from the DCJS and the Federal Bureau of Investigation, upon a form prescribed by the department that meets the requirements of section 305(30)(b) of the Education Law; and

(ii) be fingerprinted for purposes of a criminal history record check by authorized personnel of a designated fingerprinting entity. In such cases, either the prospective school employee or the covered school shall cause the designated fingerprinting entity to transmit a sufficient number of fingerprints to the department for the purpose of a criminal history record check and clearance for employment along with the consent form and the fee required by section 87.8 of this Part.

(2) Where the prospective school employee is not already in the SED criminal history file and the prospective school employee is requesting a clearance for employment, the prospective school employee may also request a conditional clearance for employment for the purposes of meeting the requirements for a conditional appointment upon a form prescribed by the department, which shall be completed and signed by the prospective school employee.

(3) Where the prospective school employee is already in the SED criminal history file, the prospective school employee shall notify the covered school of this fact.

(c) Where the prospective school employee is already in the SED criminal history file and the department has previously obtained from both DCJS and the FBI the prospective school employee's criminal history record, the department's criminal history record check shall be a review of the criminal history record obtained by the department from the FBI dating from the department's past request for this information and all convictions of crimes and any pending criminal charges maintained on the individual by DCJS. Where the prospective school employee is not already in the SED criminal history file, except as provided in section 87.9(d) of this Part, the department's criminal history record check shall be a review of a record of all convictions of crimes and any pending criminal charges maintained on an individual by DCJS and the FBI.

8 NY ADC 87.4

8 NY ADC 87.4

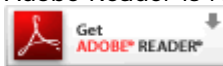
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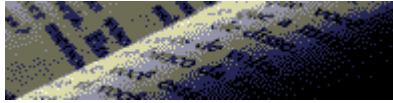
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8 NY ADC 87.3

8 NYCRR 87.3

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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER C. TEACHERS
PART 87. CRIMINAL HISTORY RECORD CHECK FOR PROSPECTIVE SCHOOL EMPLOYEES AND
APPLICANTS FOR CERTIFICATION

Current through April 30, 2011

* Section 87.3.* Requirements for applicants for certification.

An individual who applies on or after July 1, 2001 for certification as a superintendent of schools, teacher, administrator or supervisor, teaching assistant, or in any other title for which a teaching or administrative license or certificate is required pursuant to Part 80 of this Title, shall meet the requirements of this section, except for individuals who apply for a permanent certificate and hold a valid provisional certificate, applied for prior to July 1, 2001, in the same title for which the permanent certificate is sought, and except that the requirements of this section shall not be applicable for an individual to qualify for a temporary license, pursuant to section 80-5.10 of this Title, for employment by the city school district of the City of New York, provided that such individual has been cleared for employment by such school district after fingerprinting and a criminal history record check, pursuant to section 2590-h(20) of the Education Law.

(a) Where the applicant is not already in the SED criminal history file, except as provided in section 87.9(d) of this Part, the applicant for certification shall:

(1) consent to the department making a request for his or her criminal history record from the DCJS and the Federal Bureau of Investigation, upon a form prescribed by the department that meets the requirements of section 305(30)(b) of the Education Law; and

(2) be fingerprinted for purposes of a criminal history record check by authorized personnel of a designated fingerprinting entity. The applicant for certification shall cause the designated fingerprinting entity to transmit two sets of completed fingerprint cards to the department for the purpose of a criminal history record check and clearance for certification along with the consent form and the fee required by section 87.8 of this Part.

(b) Where the applicant for certification is already in the SED criminal history file, the applicant shall notify the department of this fact on forms or an equivalent manner prescribed by the department. No fee shall be payable to the department for such request for clearance.

(c) Where the applicant for certification is already in the SED criminal history file and the department has previously obtained from both DCJS and the FBI the applicant's criminal history record, the department's criminal history record check shall be a review of the criminal history record obtained by the department from the FBI dating from the department's past request for this information and all convictions of crimes and any pending criminal charges maintained on the individual by DCJS. Where the applicant for certification is not already in the SED criminal history file, except as provided in section 87.9(d) of this Part, the department's criminal history record check shall be a review of a record of all convictions of crimes and any pending criminal charges maintained on an individual by DCJS and the FBI.

8 NY ADC 87.3
8 NY ADC 87.3
2008 WL 75116044
8 NY ADC 87.3

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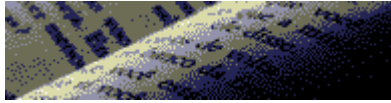
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8 NY ADC 87.2

8 NYCRR 87.2

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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER C. TEACHERS
PART 87. CRIMINAL HISTORY RECORD CHECK FOR PROSPECTIVE SCHOOL EMPLOYEES AND
APPLICANTS FOR CERTIFICATION

Current through April 30, 2011

* Section 87.2. * Definitions.

As used in this Part:

(a) Clearance for certification means a determination by the department that based upon its review of an applicant's criminal history record such individual may be certified or licensed for service by the commissioner, pursuant to Part 80 of this Title, provided that all other requirements for certification or licensure are met.

(b) Clearance for employment means a determination by the department that based upon its review of a prospective school employee's criminal history record, such individual may be employed in a covered school as defined in this section, provided that all other requirements for employment are met.

(c) Conditional appointment means an appointment by a covered school in accordance with the requirements of section 1604(39), 1709(39), 1804(9), 1950(4)(II), 2503(18), 2554(25), 2854(3)(a-2), or 3001-d(3) of the Education Law.

(d) Conditional clearance for employment means a determination by the department that based upon its review of a prospective school employee's criminal history record obtained from DCJS for a prospective school employee, such individual may be employed by a covered school as defined in this section on a conditional appointment, provided that all other requirements for employment are met.

(e) Covered school means a board of cooperative educational services, a charter school, a school district, or any nonpublic or private elementary or secondary school that elects to fingerprint and seek clearance for prospective employees from the department beginning July 1, 2007, geographically located in New York State, excluding the city school district of the City of New York.

(f) Criminal history record means a record of all convictions of crimes and any pending criminal charges maintained on an individual by the New York State Division of Criminal Justice Services and/or the Federal Bureau of Investigation.

(g) DCJS means the New York State Division of Criminal Justice Services.

(h) Department means the Education Department of the State of New York.

(i) Designated fingerprinting entity means one of the following types of entities: school districts, boards of cooperative educational services, charter schools, nonpublic or private elementary or secondary schools that elect to fingerprint and seek clearance from the department for prospective employees beginning July 1, 2007, State and local criminal justice agencies, institutions of higher education, and other entities as designated by the department.

(j) Emergency conditional appointment means an appointment by a covered school when an unforeseen emergency vacancy has occurred, in accordance with the requirements of section 1604(39), 1709(39), 1804(9), 1950(4)(II), 2503(18), 2554(25), 2854(3)(a-2), or 3001-d(3) of the Education Law.

(k) Prospective school employee means any individual:

(1) who is either:

(i) seeking a compensated position with a covered school and is not currently employed by such covered school or a student enrolled in the instructional program of a grade level in such covered school;

(ii) an employee of a provider of contracted services to a covered school who is to be placed within such covered school; or

(iii) a worker who is to be placed within a covered school under a public assistance employment program pursuant to title 9-B of article V of the Social Services Law, directly or through contract;

(2) who will reasonably be expected by such covered school to provide services which involve direct contact, meaning in person, face-to-face communication or interaction, with students under the age of 21; and

(3) excluding individuals who:

(i) are seeking a position as a school bus driver or school bus attendant and are cleared for employment pursuant to sections 509-cc, 509-d and/or 1229-d of the Vehicle and Traffic Law after fingerprinting and a criminal history record check and whose fingerprints remain on file with DCJS;

(ii) have provided services for the covered school in the previous school year either: in a compensated position, or as an employee of a provider of contracted services to such covered school, or as a worker placed within the covered school under a public assistance employment program pursuant to title 9-B of article V of the Social Services Law directly or through contract; or

(iii) will reasonably be expected by such covered school to provide services for the covered school on no more than five days in the school year in which services are to be performed, provided that the covered school provides in-person supervision of such individual by one or more employees of the covered school while that individual is providing such services. Individuals providing such time-limited and supervised services may include but shall not be limited to: artists, guest lecturers and speakers, and sports officials.

(l) SED criminal history file means the file of criminal history information maintained by the State Education Department of individuals who were fingerprinted and subject to a criminal history record check and who have not been removed from such file pursuant to the requirements of section 87.7 of this Part.

8 NY ADC 87.2

8 NY ADC 87.2

2008 WL 75116043

8 NY ADC 87.2

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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER C. TEACHERS
PART 87. CRIMINAL HISTORY RECORD CHECK FOR PROSPECTIVE SCHOOL EMPLOYEES AND
APPLICANTS FOR CERTIFICATION

Current through April 30, 2011

* Section 87.1.* Purpose.

The purpose of this Part is to set forth requirements and procedures for the fingerprinting and the State Education Department's criminal history record check of prospective school employees for service in covered schools, as defined in section 87.2 of this Part, and applicants for certification for service in the public schools of New York State in order to determine whether such individuals shall be granted a clearance for employment and/or certification by the State Education Department.

8 NY ADC 87.1

8 NY ADC 87.1

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