

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1381 Session of 2012

INTRODUCED BY WILLIAMS, PICCOLA, DINNIMAN, WASHINGTON, FARNESE, FONTANA, RAFFERTY, COSTA, WAUGH, BROWNE AND BOSCOLA, JANUARY 13, 2012

SENATOR PICCOLA, EDUCATION, AS AMENDED, MAY 1, 2012

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," providing for employment history
6 review.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The act of March 10, 1949 (P.L.30, No.14), known
10 as the Public School Code of 1949, is amended by adding a
11 section to read:

12 ~~Section 111.1. Employment History Review. (a) (1) This~~ ←
13 ~~section shall apply to all prospective employes of public and~~
14 ~~private schools, nonpublic schools, intermediate units and area~~
15 ~~vocational technical schools, including, but not limited to,~~
16 ~~teachers, substitutes, janitors, cafeteria workers, independent~~
17 ~~contractors and their employes, except those employes and~~
18 ~~independent contractors and their employes who have no direct~~
19 ~~contact with children.~~

1 ~~(2) This section shall apply to bus drivers offered~~
2 ~~employment by a school district, private school, nonpublic~~
3 ~~school, intermediate unit or area vocational technical school or~~
4 ~~by an independent contractor.~~

5 ~~(b) In addition to fulfilling the requirements of section~~
6 ~~111, before a school entity may offer employment to an applicant~~
7 ~~for a position with the school entity, the school entity shall:~~

8 ~~(1) Require the applicant to provide:~~

9 ~~(i) A list of the applicant's current and former employers.~~

10 ~~(ii) A written authorization that authorizes the applicant's~~
11 ~~current and former employers to disclose the information~~
12 ~~requested under subsection (c).~~

13 ~~(iii) A written statement of whether the applicant:~~

14 ~~(A) has been the subject of an abuse or sexual misconduct~~
15 ~~investigation by any employer or child protective services~~
16 ~~agency;~~

17 ~~(B) has ever been the subject of any misconduct~~
18 ~~investigation not related to abuse or sexual misconduct by any~~
19 ~~employer;~~

20 ~~(C) has ever resigned from or otherwise separated from any~~
21 ~~employment while allegations of any abuse or misconduct as~~
22 ~~described in paragraph (A) or (B) were pending or under~~
23 ~~investigation;~~

24 ~~(D) has ever been disciplined, discharged, non-renewed or~~
25 ~~asked to resign from employment; or~~

26 ~~(E) has ever had a license, professional license or~~
27 ~~certificate suspended or revoked.~~

28 ~~(2) Conduct a review of the employment history of the~~
29 ~~applicant by contacting the current and all past employers of~~
30 ~~the applicant and requesting the following information, as well~~

1 ~~as any records relating to the information requested under~~
2 ~~subclause (ii):~~

3 ~~(i) the dates of employment of the applicant;~~

4 ~~(ii) whether the applicant:~~

5 ~~(A) was the subject of any abuse or sexual misconduct~~
6 ~~investigation by any employer or child protective services~~
7 ~~agency;~~

8 ~~(B) was the subject of any misconduct investigation not~~
9 ~~related to child abuse or sexual misconduct;~~

10 ~~(C) resigned from or otherwise separated from any employment~~
11 ~~while allegations of misconduct were pending or under~~
12 ~~investigation;~~

13 ~~(D) has ever been disciplined, discharged, non renewed or~~
14 ~~asked to resign from employment; or~~

15 ~~(E) has ever had a license, professional license or~~
16 ~~certificate suspended or revoked.~~

17 ~~(3) Check the certification status of any professional~~
18 ~~employe to determine that the applicant holds valid and active~~
19 ~~certification and whether the applicant has been the subject of~~
20 ~~public professional discipline.~~

21 ~~(c) An applicant who wilfully fails to disclose the~~
22 ~~information required in subsection (b) shall be subject to~~
23 ~~discipline up to, and including, termination or denial of~~
24 ~~employment and may be subject to criminal prosecution under 18-~~
25 ~~Pa.C.S. § 4904 (relating to unsworn falsification to~~
26 ~~authorities), and in the case of an employe, the employe shall~~
27 ~~be subject to discipline under the act of December 12, 1973-~~
28 ~~(P.L.397, No.141), known as the "Professional Educator~~
29 ~~Discipline Act."~~

30 ~~(d) The current or former employer of the applicant shall~~

1 ~~provide information and all records in the possession of the~~
2 ~~employer related to subsection (b)(2) as requested under this~~
3 ~~section in accordance with the provisions of subsection (e).~~

4 ~~(e) (1) No later than twenty (20) days after receiving a~~
5 ~~request under subsection (d), an employer that has or had an~~
6 ~~employment relationship with the applicant shall disclose the~~
7 ~~information and records requested.~~

8 ~~(2) An employer shall disclose the information on a~~
9 ~~standardized form, developed by the Department of Education, and~~
10 ~~shall provide any supporting records with the standardized form.~~

11 ~~(3) Information received under this section is not a public~~
12 ~~record for the purposes of the act of February 14, 2008 (P.L.6,~~
13 ~~No.3), known as the "Right to Know Law," except where the~~
14 ~~information satisfies an exception to the "Right to Know Law." A~~
15 ~~school entity receiving the information under subsection (d) may~~
16 ~~use the information only for the purpose of evaluating an~~
17 ~~applicant's fitness to be hired or for continued employment.~~

18 ~~(4) An employer that provides information or records as~~
19 ~~required under this section about a current or former employe to~~
20 ~~a prospective employer shall be immune from civil liability for~~
21 ~~the disclosure of the information unless the information or~~
22 ~~records provided were knowingly false.~~

23 ~~(5) Except where the laws of other states prevent the~~
24 ~~release of the information or records requested, the failure of~~
25 ~~the school entity or employer in which the applicant had contact~~
26 ~~with children to provide the information and records as~~
27 ~~requested may result in a penalty not to exceed ten thousand~~
28 ~~dollars (\$10,000). In the case of a school entity, failure to~~
29 ~~respond may also subject the school administrator to discipline~~
30 ~~in accordance with the "Professional Educator Discipline Act."~~

1 ~~(f) (1) A school entity may not hire an applicant who does~~
2 ~~not provide the information required under subsection (b).~~

3 ~~(2) A school entity may hire an applicant on a conditional~~
4 ~~basis for a period not to exceed ninety (90) days pending the~~
5 ~~school entity's review of information and records received under~~
6 ~~this section on the condition that the applicant has no direct~~
7 ~~contact with children.~~

8 ~~(3) A school entity may not deny an applicant employment~~
9 ~~solely because a current or former employer of an applicant~~
10 ~~fails or refuses to comply with the requirements of subsection~~
11 ~~(e) or the applicant has or had an out of State employer and the~~
12 ~~laws or rules of that state prevent the release of information~~
13 ~~or records requested under subsection (e).~~

14 ~~(g) A school entity may not enter into a collective~~
15 ~~bargaining agreement, an employment contract, an agreement for~~
16 ~~resignation or termination, a severance agreement or any other~~
17 ~~contract or agreement or take any action that:~~

18 ~~(1) has the effect of suppressing information relating to an~~
19 ~~investigation related to a report of suspect abuse, sexual~~
20 ~~misconduct or other misconduct by a current or former employe;~~

21 ~~(2) affects the duties of the school entity to report~~
22 ~~suspected abuse, sexual misconduct or other misconduct to the~~
23 ~~appropriate authorities;~~

24 ~~(3) impairs the responsibility or ability of the school~~
25 ~~entity to discipline an employe for abuse, sexual misconduct or~~
26 ~~other misconduct; or~~

27 ~~(4) requires the school entity to expunge information about~~
28 ~~allegations or findings of abuse, sexual misconduct or other~~
29 ~~misconduct from any documents maintained by a school entity.~~

30 ~~(h) Any provision of an employment contract or agreement~~

1 ~~that is contrary to this section is void and unenforceable.~~

2 ~~(i) Nothing in this section shall be construed to prevent a~~
3 ~~school entity from entering into a collective bargaining~~
4 ~~agreement that includes standards for investigation of a report~~
5 ~~of abuse, sexual misconduct or other misconduct.~~

6 ~~(j) Nothing in this section shall be construed to relieve a~~
7 ~~school entity of its legal responsibility to report suspected~~
8 ~~incidents of abuse in accordance with the provisions of 23-~~
9 ~~Pa.C.S. Ch. 63 Subch. B (relating to provisions and~~
10 ~~responsibilities for reporting suspected child abuse).~~

11 ~~(k) As used in this section, the following words and phrases~~
12 ~~shall have the meanings given to them in this subsection:~~

13 ~~"Abuse" shall mean conduct that falls under the purview and~~
14 ~~reporting requirements of 23 Pa.C.S. Ch. 63 (relating to child~~
15 ~~protective services).~~

16 ~~"School entity" shall mean any public school, including a~~
17 ~~charter school or cyber charter school, private school,~~
18 ~~nonpublic school, intermediate unit or area vocational technical~~
19 ~~school operating within this Commonwealth.~~

20 ~~"Sexual misconduct" shall mean any act, including, but not~~
21 ~~limited to, any verbal, non verbal, written or electronic~~
22 ~~communication or physical activity, directed toward or with a~~
23 ~~child or a student regardless of the age of the child or student~~
24 ~~that is designed to establish a romantic or sexual relationship~~
25 ~~with the child or student. Such prohibited acts include, but are~~
26 ~~not limited to:~~

27 ~~(1) sexual or romantic involvement;~~

28 ~~(2) dating or soliciting dates;~~

29 ~~(3) engaging in sexualized or romantic dialog;~~

30 ~~(4) making sexually suggestive comments;~~

1 ~~(5) self disclosure or physical exposure of a sexual,~~
2 ~~romantic or erotic nature; or~~
3 ~~(6) any sexual, indecent, romantic or erotic contact with~~
4 ~~the child or student.~~

5 SECTION 111.1. EMPLOYMENT HISTORY REVIEW.-- (A) THIS SECTION ←
6 SHALL APPLY TO ALL POSITIONS FOR EMPLOYMENT AT SCHOOL ENTITIES
7 AND INDEPENDENT CONTRACTORS OF SCHOOL ENTITIES INVOLVING DIRECT
8 CONTACT WITH CHILDREN.

9 (B) IN ADDITION TO FULFILLING THE REQUIREMENTS OF SECTION
10 111 AND 23 PA.C.S. CH. 63 SUBCH. C.2 (RELATING TO BACKGROUND
11 CHECKS FOR EMPLOYMENT IN SCHOOLS), BEFORE A SCHOOL ENTITY OR
12 INDEPENDENT CONTRACTOR MAY OFFER EMPLOYMENT TO AN APPLICANT WHO
13 WOULD BE EMPLOYED BY OR IN A SCHOOL ENTITY IN A POSITION
14 INVOLVING DIRECT CONTACT WITH CHILDREN, THE SCHOOL ENTITY OR
15 INDEPENDENT CONTRACTOR SHALL:

16 (1) REQUIRE THE APPLICANT TO PROVIDE:

17 (I) A LIST, INCLUDING NAME, ADDRESS, TELEPHONE NUMBER AND
18 OTHER RELEVANT CONTACT INFORMATION OF THE APPLICANT'S:

19 (A) CURRENT EMPLOYER.

20 (B) ALL FORMER EMPLOYERS THAT WERE SCHOOL ENTITIES.

21 (C) ALL FORMER EMPLOYERS WHERE THE APPLICANT WAS EMPLOYED IN
22 POSITIONS THAT INVOLVED DIRECT CONTACT WITH CHILDREN.

23 (D) ALL OTHER FORMER EMPLOYERS SUBSEQUENT TO THE APPLICANT'S
24 EIGHTEENTH BIRTHDAY AND WITHIN THE PREVIOUS TEN (10) YEARS.

25 (II) A WRITTEN AUTHORIZATION THAT CONSENTS TO AND AUTHORIZES
26 DISCLOSURE BY THE APPLICANT'S CURRENT AND FORMER EMPLOYERS IN
27 SUBPARAGRAPH (I) OF THE INFORMATION REQUESTED UNDER PARAGRAPH
28 (2) AND THE RELEASE OF RELATED RECORDS AND THAT RELEASES THOSE
29 EMPLOYERS FROM LIABILITY THAT MAY ARISE FROM SUCH DISCLOSURE OR
30 RELEASE OF RECORDS PURSUANT TO SUBSECTION (D) (5).

1 (III) A WRITTEN STATEMENT OF WHETHER THE APPLICANT:

2 (A) HAS BEEN THE SUBJECT OF AN ABUSE OR SEXUAL MISCONDUCT
3 INVESTIGATION BY ANY EMPLOYER, STATE LICENSING AGENCY, LAW
4 ENFORCEMENT AGENCY OR CHILD PROTECTIVE SERVICES AGENCY, UNLESS
5 THE INVESTIGATION RESULTED IN A FINDING THAT THE ALLEGATIONS
6 WERE FALSE;

7 (B) HAS EVER BEEN DISCIPLINED, DISCHARGED, NONRENEWED, ASKED
8 TO RESIGN FROM EMPLOYMENT, RESIGNED FROM OR OTHERWISE SEPARATED
9 FROM ANY EMPLOYMENT WHILE ALLEGATIONS OF ABUSE OR SEXUAL
10 MISCONDUCT AS DESCRIBED IN CLAUSE (A) WERE PENDING OR UNDER
11 INVESTIGATION, OR DUE TO AN ADJUDICATION OR FINDINGS OF ABUSE OR
12 SEXUAL MISCONDUCT AS DESCRIBED IN CLAUSE (A); OR

13 (C) HAS EVER HAD A LICENSE, PROFESSIONAL LICENSE OR
14 CERTIFICATE SUSPENDED, SURRENDERED OR REVOKED WHILE ALLEGATIONS
15 OF ABUSE OR SEXUAL MISCONDUCT AS DESCRIBED IN CLAUSE (A) WERE
16 PENDING OR UNDER INVESTIGATION, OR DUE TO AN ADJUDICATION OR
17 FINDINGS OF ABUSE OR SEXUAL MISCONDUCT AS DESCRIBED IN CLAUSE
18 (A).

19 (2) CONDUCT A REVIEW OF THE EMPLOYMENT HISTORY OF THE
20 APPLICANT BY CONTACTING THOSE EMPLOYERS LISTED BY THE APPLICANT
21 UNDER THE PROVISIONS OF PARAGRAPH (1) (I) AND REQUESTING THE
22 FOLLOWING INFORMATION:

23 (I) THE DATES OF EMPLOYMENT OF THE APPLICANT.

24 (II) A STATEMENT AS TO WHETHER THE APPLICANT:

25 (A) WAS THE SUBJECT OF ANY ABUSE OR SEXUAL MISCONDUCT
26 INVESTIGATION BY ANY EMPLOYER, STATE LICENSING AGENCY, LAW
27 ENFORCEMENT AGENCY OR CHILD PROTECTIVE SERVICES AGENCY, UNLESS
28 SUCH INVESTIGATION RESULTED IN A FINDING THAT THE ALLEGATIONS
29 WERE FALSE;

30 (B) WAS DISCIPLINED, DISCHARGED, NONRENEWED, ASKED TO RESIGN

1 FROM EMPLOYMENT, RESIGNED FROM OR OTHERWISE SEPARATED FROM ANY
2 EMPLOYMENT WHILE ALLEGATIONS OF ABUSE OR SEXUAL MISCONDUCT AS
3 DESCRIBED IN CLAUSE (A) WERE PENDING OR UNDER INVESTIGATION, OR
4 DUE TO AN ADJUDICATION OR FINDINGS OF ABUSE OR SEXUAL MISCONDUCT
5 DESCRIBED IN CLAUSE (A); OR

6 (C) HAS EVER HAD A LICENSE, PROFESSIONAL LICENSE OR
7 CERTIFICATE SUSPENDED, SURRENDERED OR REVOKED WHILE ALLEGATIONS
8 OF ABUSE OR SEXUAL MISCONDUCT AS DESCRIBED IN CLAUSE (A) WERE
9 PENDING OR UNDER INVESTIGATION, OR DUE TO AN ADJUDICATION OR
10 FINDINGS OF ABUSE OR SEXUAL MISCONDUCT AS DESCRIBED IN CLAUSE
11 (A).

12 (3) CHECK THE ELIGIBILITY FOR EMPLOYMENT OR CERTIFICATION
13 STATUS OF ANY APPLICANT INVOLVING DIRECT CONTACT WITH CHILDREN
14 TO DETERMINE WHETHER THE APPLICANT HOLDS VALID AND ACTIVE
15 CERTIFICATION APPROPRIATE FOR THE POSITION AND IS OTHERWISE
16 ELIGIBLE FOR EMPLOYMENT AND WHETHER THE APPLICANT HAS BEEN THE
17 SUBJECT OF PUBLIC PROFESSIONAL DISCIPLINE.

18 (C) AN APPLICANT WHO PROVIDES FALSE INFORMATION OR WILFULLY
19 FAILS TO DISCLOSE INFORMATION REQUIRED IN SUBSECTION (B) SHALL
20 BE SUBJECT TO DISCIPLINE UP TO, AND INCLUDING, TERMINATION OR
21 DENIAL OF EMPLOYMENT AND MAY BE SUBJECT TO CRIMINAL PROSECUTION
22 UNDER 18 PA.C.S. § 4904 (RELATING TO UNSWORN FALSIFICATION TO
23 AUTHORITIES), AND MAY BE SUBJECT TO CIVIL PENALTIES AND
24 PROFESSIONAL DISCIPLINE IN ACCORDANCE WITH SUBSECTION (K).

25 (D) (1) NO LATER THAN TWENTY (20) DAYS AFTER RECEIVING A
26 REQUEST FOR INFORMATION REQUIRED UNDER SUBSECTION (B) (2), AN
27 EMPLOYER THAT HAS OR HAD AN EMPLOYMENT RELATIONSHIP WITH THE
28 APPLICANT SHALL DISCLOSE THE INFORMATION REQUESTED.

29 (2) THE EMPLOYER SHALL DISCLOSE THE INFORMATION ON A
30 STANDARDIZED FORM DEVELOPED BY THE DEPARTMENT OF EDUCATION.

1 (3) (I) AFTER REVIEWING THE INFORMATION INITIALLY DISCLOSED
2 UNDER PARAGRAPH (1) AND FINDING AN AFFIRMATIVE RESPONSE TO
3 SUBSECTION (B) (1) (A), (B) OR (C) OR (2) (A), (B) OR (C), WHERE
4 THE PROSPECTIVE EMPLOYING SCHOOL ENTITY OR CONTRACTOR MAKES A
5 DETERMINATION TO FURTHER CONSIDER THE APPLICANT FOR EMPLOYMENT,
6 THE SCHOOL ENTITY OR CONTRACTOR SHALL REQUEST THAT FORMER
7 EMPLOYERS PROVIDE ADDITIONAL INFORMATION ABOUT THE MATTERS
8 DISCLOSED AND ALL RELATED RECORDS.

9 (II) FORMER EMPLOYERS SHALL PROVIDE THE ADDITIONAL
10 INFORMATION REQUESTED NO LATER THAN SIXTY (60) DAYS AFTER THE
11 PROSPECTIVE EMPLOYER'S REQUEST UNDER THIS PARAGRAPH.

12 (4) (I) INFORMATION RECEIVED UNDER THIS SECTION SHALL NOT
13 BE DEEMED A PUBLIC RECORD FOR THE PURPOSES OF THE ACT OF
14 FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS THE "RIGHT-TO-KNOW
15 LAW."

16 (II) A SCHOOL ENTITY THAT RECEIVES THE INFORMATION UNDER
17 THIS SUBSECTION MAY USE THE INFORMATION FOR THE PURPOSE OF
18 EVALUATING AN APPLICANT'S FITNESS TO BE HIRED OR FOR CONTINUED
19 EMPLOYMENT AND MAY REPORT THE INFORMATION AS APPROPRIATE TO THE
20 DEPARTMENT OF EDUCATION, A STATE LICENSING AGENCY, LAW
21 ENFORCEMENT AGENCY, CHILD PROTECTIVE SERVICES AGENCY, ANOTHER
22 SCHOOL ENTITY OR PROSPECTIVE EMPLOYER.

23 (5) AN EMPLOYER, SCHOOL ENTITY, SCHOOL ADMINISTRATOR OR
24 INDEPENDENT CONTRACTOR THAT PROVIDES INFORMATION OR RECORDS
25 ABOUT A CURRENT OR FORMER EMPLOYEE OR APPLICANT SHALL BE IMMUNE
26 FROM CRIMINAL LIABILITY UNDER 23 PA.C.S. CH. 63 (RELATING TO
27 CHILD PROTECTIVE SERVICES) AND THE ACT OF DECEMBER 12, 1973
28 (P.L.397, NO.141), KNOWN AS THE "PROFESSIONAL EDUCATOR
29 DISCIPLINE ACT," AND CIVIL LIABILITY FOR THE DISCLOSURE OF THE
30 INFORMATION, UNLESS THE INFORMATION OR RECORDS PROVIDED WERE

1 KNOWINGLY FALSE. SUCH IMMUNITY SHALL BE IN ADDITION TO AND NOT
2 IN LIMITATION OF ANY OTHER IMMUNITY PROVIDED BY LAW, OR ANY
3 ABSOLUTE OR CONDITIONAL PRIVILEGES APPLICABLE TO SUCH
4 DISCLOSURES BY VIRTUE OF THE CIRCUMSTANCES OR THE APPLICANT'S
5 CONSENT THERETO.

6 (6) EXCEPT WHERE THE LAWS OF OTHER STATES PREVENT THE
7 RELEASE OF THE INFORMATION OR RECORDS REQUESTED, OR DISCLOSURE
8 IS RESTRICTED BY THE TERMS OF A CONTRACT ENTERED INTO PRIOR TO
9 THE EFFECTIVE DATE OF THIS SECTION, THE WILFUL FAILURE OF A
10 FORMER EMPLOYER, SCHOOL ENTITY, SCHOOL ADMINISTRATOR OR
11 INDEPENDENT CONTRACTOR TO RESPOND OR PROVIDE THE INFORMATION AND
12 RECORDS AS REQUESTED MAY RESULT IN CIVIL PENALTIES, AND
13 PROFESSIONAL DISCIPLINE WHERE APPROPRIATE, IN ACCORDANCE WITH
14 SUBSECTION (K).

15 (7) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, AN
16 EMPLOYER, SCHOOL ENTITY, SCHOOL ADMINISTRATOR, INDEPENDENT
17 CONTRACTOR OR APPLICANT SHALL REPORT AND DISCLOSE IN ACCORDANCE
18 WITH THIS SECTION ALL RELEVANT INFORMATION, RECORDS AND
19 DOCUMENTATION THAT MAY OTHERWISE BE CONFIDENTIAL UNDER 23
20 PA.C.S. CH. 63 AND THE "PROFESSIONAL EDUCATOR DISCIPLINE ACT."

21 (E) (1) A SCHOOL ENTITY OR INDEPENDENT CONTRACTOR MAY NOT
22 HIRE AN APPLICANT WHO DOES NOT PROVIDE THE INFORMATION REQUIRED
23 UNDER SUBSECTION (B) FOR A POSITION INVOLVING DIRECT CONTACT
24 WITH CHILDREN.

25 (2) A SCHOOL ENTITY MAY HIRE AN APPLICANT ON A PROVISIONAL
26 BASIS FOR A PERIOD NOT TO EXCEED NINETY (90) DAYS PENDING THE
27 SCHOOL ENTITY'S REVIEW OF INFORMATION AND RECORDS RECEIVED UNDER
28 THIS SECTION, PROVIDED THAT ALL OF THE FOLLOWING ARE SATISFIED:

29 (I) THE APPLICANT HAS PROVIDED ALL OF THE INFORMATION AND
30 SUPPORTING DOCUMENTATION REQUIRED UNDER SUBSECTION (B).

1 (II) THE SCHOOL ADMINISTRATOR HAS NO KNOWLEDGE OF
2 INFORMATION PERTAINING TO THE APPLICANT THAT WOULD DISQUALIFY
3 THE APPLICANT FROM EMPLOYMENT.

4 (III) THE APPLICANT SWEARS OR AFFIRMS THAT THE APPLICANT IS
5 NOT DISQUALIFIED FROM EMPLOYMENT.

6 (IV) THE APPLICANT IS NOT PERMITTED TO WORK ALONE WITH
7 CHILDREN AND WORKS IN THE IMMEDIATE VICINITY OF A PERMANENT
8 EMPLOYEE.

9 (F) ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, A SCHOOL
10 ENTITY OR INDEPENDENT CONTRACTOR MAY NOT ENTER INTO A COLLECTIVE
11 BARGAINING AGREEMENT, AN EMPLOYMENT CONTRACT, AN AGREEMENT FOR
12 RESIGNATION OR TERMINATION, A SEVERANCE AGREEMENT OR ANY OTHER
13 CONTRACT OR AGREEMENT OR TAKE ANY ACTION THAT:

14 (1) HAS THE EFFECT OF SUPPRESSING INFORMATION RELATING TO AN
15 INVESTIGATION RELATED TO A REPORT OF SUSPECTED ABUSE OR SEXUAL
16 MISCONDUCT BY A CURRENT OR FORMER EMPLOYEE;

17 (2) AFFECTS THE ABILITY OF THE SCHOOL ENTITY OR INDEPENDENT
18 CONTRACTOR TO REPORT SUSPECTED ABUSE OR SEXUAL MISCONDUCT TO THE
19 APPROPRIATE AUTHORITIES; OR

20 (3) REQUIRES THE SCHOOL ENTITY OR INDEPENDENT CONTRACTOR TO
21 EXPUNGE INFORMATION ABOUT ALLEGATIONS OR FINDINGS OF SUSPECTED
22 ABUSE OR SEXUAL MISCONDUCT FROM ANY DOCUMENTS MAINTAINED BY THE
23 SCHOOL ENTITY OR INDEPENDENT CONTRACTOR, UNLESS AFTER
24 INVESTIGATION THE ALLEGATIONS ARE FOUND TO BE FALSE.

25 (G) ANY PROVISION OF AN EMPLOYMENT CONTRACT OR AGREEMENT FOR
26 RESIGNATION OR TERMINATION OR A SEVERANCE AGREEMENT THAT IS
27 EXECUTED, AMENDED OR ENTERED INTO AFTER THE EFFECTIVE DATE OF
28 THIS SECTION AND THAT IS CONTRARY TO THIS SECTION SHALL BE VOID
29 AND UNENFORCEABLE.

30 (H) (1) FOR SUBSTITUTE EMPLOYEES, THE EMPLOYMENT HISTORY

1 REVIEW REQUIRED BY THIS SECTION SHALL BE REQUIRED ONLY PRIOR TO
2 THE INITIAL HIRING OF A SUBSTITUTE OR PLACEMENT ON THE SCHOOL
3 ENTITY'S APPROVED SUBSTITUTE LIST AND SHALL REMAIN VALID AS LONG
4 AS THE SUBSTITUTE CONTINUES TO BE EMPLOYED BY THE SAME SCHOOL
5 ENTITY OR REMAINS ON THE SCHOOL ENTITY'S APPROVED SUBSTITUTE
6 LIST.

7 (2) A SUBSTITUTE SEEKING TO BE ADDED TO ANOTHER SCHOOL
8 ENTITY'S SUBSTITUTE LIST SHALL UNDERGO A NEW EMPLOYMENT HISTORY
9 REVIEW. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (3), THE
10 APPEARANCE OF A SUBSTITUTE ON ONE SCHOOL ENTITY'S SUBSTITUTE
11 LIST DOES NOT RELIEVE ANOTHER SCHOOL ENTITY FROM COMPLIANCE WITH
12 THIS SECTION.

13 (3) AN EMPLOYMENT HISTORY REVIEW CONDUCTED UPON INITIAL
14 HIRING OF A SUBSTITUTE EMPLOYE BY AN INDEPENDENT CONTRACTOR,
15 INTERMEDIATE UNIT OR ANY OTHER ENTITY THAT FURNISHES SUBSTITUTE
16 STAFFING SERVICES TO SCHOOL ENTITIES SHALL SATISFY THE
17 REQUIREMENTS OF THIS SECTION FOR ALL SCHOOL ENTITIES USING THE
18 SERVICES OF THAT INDEPENDENT CONTRACTOR, INTERMEDIATE UNIT OR
19 OTHER ENTITY.

20 (4) AN INDEPENDENT CONTRACTOR, INTERMEDIATE UNIT OR ANY
21 OTHER ENTITY FURNISHING SUBSTITUTE STAFFING SERVICES TO SCHOOL
22 ENTITIES SHALL COMPLY WITH THE PROVISIONS OF SUBSECTION (I) (3)
23 AND (4).

24 (5) FOR PURPOSES OF THIS SUBSECTION, "SUBSTITUTE EMPLOYEE"
25 SHALL NOT MEAN SCHOOL BUS DRIVERS EMPLOYED BY AN INDEPENDENT
26 CONTRACTOR.

27 (I) (1) FOR EMPLOYEES OF INDEPENDENT CONTRACTORS, THE
28 EMPLOYMENT HISTORY REVIEW REQUIRED BY THIS SECTION SHALL BE
29 PERFORMED, EITHER AT THE TIME OF THE INITIAL HIRING OF THE
30 EMPLOYEE OR PRIOR TO THE ASSIGNMENT OF AN EXISTING EMPLOYEE TO

1 PERFORM WORK FOR A SCHOOL ENTITY IN A POSITION INVOLVING DIRECT
2 CONTACT WITH CHILDREN. THE REVIEW SHALL REMAIN VALID AS LONG AS
3 THE EMPLOYEE REMAINS EMPLOYED BY THAT SAME INDEPENDENT
4 CONTRACTOR, EVEN THOUGH ASSIGNED TO PERFORM WORK FOR OTHER
5 SCHOOL ENTITIES.

6 (2) AN INDEPENDENT CONTRACTOR SHALL MAINTAIN RECORDS
7 DOCUMENTING EMPLOYMENT HISTORY REVIEWS FOR ALL EMPLOYEES AS
8 REQUIRED BY THIS SECTION AND, UPON REQUEST, SHALL PROVIDE A
9 SCHOOL ENTITY FOR WHOM AN EMPLOYEE IS ASSIGNED TO PERFORM WORK
10 ACCESS TO THE RECORDS PERTAINING TO THAT EMPLOYEE.

11 (3) PRIOR TO ASSIGNING AN EMPLOYEE TO PERFORM WORK FOR A
12 SCHOOL ENTITY IN A POSITION INVOLVING DIRECT CONTACT WITH
13 CHILDREN, THE INDEPENDENT CONTRACTOR SHALL INFORM THE SCHOOL
14 ENTITY OF ANY INSTANCE KNOWN TO THE INDEPENDENT CONTRACTOR IN
15 WHICH THE EMPLOYEE:

16 (I) WAS THE SUBJECT OF ANY ABUSE OR SEXUAL MISCONDUCT
17 INVESTIGATION BY ANY EMPLOYER, STATE LICENSING AGENCY, LAW
18 ENFORCEMENT AUTHORITY OR CHILD PROTECTIVE SERVICES AGENCY,
19 UNLESS SUCH INVESTIGATION RESULTED IN A FINDING THAT ALLEGATIONS
20 ARE FALSE;

21 (II) HAS EVER BEEN DISCIPLINED, DISCHARGED, NONRENEWED,
22 REMOVED FROM A SUBSTITUTE LIST, ASKED TO RESIGN FROM EMPLOYMENT,
23 RESIGNED FROM OR OTHERWISE SEPARATED FROM ANY EMPLOYMENT WHILE
24 ALLEGATIONS OF ABUSE OR SEXUAL MISCONDUCT AS DESCRIBED IN
25 SUBPARAGRAPH (I) WERE PENDING OR UNDER INVESTIGATION, OR DUE TO
26 AN ADJUDICATION OR FINDINGS OF ABUSE OR SEXUAL MISCONDUCT AS
27 DESCRIBED IN SUBPARAGRAPH (I); OR

28 (III) HAS EVER HAD A LICENSE, PROFESSIONAL LICENSE OR
29 CERTIFICATE SUSPENDED, SURRENDERED OR REVOKED WHILE ALLEGATIONS
30 OF ABUSE OR SEXUAL MISCONDUCT AS DESCRIBED IN SUBPARAGRAPH (I)

1 WERE PENDING OR UNDER INVESTIGATION, OR DUE TO AN ADJUDICATION
2 OR FINDINGS OF ABUSE OR SEXUAL MISCONDUCT AS DESCRIBED IN
3 SUBPARAGRAPH (I).

4 (4) THE INDEPENDENT CONTRACTOR MAY NOT ASSIGN THE EMPLOYE TO
5 PERFORM WORK FOR THE SCHOOL ENTITY IN A POSITION INVOLVING
6 DIRECT CONTACT WITH CHILDREN WHERE THE SCHOOL ENTITY OBJECTS TO
7 THE ASSIGNMENT AFTER BEING INFORMED OF AN INSTANCE LISTED IN
8 PARAGRAPH (3).

9 (J) NOTHING IN THIS SECTION SHALL BE CONSTRUED:

10 (1) TO PREVENT A PROSPECTIVE EMPLOYER FROM CONDUCTING
11 FURTHER INVESTIGATIONS OF PROSPECTIVE EMPLOYEES OR FROM REQUIRING
12 APPLICANTS TO PROVIDE ADDITIONAL BACKGROUND INFORMATION OR
13 AUTHORIZATIONS BEYOND WHAT IS REQUIRED UNDER THIS SECTION, NOR
14 TO PREVENT A FORMER EMPLOYER FROM DISCLOSING MORE INFORMATION
15 THAN WHAT IS REQUIRED UNDER THIS SECTION.

16 (2) TO RELIEVE A SCHOOL ENTITY, SCHOOL ADMINISTRATOR OR
17 INDEPENDENT CONTRACTOR OF ITS LEGAL RESPONSIBILITY TO REPORT
18 SUSPECTED INCIDENTS OF ABUSE IN ACCORDANCE WITH THE PROVISIONS
19 OF 23 PA.C.S. CH. 63.

20 (3) TO RELIEVE A SCHOOL ENTITY, SCHOOL ADMINISTRATOR OR
21 INDEPENDENT CONTRACTOR OF ITS LEGAL RESPONSIBILITY TO REPORT
22 SUSPECTED INCIDENTS OF PROFESSIONAL MISCONDUCT IN ACCORDANCE
23 WITH THE "PROFESSIONAL EDUCATOR DISCIPLINE ACT."

24 (4) TO PROHIBIT THE RIGHT OF THE EXCLUSIVE REPRESENTATIVE
25 UNDER A COLLECTIVE BARGAINING AGREEMENT TO GRIEVE AND ARBITRATE
26 THE VALIDITY OF AN EMPLOYE'S TERMINATION OR DISCIPLINE FOR JUST
27 CAUSE OR FOR THE CAUSES SET FORTH IN THIS ACT.

28 (K) (1) THE DEPARTMENT OF EDUCATION SHALL HAVE JURISDICTION
29 TO DETERMINE WILFUL VIOLATIONS OF THIS SECTION AND MAY,
30 FOLLOWING A HEARING, ASSESS A CIVIL PENALTY NOT TO EXCEED TEN

1 THOUSAND DOLLARS (\$10,000). SCHOOL ENTITIES SHALL BE BARRED FROM
2 CONTRACTING WITH AN INDEPENDENT CONTRACTOR WHO IS FOUND TO HAVE
3 WILFULLY VIOLATED THE PROVISIONS OF THIS SECTION.

4 (2) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY,
5 THE DEPARTMENT OF EDUCATION MAY INITIATE DISCIPLINARY ACTION
6 BEFORE THE PROFESSIONAL STANDARDS AND PRACTICES COMMISSION
7 PURSUANT TO THE "PROFESSIONAL EDUCATOR DISCIPLINE ACT" AGAINST
8 ANY APPLICANT, EMPLOYEE, INDEPENDENT CONTRACTOR OR SCHOOL
9 ADMINISTRATOR WHO IS SUBJECT TO THE "PROFESSIONAL EDUCATOR
10 DISCIPLINE ACT" FOR WILFUL VIOLATIONS OF THIS SECTION.

11 (L) CONTRACTORS AND SCHOOL ENTITIES SHALL PROVIDE THEIR
12 EMPLOYEES WHO HAVE DIRECT CONTACT WITH CHILDREN WITH MANDATORY
13 TRAINING ON CHILD ABUSE RECOGNITION AND REPORTING AND THE
14 FOLLOWING SHALL APPLY:

15 (1) TRAINING SHALL ADDRESS, BUT SHALL NOT BE LIMITED TO, THE
16 FOLLOWING TOPICS:

17 (I) RECOGNITION OF THE SIGNS OF ABUSE AND SEXUAL MISCONDUCT
18 AND REPORTING REQUIREMENTS FOR SUSPECTED ABUSE AND SEXUAL
19 MISCONDUCT IN THIS COMMONWEALTH.

20 (II) PROVISIONS OF THE "PROFESSIONAL EDUCATOR DISCIPLINE
21 ACT," INCLUDING MANDATORY REPORTING REQUIREMENTS.

22 (III) SCHOOL DISTRICT POLICIES RELATED TO REPORTING OF
23 SUSPECTED ABUSE AND SEXUAL MISCONDUCT.

24 (IV) MAINTENANCE OF PROFESSIONAL AND APPROPRIATE
25 RELATIONSHIPS WITH STUDENTS.

26 (2) INDEPENDENT CONTRACTORS AND SCHOOL ENTITIES MAY PROVIDE
27 TRAINING THROUGH THE INTERNET OR OTHER DISTANCE COMMUNICATION
28 SYSTEMS.

29 (3) EMPLOYEES SHALL COMPLETE A MINIMUM OF THREE (3) HOURS OF
30 TRAINING EVERY FIVE (5) YEARS.

1 (4) EMPLOYES REQUIRED TO UNDERGO CONTINUING PROFESSIONAL
2 EDUCATION UNDER SECTION 1205.2 SHALL RECEIVE CREDIT TOWARD THE
3 CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS WHERE THE
4 TRAINING PROGRAM HAS BEEN APPROVED BY THE DEPARTMENT OF PUBLIC
5 WELFARE OR THE DEPARTMENT OF EDUCATION.

6 (M) THE DEPARTMENT OF EDUCATION SHALL DEVELOP THE FORMS FOR
7 APPLICANTS AND EMPLOYERS REQUIRED UNDER SUBSECTION (B) (1) AND
8 (2), AS WELL AS ANY OTHER FORMS NECESSARY TO CARRY OUT THE
9 PROVISIONS OF THIS SECTION.

10 (N) AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES
11 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION:

12 "ABUSE." CONDUCT THAT FALLS UNDER THE PURVIEW AND REPORTING
13 REQUIREMENTS OF 23 PA.C.S. CH. 63 (RELATING TO CHILD PROTECTIVE
14 SERVICES) AND IS DIRECTED TOWARD OR AGAINST A CHILD OR A
15 STUDENT, REGARDLESS OF THE AGE OF THE CHILD OR STUDENT.

16 "DIRECT CONTACT WITH CHILDREN." THE POSSIBILITY OF CARE,
17 SUPERVISION, GUIDANCE OR CONTROL OF CHILDREN OR ROUTINE
18 INTERACTION WITH CHILDREN.

19 "SCHOOL ENTITY." ANY PUBLIC SCHOOL, INCLUDING A CHARTER
20 SCHOOL OR CYBER CHARTER SCHOOL, PRIVATE SCHOOL, NONPUBLIC
21 SCHOOL, INTERMEDIATE UNIT OR AREA VOCATIONAL-TECHNICAL SCHOOL
22 OPERATING WITHIN THIS COMMONWEALTH.

23 "SEXUAL MISCONDUCT." ANY ACT, INCLUDING, BUT NOT LIMITED TO,
24 ANY VERBAL, NONVERBAL, WRITTEN OR ELECTRONIC COMMUNICATION OR
25 PHYSICAL ACTIVITY, DIRECTED TOWARD OR WITH A CHILD OR A STUDENT
26 REGARDLESS OF THE AGE OF THE CHILD OR STUDENT THAT IS DESIGNED
27 TO ESTABLISH A ROMANTIC OR SEXUAL RELATIONSHIP WITH THE CHILD OR
28 STUDENT. SUCH ACTS INCLUDE, BUT ARE NOT LIMITED TO:

29 (1) SEXUAL OR ROMANTIC INVITATION.

30 (2) DATING OR SOLICITING DATES.

1 (3) ENGAGING IN SEXUALIZED OR ROMANTIC DIALOG.

2 (4) MAKING SEXUALLY SUGGESTIVE COMMENTS.

3 (5) SELF-DISCLOSURE OR PHYSICAL EXPOSURE OF A SEXUAL,
4 ROMANTIC OR EROTIC NATURE.

5 (6) ANY SEXUAL, INDECENT, ROMANTIC OR EROTIC CONTACT WITH
6 THE CHILD OR STUDENT.

7 Section 2. This act shall take effect in 60 days.