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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1349 Session of  
2011

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INTRODUCED BY WILLIAMS, PICCOLA, DINNIMAN, WASHINGTON, FARNESE,  
FONTANA, RAFFERTY, COSTA, WAUGH, BROWNE AND BOSCOLA,  
NOVEMBER 28, 2011

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REFERRED TO EDUCATION, NOVEMBER 28, 2011

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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, intermediate units and area vocational-  
15 technical schools, including, but not limited to, teachers,  
16 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 who are school entities.

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

14 (iii) A written statement of whether the applicant:

15 (A) has been the subject of a substantiated report of child  
16 abuse or sexual conduct; or

17 (B) is the subject of an ongoing investigation related to a  
18 report of suspected child abuse or sexual conduct.

19 (2) (Reserved).

20 (c) Conduct a review of the employment history of the  
21 applicant by contacting the three most recent employers of the  
22 applicant who are school entities and requesting or verifying  
23 the following:

24 (1) the dates of employment of the applicant by the school  
25 entities;

26 (2) whether the applicant was the subject of any  
27 substantiated reports of child abuse or sexual conduct related  
28 to the applicant's employment with the school entity, and the  
29 dates of any substantiated reports;

30 (3) the definitions of child abuse and sexual conduct used

1 by the school entity when the school entity determined that any  
2 reports were substantiated; and

3 (4) the standards used by the education provider to  
4 determine whether any reports were substantiated.

5 (d) Inquire with the Professional Standards and Practices  
6 Commission to determine whether the Commission has information  
7 relating to conduct of the applicant that may constitute child  
8 abuse or sexual conduct.

9 (e) (1) No later than twenty (20) days after receiving a  
10 request under subsection (c), a school entity that has or has  
11 had an employment relationship with the applicant shall disclose  
12 the information requested.

13 (2) A school entity may disclose the information on a  
14 standardized form, developed by the Department of Education, and  
15 is not required to provide any additional information related to  
16 a substantiated report of child abuse or sexual conduct other  
17 than the information that is required under subsection (c).

18 (3) Information received under this section is confidential  
19 and is not a public record for the purposes of the act of  
20 February 14, 2008, (P.L.6, No.3), known as the "Right-to-Know  
21 Law." A school entity may use the information only for the  
22 purpose of evaluating an applicant's eligibility to be hired.

23 (f) (1) A school entity may not hire an applicant who does  
24 not comply with the requirements of this section.

25 (2) A school entity may hire an applicant on a conditional  
26 basis pending the school entity's review of information and  
27 records received under this section.

28 (3) A school entity may not deny an applicant employment  
29 solely because a current or former employer of an applicant  
30 fails or refuses to comply with the requirements of subsection

1 (e) or the applicant has or had an out-of-State employer and the  
2 laws or rules of that state prevent the release of information  
3 or records requested under subsection (e).

4 (g) A school entity may not enter into a collective  
5 bargaining agreement, an employment contract, an agreement for  
6 resignation or termination, a severance agreement or any other  
7 contract or agreement that:

8 (1) has the effect of suppressing information relating to an  
9 ongoing investigation related to a report of suspect child abuse  
10 or sexual conduct or relating to a substantiated report of child  
11 abuse or sexual conduct by a current or former employe;

12 (2) affects the duties of the school entity to report  
13 suspected child abuse or sexual conduct or to discipline a  
14 current or former employe for a substantiated report of child  
15 abuse or sexual conduct;

16 (3) impairs the ability of the school entity to discipline  
17 an employe for a substantiated report of child abuse or sexual  
18 conduct; or

19 (4) requires the school entity to expunge substantiated  
20 information about child abuse or sexual conduct from any  
21 documents maintained by a school entity.

22 (h) Any provision of an employment contract or agreement  
23 that is contrary to this section is void and unenforceable.

24 (i) Nothing in this section shall be construed to prevent a  
25 school entity from entering into a collective bargaining  
26 agreement that includes standards for investigation of a report  
27 of child abuse or sexual conduct.

28 (j) Nothing in this section shall be construed to relieve a  
29 school entity of its legal responsibility to report suspected  
30 incidents of child abuse in accordance with the provisions of 23

1 Pa.C.S. Ch. 63, Subch B (relating to provisions and  
2 responsibilities for reporting suspected child abuse).

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

5 "Child abuse" shall have the definition given to it under 23  
6 Pa.C.S. § 6303(b)(1) (relating to definitions).

7 "Sexual conduct" shall mean any verbal or physical conduct by  
8 a school employe that:

9 (1) is sexual in nature;

10 (2) is directed toward a kindergarten through grade twelve  
11 student;

12 (3) has the effect of unreasonably interfering with a  
13 student's educational performance; and

14 (4) creates an intimidating, hostile or offensive  
15 educational environment.

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

20 "Substantiated report" shall mean a report of child abuse or  
21 sexual conduct that:

22 (1) a school entity has reasonable cause to believe is  
23 founded based on the available evidence after conducting an  
24 investigation; and

25 (2) involves conduct that the education provider determines  
26 is sufficiently serious to be documented in the school employe's  
27 personnel file.

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