

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 46

Session of 2013

INTRODUCED BY WILLIAMS, BROWNE, FARNESE, WASHINGTON, ERICKSON, VULAKOVICH, ALLOWAY, RAFFERTY, FONTANA, EICHELBERGER, MENSCH, BLAKE AND BOSCOLA, JANUARY 4, 2013

SENATOR FOLMER, EDUCATION, AS AMENDED, APRIL 16, 2013

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," in preliminary provisions, providing
6 for employment history 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) This section
13 shall apply to all positions for employment at school entities
14 and independent contractors of school entities involving direct
15 contact with children.

16 (b) In addition to fulfilling the requirements of section
17 111 and 23 Pa.C.S. Ch. 63 Subch. C.2 (relating to background
18 checks for employment in schools), before a school entity or
19 independent contractor may offer employment to an applicant who

1 would be employed by or in a school entity in a position
2 involving direct contact with children, the school entity or
3 independent contractor shall:

4 (1) Require the applicant to provide:

5 (i) A list, including name, address, telephone number and
6 other relevant contact information of the applicant's:

7 (A) Current employer.

8 (B) All former employers that were school entities.

9 (C) All former employers where the applicant was employed in
10 positions that involved direct contact with children.

11 (D) All other former employers subsequent to the applicant's
12 eighteenth birthday and within the previous ten (10) years.

13 (ii) A written authorization that consents to and authorizes
14 disclosure by the applicant's current and former employers in
15 subparagraph (i) of the information requested under paragraph
16 (2) and the release of related records and that releases those
17 employers from liability that may arise from such disclosure or
18 release of records pursuant to subsection (d) (5).

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

20 (A) has been the subject of an abuse or sexual misconduct
21 investigation by any employer, State licensing agency, law
22 enforcement agency or child protective services agency, unless
23 the investigation resulted in a finding that the allegations
24 were false;

25 (B) has ever been disciplined, discharged, nonrenewed, asked
26 to resign from employment, resigned from or otherwise separated
27 from any employment while allegations of abuse or sexual
28 misconduct as described in clause (A) were pending or under
29 investigation, or due to an adjudication or findings of abuse or
30 sexual misconduct as described in clause (A); or

1 (C) has ever had a license, professional license or
2 certificate suspended, surrendered or revoked while allegations
3 of abuse or sexual misconduct as described in clause (A) were
4 pending or under investigation, or due to an adjudication or
5 findings of abuse or sexual misconduct as described in clause
6 (A).

7 (2) Conduct a review of the employment history of the
8 applicant by contacting those employers listed by the applicant
9 under the provisions of paragraph (1)(i) and requesting the
10 following information:

11 (i) The dates of employment of the applicant.

12 (ii) A statement as to whether the applicant:

13 (A) was the subject of any abuse or sexual misconduct
14 investigation by any employer, State licensing agency, law
15 enforcement agency or child protective services agency, unless
16 such investigation resulted in a finding that the allegations
17 were false;

18 (B) was disciplined, discharged, nonrenewed, asked to resign
19 from employment, resigned from or otherwise separated from any
20 employment while allegations of abuse or sexual misconduct as
21 described in clause (A) were pending or under investigation, or
22 due to an adjudication or findings of abuse or sexual misconduct
23 described in clause (A); or

24 (C) has ever had a license, professional license or
25 certificate suspended, surrendered or revoked while allegations
26 of abuse or sexual misconduct as described in clause (A) were
27 pending or under investigation, or due to an adjudication or
28 findings of abuse or sexual misconduct as described in clause
29 (A).

30 (3) Check the eligibility for employment or certification

1 status of any applicant involving direct contact with children
2 to determine whether the applicant holds valid and active
3 certification appropriate for the position and is otherwise
4 eligible for employment and whether the applicant has been the
5 subject of public professional discipline.

6 (c) An applicant who provides false information or wilfully
7 fails to disclose information required in subsection (b) shall
8 be subject to discipline up to, and including, termination or
9 denial of employment and may be subject to criminal prosecution
10 under 18 Pa.C.S. § 4904 (relating to unsworn falsification to
11 authorities), and may be subject to civil penalties and
12 professional discipline in accordance with subsection ~~(k)~~ (L). <--

13 (d) (1) No later than twenty (20) days after receiving a
14 request for information required under subsection (b)(2), an
15 employer that has or had an employment relationship with the
16 applicant shall disclose the information requested.

17 (2) The employer shall disclose the information on a
18 standardized form developed by the Department of Education.

19 (3) (i) After reviewing the information initially disclosed
20 under paragraph (1) and finding an affirmative response to
21 subsection (b)(1)(A), (B) or (C) or (2)(A), (B) or (C), where
22 the prospective employing school entity or contractor makes a
23 determination to further consider the applicant for employment,
24 the school entity or contractor shall request that former
25 employers provide additional information about the matters
26 disclosed and all related records.

27 (ii) Former employers shall provide the additional
28 information requested no later than sixty (60) days after the
29 prospective employer's request under this paragraph.

30 (4) (i) Information received under this section shall not

1 be deemed a public record for the purposes of the act of
2 February 14, 2008 (P.L.6, No.3), known as the "Right-to-Know
3 Law."

4 (ii) A school entity that receives the information under
5 this subsection may use the information for the purpose of
6 evaluating an applicant's fitness to be hired or for continued
7 employment and may report the information as appropriate to the
8 Department of Education, a State licensing agency, law
9 enforcement agency, child protective services agency, another
10 school entity or prospective employer.

11 (5) An employer, school entity, school administrator or
12 independent contractor that provides information or records
13 about a current or former employe or applicant shall be immune
14 from criminal liability under 23 Pa.C.S. Ch. 63 (relating to
15 child protective services) and the act of December 12, 1973
16 (P.L.397, No.141), known as the "Professional Educator
17 Discipline Act," and civil liability for the disclosure of the
18 information, unless the information or records provided were
19 knowingly false. Such immunity shall be in addition to and not
20 in limitation of any other immunity provided by law, or any
21 absolute or conditional privileges applicable to such
22 disclosures by virtue of the circumstances or the applicant's
23 consent thereto.

24 (6) Except where the laws of other states prevent the
25 release of the information or records requested, or disclosure
26 is restricted by the terms of a contract entered into prior to
27 the effective date of this section, the wilful failure of a
28 former employer, school entity, school administrator or
29 independent contractor to respond or provide the information and
30 records as requested may result in civil penalties, and

1 professional discipline where appropriate, in accordance with
2 subsection ~~(k)~~ (L).

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3 (7) Notwithstanding any provision of law to the contrary, an
4 employer, school entity, school administrator, independent
5 contractor or applicant shall report and disclose in accordance
6 with this section all relevant information, records and
7 documentation that may otherwise be confidential under 23
8 Pa.C.S. Ch. 63 and the "Professional Educator Discipline Act."

9 (e) (1) A school entity or independent contractor may not
10 hire an applicant who does not provide the information required
11 under subsection (b) for a position involving direct contact
12 with children.

13 (2) A school entity may hire an applicant on a provisional
14 basis for a period not to exceed ninety (90) days pending the
15 school entity's review of information and records received under
16 this section, provided that all of the following are satisfied:

17 (i) The applicant has provided all of the information and
18 supporting documentation required under subsection (b).

19 (ii) The school administrator has no knowledge of
20 information pertaining to the applicant that would disqualify
21 the applicant from employment.

22 (iii) The applicant swears or affirms that the applicant is
23 not disqualified from employment.

24 (iv) The applicant is not permitted to work alone with
25 children and works in the immediate vicinity of a permanent
26 employee.

27 (f) On or after the effective date of this section, a school
28 entity or independent contractor may not enter into a collective
29 bargaining agreement, an employment contract, an agreement for
30 resignation or termination, a severance agreement or any other

1 contract or agreement or take any action that:

2 (1) has the effect of suppressing information relating to an
3 investigation related to a report of suspected abuse or sexual
4 misconduct by a current or former employe;

5 (2) affects the ability of the school entity or independent
6 contractor to report suspected abuse or sexual misconduct to the
7 appropriate authorities; or

8 (3) requires the school entity or independent contractor to
9 expunge information about allegations or findings of suspected
10 abuse or sexual misconduct from any documents maintained by the
11 school entity or independent contractor, unless after
12 investigation the allegations are found to be false.

13 (g) Any provision of an employment contract or agreement for
14 resignation or termination or a severance agreement that is
15 executed, amended or entered into after the effective date of
16 this section and that is contrary to this section shall be void
17 and unenforceable.

18 (h) (1) For substitute employes, the employment history
19 review required by this section shall be required only prior to
20 the initial hiring of a substitute or placement on the school
21 entity's approved substitute list and shall remain valid as long
22 as the substitute continues to be employed by the same school
23 entity or remains on the school entity's approved substitute
24 list.

25 (2) A substitute seeking to be added to another school
26 entity's substitute list shall undergo a new employment history
27 review. Except as otherwise provided in paragraph (3), the
28 appearance of a substitute on one school entity's substitute
29 list does not relieve another school entity from compliance with
30 this section.

1 (3) An employment history review conducted upon initial
2 hiring of a substitute employe by an independent contractor,
3 intermediate unit or any other entity that furnishes substitute
4 staffing services to school entities shall satisfy the
5 requirements of this section for all school entities using the
6 services of that independent contractor, intermediate unit or
7 other entity.

8 (4) An independent contractor, intermediate unit or any
9 other entity furnishing substitute staffing services to school
10 entities shall comply with the provisions of subsection (i)(3)
11 and (4).

12 (5) For purposes of this subsection, "substitute employe"
13 shall not mean school bus drivers employed by an independent
14 contractor.

15 (i) (1) For employes of independent contractors, the
16 employment history review required by this section shall be
17 performed, either at the time of the initial hiring of the
18 employe or prior to the assignment of an existing employe to
19 perform work for a school entity in a position involving direct
20 contact with children. The review shall remain valid as long as
21 the employe remains employed by that same independent
22 contractor, even though assigned to perform work for other
23 school entities.

24 (2) An independent contractor shall maintain records
25 documenting employment history reviews for all employes as
26 required by this section and, upon request, shall provide a
27 school entity for whom an employe is assigned to perform work
28 access to the records pertaining to that employe.

29 (3) Prior to assigning an employe to perform work for a
30 school entity in a position involving direct contact with

1 children, the independent contractor shall inform the school
2 entity of any instance known to the independent contractor in
3 which the employe:

4 (i) was the subject of any abuse or sexual misconduct
5 investigation by any employer, State licensing agency, law
6 enforcement authority or child protective services agency,
7 unless such investigation resulted in a finding that allegations
8 are false;

9 (ii) has ever been disciplined, discharged, nonrenewed,
10 removed from a substitute list, asked to resign from employment,
11 resigned from or otherwise separated from any employment while
12 allegations of abuse or sexual misconduct as described in
13 subparagraph (i) were pending or under investigation, or due to
14 an adjudication or findings of abuse or sexual misconduct as
15 described in subparagraph (i); or

16 (iii) has ever had a license, professional license or
17 certificate suspended, surrendered or revoked while allegations
18 of abuse or sexual misconduct as described in subparagraph (i)
19 were pending or under investigation, or due to an adjudication
20 or findings of abuse or sexual misconduct as described in
21 subparagraph (i).

22 (4) The independent contractor may not assign the employe to
23 perform work for the school entity in a position involving
24 direct contact with children where the school entity objects to
25 the assignment after being informed of an instance listed in
26 paragraph (3).

27 (j) An applicant who has once undergone the employment
28 history review required under this section and seeks transfer to
29 or provide services to another school in the same district,
30 diocese or religious judicatory or established and supervised by

1 the same organization shall not be required to obtain additional
2 reports before making such transfer.

3 (k) Nothing in this section shall be construed:

4 (1) To prevent a prospective employer from conducting
5 further investigations of prospective employes or from requiring
6 applicants to provide additional background information or
7 authorizations beyond what is required under this section, nor
8 to prevent a former employer from disclosing more information
9 than what is required under this section.

10 (2) To relieve a school entity, school administrator or
11 independent contractor of its legal responsibility to report
12 suspected incidents of abuse in accordance with the provisions
13 of 23 Pa.C.S. Ch. 63.

14 (3) To relieve a school entity, school administrator or
15 independent contractor of its legal responsibility to report
16 suspected incidents of professional misconduct in accordance
17 with the "Professional Educator Discipline Act."

18 (4) To prohibit the right of the exclusive representative
19 under a collective bargaining agreement to grieve and arbitrate
20 the validity of an employe's termination or discipline for just
21 cause or for the causes set forth in this act.

22 (1) (1) The Department of Education shall have jurisdiction
23 to determine wilful violations of this section and may,
24 following a hearing, assess a civil penalty not to exceed ten
25 thousand dollars (\$10,000). School entities shall be barred from
26 contracting with an independent contractor who is found to have
27 wilfully violated the provisions of this section.

28 (2) Notwithstanding any provision of law to the contrary,
29 the Department of Education may initiate disciplinary action
30 before the Professional Standards and Practices Commission

1 pursuant to the "Professional Educator Discipline Act" against
2 any applicant, employe, independent contractor or school
3 administrator who is subject to the "Professional Educator
4 Discipline Act" for wilful violations of this section.

5 (m) Contractors and school entities shall provide their
6 employes who have direct contact with children with mandatory
7 training on child abuse recognition and reporting and the
8 following shall apply:

9 (1) Training shall address, but shall not be limited to, the
10 following topics:

11 (i) Recognition of the signs of abuse and sexual misconduct
12 and reporting requirements for suspected abuse and sexual
13 misconduct in this Commonwealth.

14 (ii) Provisions of the "Professional Educator Discipline
15 Act," including mandatory reporting requirements.

16 (iii) School district policies related to reporting of
17 suspected abuse and sexual misconduct.

18 (iv) Maintenance of professional and appropriate
19 relationships with students.

20 (2) Independent contractors and school entities may provide
21 training through the Internet or other distance communication
22 systems.

23 (3) Employes shall complete a minimum of three (3) hours of
24 training every five (5) years.

25 (4) Employes required to undergo continuing professional
26 education under section 1205.2 shall receive credit toward the
27 continuing professional education requirements where the
28 training program has been approved by the Department of Public
29 Welfare or the Department of Education.

30 (n) The Department of Education shall develop the forms for

1 applicants and employers required under subsection (b)(1) and
2 (2), as well as any other forms necessary to carry out the
3 provisions of this section.

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

6 "Abuse." Conduct that falls under the purview and reporting
7 requirements of 23 Pa.C.S. Ch. 63 (relating to child protective
8 services) and is directed toward or against a child or a
9 student, regardless of the age of the child or student.

10 "Direct contact with children." The possibility of care,
11 supervision, guidance or control of children or routine
12 interaction with children.

13 "School entity." Any public school, including a charter
14 school or cyber charter school, private school, nonpublic
15 school, intermediate unit or area vocational-technical school
16 operating within this Commonwealth.

17 "Sexual misconduct." Any act, including, but not limited to,
18 any verbal, nonverbal, written or electronic communication or
19 physical activity, directed toward or with a child or a student
20 regardless of the age of the child or student that is designed
21 to establish a romantic or sexual relationship with the child or
22 student. Such acts include, but are not limited to:

23 (1) Sexual or romantic invitation.

24 (2) Dating or soliciting dates.

25 (3) Engaging in sexualized or romantic dialog.

26 (4) Making sexually suggestive comments.

27 (5) Self-disclosure or physical exposure of a sexual,
28 romantic or erotic nature.

29 (6) Any sexual, indecent, romantic or erotic contact with
30 the child or student.

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