



Senate Education Committee

Senator Mike Folmer
Chairman

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BILL SUMMARY

Senate Bill 46, Printer's No. 15
Prime Sponsor: Senator Williams

A. SUMMARY:

Senate Bill 46 amends the Public School Code to provide for further employment history reviews of applicants for school positions involving direct contact with children.

B. BILL ANALYSIS:

Senate Bill 46 amends the Public School Code with regard to positions being offered by school entities and independent contractors of school entities. School entities include traditional public schools, charter schools, cyber charter schools, private schools, nonpublic schools, intermediate units or area vo-tech schools in the Commonwealth. The position must involve direct contact with children, meaning it must involve the possibility of care, supervision, guidance or control of children, or routine interactions with children. School entities and independent contractors hiring for these positions must fulfill these requirements prior to offering employment to an applicant.

Applicant Requirements

When applying for a position that involves direct contact with children, the applicant must provide:

1. All relevant contact information for all of the applicant's current and former employers. Former employers include those that were school entities, those where the applicant was employed in positions involving direct contact with children, and any additional former employer within the past ten years and after the applicant's eighteenth birthday (independent of whether the position involved direct contact with children).
2. A written authorization allowing the applicant's current and former employers to disclose the requested information and related records, as well as a release from liability arising from disclosure of information.

3. A written statement indicating whether the applicant:
 - a. Has been the subject of an abuse or sexual misconduct investigation by any employer, state licensing agency, law enforcement agency or child protective services agency, unless such investigation resulted in a finding that the allegations were false;
 - b. Has ever been disciplined, discharged, non-renewed, asked to resign from employment or separated from employment while allegations of abuse or sexual misconduct were pending or under investigation, or due to an adjudication or findings of abuse or sexual misconduct; or
 - c. Has ever had a license, professional license or certificate suspended, surrendered or revoked while such allegations of abuse or sexual misconduct were pending or under investigation, or due to an adjudication or findings of abuse or sexual misconduct.

Prospective Employer Requirements

After receiving an application for employment for a position involving direct contact with children, a school entity or independent contractor hiring for these positions must:

1. Contact the employers listed by the applicant and request the dates of the applicant's employment and whether the applicant:
 - i. Was the subject of any abuse or sexual misconduct investigation as described above, unless such investigation resulted in a finding that the allegations were false;
 - ii. Was disciplined, discharged, non-renewed, asked to resign or separated from employment while allegations of abuse or sexual misconduct were pending or under investigation as described above, or due to an adjudication or findings of abuse or sexual misconduct as described above.
 - iii. Has ever had a license or certificate suspended, surrendered or revoked while allegations of abuse or sexual misconduct were pending as described above, or due to an adjudication or findings of abuse or sexual misconduct as described above.
2. Verify employment eligibility of the applicant or whether the applicant holds a valid and active certification and whether the applicant has been the subject of public professional discipline.

Current and former employers have 20 days from receipt of the request to provide this information on a standardized form, which will be developed by the Department of Education.

Following the initial screening, if an affirmative response is given to any of the questions raised, a hiring school entity or contractor will request additional information from former employers about matters disclosed if the hiring school entity or contractor makes a determination to further consider the applicant for employment. In this case, former employers will have 60 days to provide the hiring school entity or contractor with the requested additional information.

Employment history review requirements apply to substitute employees only upon initial hiring of a substitute or placement on the school entity's approved substitute list. The review will remain valid until the substitute employee seeks assignment in another school entity for a position involving direct contact with children.

With respect to independent contractors, the review will remain valid as long as the substitute employee remains employed by the same independent contractor, regardless of whether the substitute employee is

assigned to other school entities. In addition, prior to assigning an employee to a school entity in a position involving direct contact with children, independent contractors must inform the school entity of any knowledge of whether the employee:

1. Was the subject of any abuse or sexual misconduct investigation as described above, unless such investigation resulted in a finding that the allegations were false;
2. Was disciplined, discharged, non-renewed, asked to resign or separated from employment while allegations of abuse or sexual misconduct were pending or under investigation as described above, or due to an adjudication or findings of abuse or sexual misconduct as described above.
3. Has ever had a license or certificate suspended, surrendered or revoked while allegations of abuse or sexual misconduct were pending as described above, or due to an adjudication or findings of abuse or sexual misconduct as described above.

A school entity may object to the placement of an employee by an independent contractor, in which case the employee cannot be placed in a position within that school entity.

An applicant who once undergone the employment history review and transfers to or provides services to another school in the same district, diocese or religious judicatory or who has been established and supervised by the same organization shall not be required to obtain additional reports before making such transfer.

Prohibited Contracts

On or after the effective date of this act, school entities and independent contractors may not enter into contracts or agreements that would:

1. Suppress information relating to an investigation of a report of suspected abuse or sexual misconduct by a current or former employee;
2. Affect the school entity's or independent contractor's ability to report suspected abuse or sexual misconduct; or
3. Require the school entity or independent contractor to expunge information relating to allegations or findings of suspected abuse or sexual misconduct from any documents the school maintains.

Provisions of an employment contract or agreement for resignation, termination or severance that is executed, amended or entered into after the effective date of this act that is contrary to this section is void and unenforceable.

Disclosure, Immunity and Penalties

Notwithstanding any other provision of law to the contrary, employers, school entities, school administrators, independent contractors or applicants are required to disclose the information requested that may otherwise be confidential under 23 Pa.C.S. Ch. 63 (relating to child protective services) or EDA.

Senate Bill 46 clarifies that these parties are immune from criminal liability under 23 Pa.C.S. Ch. 63 (relating to child protective services) and EDA and from civil liability for the disclosure of the relevant information, unless the provided information was knowingly false.

The willful failure of a former employer, school entity, school administrator or independent contractor to provide the requested information may result in civil penalties or professional discipline. Furthermore, an applicant who provides false information or willfully fails to disclose the required information will be subject to discipline up to termination or denial of employment, and may be subject to criminal penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). PDE has jurisdiction to determine the willful violations of these parties and may, following a hearing, assess a civil penalty of up to \$10,000. PDE may also initiate disciplinary action pursuant to the EDA against any applicant, employee, independent contractor or school administrator for willful violations of this section.

Mandatory Training

Independent contractors and school entities are required to provide employees having direct contact with children with three hours of mandatory training on child abuse recognition and reporting every 5 years. Training subjects must include recognizing the signs of abuse or sexual misconduct and the maintenance of appropriate relationships with students. Training can be provided through the internet, and employees may receive continuing professional education credits for completing training developed by PDE or DPW.

Definitions

Senate Bill 46 defines “abuse” as the conduct which falls under the purview and reporting requirements of 23 Pa.C.S. Ch. 63 (relating to child protective services). Additionally, “sexual misconduct” may include, but is not limited to: “any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student.”

The provisions of the bill would take effect 60 days following enactment.

C. Amendment A00784 to SB 34:

Amendment A00784 is a technical amendment which deletes references to subsection (k) and replaces them with subsection (l).