



Senate Education Committee

Senator Jeffrey E. Piccola
Chairman

Dave Transue
Executive Director
dtransue@pasen.gov

Matt Azeles
Deputy Executive Director
mazeles@pasen.gov

Karen Seivard
Committee Counsel
kseivard@pasen.gov

Room 173 Capitol Building, Senate Box 203015, Harrisburg, Pennsylvania 17120-3015 • 717-787-6801 • 717-783-3722

BILL SUMMARY
Senate Bill 1381, Printer's No. 1890
Prime Sponsor: Williams

SUMMARY

Senate Bill 1381 adds a new section to the Public School Code of 1949 to provide for employment history reviews by school entities of applicants for positions involving contact with children.

ANALYSIS

Senate Bill 1381 amends the Public School Code by adding a new section, Section 111.1 relating to employment history review. This bill requires an applicant for employment at a school entity to provide the school with a list of all prior employers and written permission for the school to contact the employers. The applicant must disclose whether or not the applicant:

- Was the subject of any investigation by an employer or child protective services for abuse or sexual misconduct
- Was the subject of any investigation by the employer not related to abuse or sexual misconduct
- Has resigned or otherwise separated from employment while the subject of investigation
- Has been disciplined, discharged or ask to resign from employment due to an investigation
- Has ever had a license or certificate revoked or suspended

The legislation further requires the school entity to conduct a thorough review of the information provided, including contacting the current and former employers and seeking verification (documentation where available) as to the specifics of the applicant's employment as well as information related to any investigation during the time of employment.

School entities may not enter into a collective bargaining agreement, an employment contract, an agreement for resignation or termination, a severance agreement or any other contract or

agreement or take any action that:

- has the effect of suppressing information relating to an investigation related to a report of suspect abuse, sexual misconduct or other misconduct by a current or former employee;
- affects the duties of the school entity to report suspected abuse, sexual misconduct or other misconduct to the appropriate authorities;
- impairs the responsibility or ability of the school entity to discipline an employee for abuse, sexual misconduct or other misconduct; or
- requires the school entity to expunge information about allegations or findings of abuse, sexual misconduct or other misconduct from any documents maintained by a school entity.

Senate Bill 1381 applies to all school employees that have direct contact with children (i.e., bus drivers, janitors, etc).

This legislation takes effect in 60 days.

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

REFERRED TO EDUCATION, JANUARY 13, 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 resigned 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 employee 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 employee, the employee 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 2. This act shall take effect in 60 days.



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A09976 to SB 1381 - Summary

Amendment A09976 (Williams) is a gut and replace amendment intended to clarify and further develop definitions and provisions of SB 1381, a bill to provide for employment background checks of applicants for school positions involving direct contact with children. This will create a new Section 111.1 in the Public School Code of 1949, in addition to the employment background check requirements found in Section 111.

Scope

Amendment A09976 applies to positions being offered by 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 the requirements of this section prior to offering employment to an applicant.

Under this section, “abuse” means that 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.”

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 consent to authorize 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 are false;
 - b. Has ever been disciplined, discharged, non-renewed, asked to resign from employment or separated from employment while allegations of such 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 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:
 - a. The dates of the applicant's employment; and
 - b. 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 were pending or under investigation as described above; or
 - iii. Has ever had a license or certificate suspended, surrendered or revoked while allegations were pending as described above.
2. Verify whether the applicant holds a valid and active certification or 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 above initial screening, a hiring school entity or contractor may request additional information from former employers if it 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 where there is an affirmative response to whether the applicant has been the subject of such abuse or sexual misconduct allegations or investigations, or whether the applicant's certificate or employment status was affected while such allegations or investigations were pending.

These employment history review requirements apply to substitute employees only upon initial hiring of a substitute or placement in the school entity. The review will remain valid until the substitute employee seeks assignment to another school entity, at which time the new school entity must undergo a new employment history review.

Independent Contractors

Independent contractors must fulfill the requirements of this section upon the initial hiring of the employee, or prior to assignment of an existing employee to a school entity, for a position involving direct contact with children. The review will remain valid as long as the employee remains employed by the same independent contractor, regardless of whether the 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 were pending or under investigation as described above; or
3. Has ever had a license or certificate suspended, surrendered or revoked while allegations were pending 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.

Prohibited Contracts

On or after the effective date of this act, school entities and contractors may not enter into contracts or agreements of any kind that would suppress information relating to an investigation of a report of suspected abuse or sexual misconduct by a current or former employee, would affect the school entity's ability to report suspected abuse or sexual misconduct, or would require the school entity to expunge information relating to allegations or findings of suspected abuse or sexual misconduct from any documents the school maintains. Moreover, 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 is void if it is contrary to this section.

Disclosure, Immunity & 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 under this section that may otherwise be confidential under 23 Pa.C.S. Ch. 63 (relating to child protective services) or the act of December 12, 1973 (P.L. 397, No. 141), known as the "Professional Educator Discipline Act". A09949 clarifies that these parties are immune from criminal liability under 23 Pa.C.S. Ch. 63 (relating to child protective services) and the Professional Educator Discipline Act and from civil liability, 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 under this section may result in civil penalties or professional discipline. Furthermore, an applicant who provides false information or willfully fails to disclose the required information under this section 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). The Department has jurisdiction to determine willful violations of these parties and may, following a hearing, assess a civil penalty of up to \$10,000. The Department may also initiate disciplinary action pursuant to the Professional Educator Discipline Act against any applicant, employee, independent contractor or school administrator for willful violations of this section.

Mandatory Training

Contractors and school entities are required to provide employees having direct contact with children with 3 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, reporting requirements, school district policies related to suspected abuse and sexual misconduct, as well as maintenance of appropriate relationships with students. Training can be provided through the Internet. Employees may receive Act 48 continuing professional education credits for completing training developed by the Department of Education or Department of Public Welfare.

LEGISLATIVE REFERENCE BUREAU

AMENDMENTS TO SENATE BILL NO. 1381

Sponsor:

Printer's No. 1890

1 Amend Bill, page 1, lines 12 through 19; pages 2 through 6,
2 lines 1 through 30; page 7, lines 1 through 4, by striking out
3 all of said lines on said pages and inserting

4 Section 111.1. Employment History Review.--(a) This section
5 shall apply to all positions for employment at school entities
6 and independent contractors of school entities involving direct
7 contact with children.

8 (b) In addition to fulfilling the requirements of section
9 111 and 23 Pa.C.S. Ch. 63 Subch. C.2 (relating to background
10 checks for employment in schools), before a school entity or
11 independent contractor may offer employment to an applicant who
12 would be employed by or in a school entity in a position
13 involving direct contact with children, the school entity or
14 independent contractor shall:

15 (1) Require the applicant to provide:

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

18 (A) Current employer.

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

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

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

24 (ii) A written authorization that consents to and authorizes
25 disclosure by the applicant's current and former employers in
26 subparagraph (i) of the information requested under paragraph
27 (2) and the release of related records and that releases those
28 employers from liability that may arise from such disclosure or
29 release of records pursuant to subsection (d)(5).

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

31 (A) has been the subject of an abuse or sexual misconduct
32 investigation by any employer, State licensing agency, law
33 enforcement agency or child protective services agency, unless
34 the investigation resulted in a finding that the allegations
35 were false;

36 (B) has ever been disciplined, discharged, nonrenewed, asked
37 to resign from employment, resigned from or otherwise separated

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

11 (2) Conduct a review of the employment history of the
12 applicant by contacting those employers listed by the applicant
13 under the provisions of paragraph (1)(i) and requesting the
14 following information:

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

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

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

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

28 (C) 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 clause (A) were
31 pending or under investigation, or due to an adjudication or
32 findings of abuse or sexual misconduct as described in clause
33 (A).

34 (3) Check the eligibility for employment or certification
35 status of any applicant involving direct contact with children
36 to determine whether the applicant holds valid and active
37 certification appropriate for the position and is otherwise
38 eligible for employment and whether the applicant has been the
39 subject of public professional discipline.

40 (c) An applicant who provides false information or wilfully
41 fails to disclose information required in subsection (b) shall
42 be subject to discipline up to, and including, termination or
43 denial of employment and may be subject to criminal prosecution
44 under 18 Pa.C.S. § 4904 (relating to unsworn falsification to
45 authorities), and may be subject to civil penalties and
46 professional discipline in accordance with subsection (k).

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

51 (2) The employer shall disclose the information on a

1 standardized form developed by the Department of Education.

2 (3) (i) After reviewing the information initially disclosed
3 under paragraph (1) and finding an affirmative response to
4 subsection (b) (1) (A), (B) or (C) or (2) (A), (B) or (C), where
5 the prospective employing school entity or contractor makes a
6 determination to further consider the applicant for employment,
7 the school entity or contractor shall request that former
8 employers provide additional information about the matters
9 disclosed and all related records.

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

13 (4) (i) Information received under this section shall not
14 be deemed a public record for the purposes of the act of
15 February 14, 2008 (P.L.6, No.3), known as the "Right-to-Know
16 Law."

17 (ii) A school entity that receives the information under
18 this subsection may use the information for the purpose of
19 evaluating an applicant's fitness to be hired or for continued
20 employment and may report the information as appropriate to the
21 Department of Education, a State licensing agency, law
22 enforcement agency, child protective services agency, another
23 school entity or prospective employer.

24 (5) An employer, school entity, school administrator or
25 independent contractor that provides information or records
26 about a current or former employe or applicant shall be immune
27 from criminal liability under 23 Pa.C.S. Ch. 63 (relating to
28 child protective services) and the act of December 12, 1973
29 (P.L.397, No.141), known as the "Professional Educator
30 Discipline Act," and civil liability for the disclosure of the
31 information, unless the information or records provided were
32 knowingly false. Such immunity shall be in addition to and not
33 in limitation of any other immunity provided by law, or any
34 absolute or conditional privileges applicable to such
35 disclosures by virtue of the circumstances or the applicant's
36 consent thereto.

37 (6) Except where the laws of other states prevent the
38 release of the information or records requested, or disclosure
39 is restricted by the terms of a contract entered into prior to
40 the effective date of this section, the wilful failure of a
41 former employer, school entity, school administrator or
42 independent contractor to respond or provide the information and
43 records as requested may result in civil penalties, and
44 professional discipline where appropriate, in accordance with
45 subsection (k).

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

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

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

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

11 (ii) The school administrator has no knowledge of
12 information pertaining to the applicant that would disqualify
13 the applicant from employment.

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

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

19 (f) On or after the effective date of this section, a school
20 entity or independent contractor may not enter into a collective
21 bargaining agreement, an employment contract, an agreement for
22 resignation or termination, a severance agreement or any other
23 contract or agreement or take any action that:

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

27 (2) affects the ability of the school entity or independent
28 contractor to report suspected abuse or sexual misconduct to the
29 appropriate authorities; or

30 (3) requires the school entity or independent contractor to
31 expunge information about allegations or findings of suspected
32 abuse or sexual misconduct from any documents maintained by the
33 school entity or independent contractor, unless after
34 investigation the allegations are found to be false.

35 (g) Any provision of an employment contract or agreement for
36 resignation or termination or a severance agreement that is
37 executed, amended or entered into after the effective date of
38 this section and that is contrary to this section shall be void
39 and unenforceable.

40 (h) (1) For substitute employes, the employment history
41 review required by this section shall be required only prior to
42 the initial hiring of a substitute or placement on the school
43 entity's approved substitute list and shall remain valid as long
44 as the substitute continues to be employed by the same school
45 entity or remains on the school entity's approved substitute
46 list.

47 (2) A substitute seeking to be added to another school
48 entity's substitute list shall undergo a new employment history
49 review. Except as otherwise provided in paragraph (3), the
50 appearance of a substitute on one school entity's substitute
51 list does not relieve another school entity from compliance with

1 this section.

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

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

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

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

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

30 (3) Prior to assigning an employe to perform work for a
31 school entity in a position involving direct contact with
32 children, the independent contractor shall inform the school
33 entity of any instance known to the independent contractor in
34 which the employe:

35 (i) was the subject of any abuse or sexual misconduct
36 investigation by any employer, State licensing agency, law
37 enforcement authority or child protective services agency,
38 unless such investigation resulted in a finding that allegations
39 are false;

40 (ii) has ever been disciplined, discharged, nonrenewed,
41 removed from a substitute list, asked to resign from employment,
42 resigned from or otherwise separated from any employment while
43 allegations of abuse or sexual misconduct as described in
44 subparagraph (i) were pending or under investigation, or due to
45 an adjudication or findings of abuse or sexual misconduct as
46 described in subparagraph (i); or

47 (iii) has ever had a license, professional license or
48 certificate suspended, surrendered or revoked while allegations
49 of abuse or sexual misconduct as described in subparagraph (i)
50 were pending or under investigation, or due to an adjudication
51 or findings of abuse or sexual misconduct as described in

1 subparagraph (i).

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

7 (j) Nothing in this section shall be construed:

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

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

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

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

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

32 (2) Notwithstanding any provision of law to the contrary,
33 the Department of Education may initiate disciplinary action
34 before the Professional Standards and Practices Commission
35 pursuant to the "Professional Educator Discipline Act" against
36 any applicant, employe, independent contractor or school
37 administrator who is subject to the "Professional Educator
38 Discipline Act" for wilful violations of this section.

39 (1) Contractors and school entities shall provide their
40 employes who have direct contact with children with mandatory
41 training on child abuse recognition and reporting and the
42 following shall apply:

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

45 (i) Recognition of the signs of abuse and sexual misconduct
46 and reporting requirements for suspected abuse and sexual
47 misconduct in this Commonwealth.

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

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

1 (iv) Maintenance of professional and appropriate
2 relationships with students.

3 (2) Independent contractors and school entities may provide
4 training through the Internet or other distance communication
5 systems.

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

8 (4) Employes required to undergo continuing professional
9 education under section 1205.2 shall receive credit toward the
10 continuing professional education requirements where the
11 training program has been approved by the Department of Public
12 Welfare or the Department of Education.

13 (m) The Department of Education shall develop the forms for
14 applicants and employers required under subsection (b) (1) and
15 (2), as well as any other forms necessary to carry out the
16 provisions of this section.

17 (n) As used in this section, the following words and phrases
18 shall have the meanings given to them in this subsection:

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

23 "Direct contact with children." The possibility of care,
24 supervision, guidance or control of children or routine
25 interaction with children.

26 "School entity." Any public school, including a charter
27 school or cyber charter school, private school, nonpublic
28 school, intermediate unit or area vocational-technical school
29 operating within this Commonwealth.

30 "Sexual misconduct." Any act, including, but not limited to,
31 any verbal, nonverbal, written or electronic communication or
32 physical activity, directed toward or with a child or a student
33 regardless of the age of the child or student that is designed
34 to establish a romantic or sexual relationship with the child or
35 student. Such acts include, but are not limited to:

36 (1) Sexual or romantic invitation.

37 (2) Dating or soliciting dates.

38 (3) Engaging in sexualized or romantic dialog.

39 (4) Making sexually suggestive comments.

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

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