pennsylvania
DEPARTMENT OF EDUCATION

Testimony
Senate Education Committee

Act 24 of 2011 – Section 111 Background Check Provisions

Carolyn Dumaresq
Deputy Secretary for Elementary and Secondary Education

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Good morning Chairman Piccola, Chairman Dinniman and distinguished members of the Senate Education Committee. Thank you for inviting the Department of Education to testify about the background check provisions enacted in Act 24 of 2011. We welcome this chance to discuss our interpretation of the statute that you worked to enact.

By way of background for those in attendance, the changes to Section 111 of the Public School Code contained in Act 24 of 2011 were originally introduced by you, Chairman Piccola, in Senate Bill 224 this session. That piece of legislation passed the Senate and was then inserted into the omnibus School Code bill that was enacted alongside the budget.

The Department issued notification to all local education agencies on September 28, 2011, detailing the changes to Section 111 and the new requirements for reporting contained in those provisions. On September 30, 2011, the Department's chief counsel received correspondence from the Pennsylvania State Education Association's (PSEA) legal division explaining its interpretation of the statute. As our chief counsel was developing a response, the chief counsel of Pennsylvania School Boards Association also sent correspondence to its membership indicating agreement with PSEA's interpretation. As such, our chief counsel responded to both organizations on October 6 with the Department's interpretation of the language, which I will discuss here today. We anticipate issuing a Basic Education Circular in the coming weeks to provide further guidance with respect to these important amendments.

It is our belief that the provisions of the newly amended Public School Code are designed to enhance the safety of students. The changes to Section 111 contained in Act 24 include additions to the list of the most severe offenses contained in subsection (e); for which there is now a lifetime ban on employment; broadened protections to ensure that those convicted of similar offenses under former statutes or of similar statutes in other states; a tiered system for offenses in addition to the lifetime bans included in the Public School Code; and most pertinent to our discussion today, the creation of reporting requirements for current and prospective employees contained in subsection (j).

While subsection (e) only prohibits the school employment of persons who have been convicted of subsection (e) offenses, by adding subsection (j), the General Assembly has expressly indicated that it wants school employees to disclose arrests for these severe subsection (e) offenses as well. Subsection (e) offenses are some of the most heinous crimes, including such crimes as homicide, kidnapping, rape and child sexual abuse, among others. In our view, the General Assembly has concluded that school administrators should know if their current employees have been arrested for any of the subsection (e) offenses, so that school administrators can take appropriate lawful measures to protect children. These measures also include reporting arrests for and convictions of these offenses to the Department.

It is important to point out that Pennsylvania's Professional Educator Discipline Act has long required school administrators to report to the Department known instances of school employees who are arrested or convicted of subsection (e) offenses. When the facts disclosed as the result of an arrest justify a conclusion that the person should not be allowed to have continued contact with children, the Department has, when it has deemed it appropriate, sought the revocation of teaching certificates of educators who were never convicted of a crime.

The need for the new Section 111 reporting is two-fold. First, because the school background checks provided for in Section 111 were previously imposed only on prospective employees, there would be no way for school administrators to know if current employees, who may have never had a background check, had been arrested for or convicted of a subsection (e) offense. This prior practice might have been perceived as potentially disparate treatment of current and prospective employees when it comes to background checks. Second, because Section 111 permits background checks to be up to one-year-old, school administrators might not know whether a current or prospective employee had been arrested for or convicted of a Section 111(e) crime since the date of the employee's last background check.

The statute specifies that the form developed by the Department shall be completed and submitted by all current employees of a public or private school, intermediate unit, or area vocational-technical school by December 27, 2011. In addition, the form shall also be used by all employees to provide written notice within 72 hours after an arrest or conviction for a

subsection (e) offense occurring after September 28, 2011. Employees are required to submit the form to the administrator or other person responsible for employment decisions within a school entity.

The newly enacted provisions also contain consequences for employees that fail to meet the requirements of the section, including a provision for possible termination and criminal prosecution in the case of a falsification of the reporting form.

Once again, the Department believes that the legislative intent behind this statute is clear – to protect students and to ensure that administrators have the means by which to know whether or not the employees who are in contact with our students have been arrested for or convicted of these serious offenses.

PSEA has asserted that omission of the word "arrest" in subsection (j)(2) implies that the General Assembly intended to relieve current employees of the duty to disclose to their employers whether they have been arrested for a subsection (e) offense. However, we do not believe that use of the words "indicating whether or not they have been convicted" could have been intended as a limitation on the reporting requirements or the required contents of the form specifically set forth in subsection (j)(1). Subsection (j)(1) requires a single form that compels both current and prospective employees to report arrests and convictions and points to criminal sanctions for failing to accurately report arrests and convictions. In fact, limiting the subsection (j)(2) report only to convictions would render meaningless the requirement of subsection (j)(1) that the form have a single space that states that no arrests and no convictions have occurred.

We also believe it is not reasonable to assume that the General Assembly was only interested in having current school employees report only arrests for offenses occurring after September 28, 2011. Rather, the date appears to have been chosen to provide reasonable certainty as to when the section's rigorous 72-hour reporting requirement begins. We can think of little reason for the General Assembly to consider arrests for crimes that took place prior to September 28, 2011, to not merit reporting while being concerned with arrests after that date to be reportable. Indeed,

one can imagine that school administrators would be particularly concerned about arrests prior to September 28, 2011, for one of these severe offenses for which charges may still be pending.

We respectfully disagree with the interpretation of the statute that has been disseminated by PSEA and PSBA. We understand that the requirements of Section 111 are perhaps subject to differing interpretations. However, given differing interpretations of the same provision, we believe the deciding weight should be given to the intent of the General Assembly, which in this case, is the interpretation that bests protects children and provides parents with assurance that their children are going to be protected. It is our hope that PSEA and PSBA will reconsider any advice given to their members that may interfere with the collection of these forms.

Thank you again for inviting us to testify, and I would be happy to answer any questions you may have on this issue.