

Senate Education Committee

Testimony of Chester C. Kent

Senate Bill S.B. No. 1381 Session of 2012

February 8, 2012

Honorable Senators,

Thank you for the opportunity to provide testimony on S.B. 1381 to fill a gap in our school reporting statute to prevent child predators from employment in Pennsylvania schools. "Passing the trash" as this practice is known in the educational profession is a long standing pernicious school practice that has allowed, and sometimes encouraged, professional employees who are confronted with allegations of unprofessional activities of a sexual nature with students to leave their current employment voluntarily, in good standing, without harm to their reputations, and apply for a position in another unsuspecting school that is ignorant of why the candidate left the prior school. The results of this practice are tragic for children. Unfortunately, I have also witnessed on several occasions where the same "trash" was passed twice and in one case multiple times.

I have been involved as an educational consultant in over 100 sexual misconduct cases in schools across the country over the past 30 years beginning in 1982 with **Stoneking v. Bradford School District** that was appealed to the U. S. Supreme Court twice. In virtually all cases the pattern of unprofessional employee misconduct was consistent with known predatory grooming practices that SB 1381 seeks to curb. Confidentiality requirements prevent me from discussing specific cases.

Unfortunately, some schools faced with this predicament seek to protect themselves through voluntary or consensual employee resignations, retirements and/or negotiated severance agreements designed, they believe, to prevent the employee from suing them. Such "leavings" are accompanied by positive recommendations. This dumping strategy allows a school to avoid conducting an

internal investigation to determine if allegations of sexual misconduct or evidence of such misconduct are accurate and taking appropriate action. Many school districts and private schools wish to avoid negative publicity that would undermine their reputation and cultivated image in the community and among parents as a safe place for children to learn. Unfortunately, many schools will work to get rid of the problem and minimize the consequences, thereby keeping parents and community in the dark, and their reputations intact, by allowing the alleged perpetrator to leave quietly.

In my knowledge and experience in dealing with employee abuse and sexual misconduct with students, the problem is as prevalent now as ever, if not more so, judging by the number of yearly suspension, revocation and relinquishment of professional certificates and criminal convictions in our state and the number of incidents revealed by the media of alleged sexual misconduct in schools. Back in the 1980's, I believed, naively, that if publicity was focused on teacher sexual abuse of students in schools, incidences of sexual misconduct would decrease substantially. Was I ever wrong! Allegations of sexual misconduct have increased and, will continue to do so, 1) due to evolving digital technology that facilitates 24/7 access to students and, 2) the questionable moral compass of today's young teachers reared in a society where the line between right and wrong is increasingly blurred. Many teachers have more ambiguous and tolerant perceptions of where the professional boundary resides between a teacher and a student. Pedophiles, who are accused of molesting elementary students, when confronted tend to be older and usually, but not always, have a history of moving around.

This boundary distortion causes deep concern among veteran school faculty. Unprofessional school relationships will only increase unless SB 1381 draws a clear red line for schools and requires them to enforce SB 1381 by describing to faculty prohibited, reportable, practices of unprofessional sexual misconduct that are the harbinger of student abuse.

Therefore, at the entry point of the employment process, increased vigilance by schools administrators who are screening prospective candidates is critical. S.B.

1381 provides an administrative tool, requiring mandatory applicant disclosure and a document waiver that shines a spotlight on a candidate's prior employment record to uncover any unsavory, dangerous past unprofessional sexual misconduct and/or criminal sexual abuse. SB 1381's focus will generate the appropriate amount of scrutiny and skepticism about every applicant's past employment record unencumbered by self serving resumes designed to enhance job prospects. A mandatory applicant waiver to obtain such prior records is critical to stop this "pass the trash" practice.

I wish to make crystal clear, SB 1381 is breaking much needed new ground by initiating a two tier system to help schools identify and address a longstanding deficit that has allowed a perpetrator to leave a current school to continue to prey on students in a new setting.

SB 1381 identifies and prohibits the process that allows sexual abuse and child misconduct to occur - the "grooming" of vulnerable students by school predators using the trust and authority of the position to prepare students for sexual abuse.

The first tier of SB 1381 reinforces the current state reporting "hotline" complaint system, **(23 Pa.C.S. Ch.63, Child Protective Services)** embedded in criminal law to prevent child abuse that generates an investigation by county health and/or the local police in response to a complaint of student abuse that may be physical and/or sexual in nature. This investigation determines if sufficient evidence exists for criminal prosecution. In general, at this point, you are looking at the tail end of the predator grooming process where the damage to a student has already been done and it is now a criminal offense. Most sexual abuse allegations against teachers in our schools never reach this point because the available evidence may not yet reach a criminal standard. These employees are the ones that are more likely to be given the opportunity to be "passed" on.

The second tier of SB 1381, anchored in local Board responsibility, breaks new ground by mandating school officials investigate allegations of prohibited unprofessional sexual misconduct coming to their attention, as stated in the SB 1381's definition of sexual misconduct that results in criminal child abuse if not stopped. SB 1381 mandates a local school investigation of such sexual

misconduct. The district is now responsible to conduct an immediate investigation via policy and CBA agreement to determine if the alleged sexual misconduct is in violation of school/local community standards and merits employee discipline. It is also possible, depending on the evidence collected during the investigation that the District may report to the state hotline and/or the police. The school cannot abdicate its responsibility under SB 1381.

SB 1381 accords all legal protection to the employee via law and the negotiated collective bargaining agreement during either the tier 1(State) or 2(local) process. Tier 2 is the local stage where the grooming process is interrupted, exposed and the predator is stopped by the District from further sexual misconduct/ abuse of a child.

Generation of an investigatory record serves a twofold purpose. Records are critical 1) to determine if an employee is engaging in sexual misconduct and to put an end to it; and, 2) to serve subsequently to place a future school on notice whether or not they wish to employ this person if he or she becomes a prospective candidate.

Another critical concept in SB 1381 covers the scope of school reporting of employee sexual misconduct allegations involving students **through graduation**. I have experienced teacher serial predators who groomed students until they turned 18 before engaging in sexual relations and then claimed it was consensual.

I would humbly offer that SB 1381 could be improved by embedding in the bill stronger implementation language that mandates districts : 1) modify safe schools policy (easy since all districts use the PSBA policy manual which would promote widespread awareness); and, 2) provide awareness training for current employees and all new employees to acquaint them with reportable prohibited “grooming” behaviors favored by predators, that are generally visible to other employees in the school setting and should be reported to the principal.

SB 1381 would strengthen the 1994 Pennsylvania teacher reporting mandate, **23 Pa C.S. 6352 (a) (1)**¹ by providing teachers with the required knowledge and

training directive, contained in the statute's **"reasonable cause to suspect based on professional or other training and experience... (that a student) is a victim of sexual abuse or sexual exploitation"**. SB 1381 training will enable teachers to comply with the reporting law. SB 1381 highlights and makes operational the term **"or sexual exploitation"** in the 1994 teacher reporting law. Such training, which teachers now rarely get, would not only reinforce a safe school culture to curb employee sexual misconduct with a student but also insure that offending employees would not be passed to another district. Drawing an analogy to stopping an embezzler, a potential offending employee would know they would stand out because many eyes would be upon them. The sexual misconduct language and local school investigation authority in SB 1381 are highly effective to cure this problem.

A third suggestion would be to embed local school training to expose parents and students at the middle and high school levels, with district discretion at the elementary level, to tier 2 sexual misconduct grooming behaviors. I can't stress enough the effectiveness of parents and students in exposing such misconduct. Schooling is a "friending" social process. In my experience, confidantes of the victim are usually aware of what is happening but do not report it. This law provides validation of unprofessional behaviors of a sexual nature that should be "looked" into.

We are all familiar with the unfortunate Penn State sexual abuse tragedy. It is important to note that a parent of a 10 year old in 1998, who noticed her son had wet hair, exposed the perpetrator by notifying police. In my experience, I have seen many parents who approached school administrators with allegations and/or concerns about the questionable behavior of a teacher toward their child only to be reassured there was no problem. Such administrator behavior does not meet the standard of "reasonableness" in school administration.

SB 1381 has momentous potential to insure a safe school environment in Pennsylvania schools. You are to be highly commended for your effort to do the right thing for Pennsylvania's school children.

Thank you for your concern and diligence.

Chester C. Kent Ph.D., J.D.

- (1) “ A school employee, who has reasonable cause to suspect, **on the basis of professional or other training, or experience**, that a student coming before the school employee, in the employees professional or official capacity, is a victim of serious bodily injury or sexual abuse, **or sexual exploitation** by a school employer shall immediately contact the administrator.”