Testimony
on
Senate Bill 1381, P.N. 1890
Adding Section 111.1 to the Public School Code
Relating to
Employment History Review
for Prospective Employees

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Good morning Chairmen Piccola and Dinniman and members of the Senate Education Committee. Thank you for inviting PSBA to present testimony regarding Senate Bill 1381 and the new standards this legislation would establish regarding review of the employment history of applicants for employment in both public and non-public school entities.

Let me begin by emphasizing that PSBA fully supports the goals of Senate Bill 1381: to promote the safety of school children and the quality of the education work force by enhancing the kind and amount of job history information available to prospective school employers when evaluating applicants for employment. For many years PSBA has joined the Department of Education and the Professional Standards and Practices Commission in raising concerns about two significant obstacles to availability of employment history information about job applicants.

The first of these obstacles is the reluctance of prior employers, due to liability concerns, to provide prospective employers with candid information about employees with poor records of performance or behavior. The second is the practice of agreeing with employees facing termination for cause that in exchange for the employee's resignation, the employer agrees to provide only a "neutral" reference in response to future employment history checks (limited to inclusive dates of employment and positions held), and/or agrees to refrain from making a non-mandatory report to PDE pursuant to the Professional Educator Discipline Act of matters that might otherwise subject a certificated employee to professional discipline if reported.

Either one of these factors prevent a prospective school employer from having a complete picture of a job applicant's suitability for employment, with potential negative effects on the safety of students and other school staff, on student achievement, and on the overall success of a

school. PSBA actively encourages our members to report misconduct even where reporting may not be mandatory, discourages them from entering into agreements to refrain from such reporting, and has suggested to members approaches to the application process that can reduce the liability concerns of former employers and encourage candid reference checks.

Over the past three years, PSBA has been working with the Commission in an effort to draft amendments overhauling the Professional Educator Discipline Act that include important measures to address these problems. We hope that the fruit of these efforts will soon be introduced as legislation and enacted into law. These amendments would do six things in particular aimed at the problems mentioned above.

- Add a new category of misconduct subject to a mandatory reporting requirement---“sexual misconduct”---addressing school staff engaging in romantic or sexual relations with students, including grooming behaviors and other attempts to develop such relationships;
- Make it mandatory to report to the department in situations where an employee has resigned in the face of misconduct allegations whether or not the employer proceeds with formal termination action;
- Add a category of misconduct making subject to discipline discrimination or retaliation against someone for reporting educator misconduct in good faith, or against victims or witnesses;
- Expressly provide for immunity from liability of employers who in good faith provide information about professional misconduct to prospective employers;
- Prohibit school entities from making agreements with professional educators or their unions to refrain from reporting matters otherwise

subject to reporting, or from withholding or expunging related information, and

- Better protect children in charter schools by making the act applicable to non-certificated educators in charter schools, and empowering the commission to impose discipline upon them including revocation or suspension of eligibility to be employed in a charter school.

I want to be clear that it is not PSBA's position that the amendments to the Professional Educator Discipline Act described above will make a bill like SB 1381 unnecessary, as they would not address similar problems that exist with respect to school staff who are not professional educators. However, to better achieve the goals of these two important efforts, we urge that they be harmonized as fully as possible, so that they do not result in inconsistent standards or unduly divergent procedures that could unnecessarily complicate and impede effective compliance by those in the field. It will also be important that the standard application for teaching positions prescribed by PDE be updated to ensure it dovetails as much as possible with the language of new disclosure requirements.

PSBA is encouraged to see that Senate Bill 1381 reflects several improvements in this regard responsive to concerns expressed about Senate Bill 1349, in particular the addition of an express immunity provision and the adoption of the definition of "sexual misconduct" developed for the Professional Educator Discipline Act. We applaud the bill's sponsors and staff for that progress.

Nonetheless, we still see a number of primarily technical issues still to be addressed, and we look forward to working with your staff to resolve them on a line-by-line basis to enhance clarity and ensure the final bill will be as effective as possible in achieving its goals. We also think it would be

very important to consult with school district human relations professionals, whose experience executing hiring processes at the ground level would enable them to identify aspects in which the approach taken by the bill as currently written could present practical problems impeding its effectiveness. PSBA would be please to assist your staff in identifying appropriate persons to provide that kind of input.

PSBA also has several concerns that are more than just technical to offer for the committee's consideration.

First, we are concerned that the requirement that a former employer automatically provide all records related to investigations or other matters being disclosed in the course of an employment history check would introduce unnecessary burdens, costs and legal issues that could chill the cooperation of former employers and create harmful delays. We suggest that a two stage approach be considered that would provide for an initial disclosure using a standard form, with the provision of related records only upon a follow up request of the prospective employer should the applicant remain under consideration.

Second, we think it would be wise for practical reasons to limit the required inquiries to a set number of former employers or all within a ten year period, or some similar approach, rather than requiring that all former employers be contacted. In the case of my own first after-school job as a restaurant dishwasher many years ago, the company no longer exists, and even if it did it would no longer be at the same address and would be unlikely to have any record of me at this point.

Third, we urge the deletion of the provision appearing on page 5 at lines 8 through 13 that prohibits an employer from declining to hire an applicant solely because a former employer has failed to respond or is

precluded from responding by the laws of another state. There is no real need for such a provision, and it is likely to create compliance issues and/or new sources of liability for school districts. Why should any employer not be able to decide not to employ a "mystery candidate" or to prefer candidates for whom more complete information is available? Faced with several candidates you have clean reports on and one with blank spots, would you choose to hire the one with blank spots? Failing to hire the mystery candidate for any reason could result in claims of violating this section.

Lastly, we urge the deletion of the provision appearing on page 6 at lines 2 through 5 that states *"[n]othing in this section shall be construed to prevent a school entity from entering into a collective bargaining agreement that includes standards for investigation of a report of abuse, sexual misconduct or other misconduct."* Aside from having no clear meaning, there is no real need for such a provision. This currently is considered purely a matter for management not appropriate for bargaining, and such a provision could turn it into a new bargaining issue. School employers should never agree to include such a thing in collective bargaining agreements, which could also make the conduct of such pre-employment investigations subject to the jurisdiction of labor arbitrators. In addition, applicants are not yet members of a bargaining unit and have no rights under a union contract.

In conclusion, PSBA thanks the Committee for this opportunity to testify on Senate Bill 1381, and we look forward to working with you in further improving, refining and streamlining the bill to maximize its effectiveness. I would be happy at this point to try to answer any questions you may have.