

[First Reprint]

SENATE, No. 414

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

Senator ANTHONY R. BUCCO

District 25 (Morris and Somerset)

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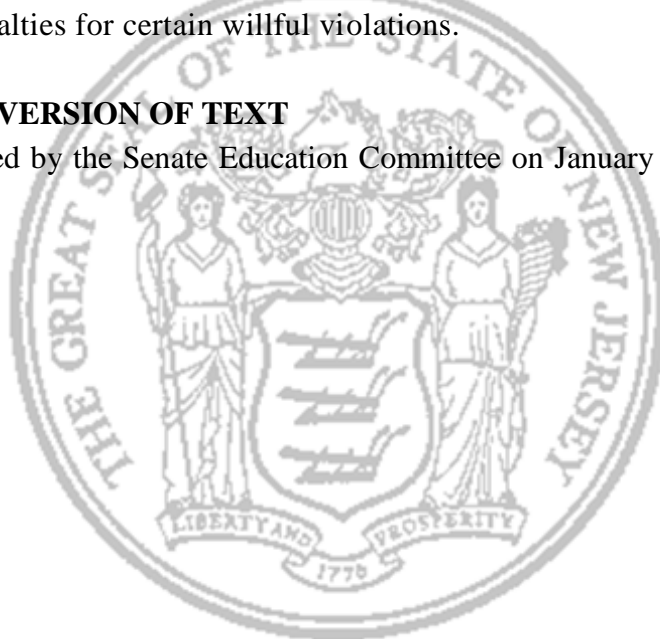
Senators Addiego and Oroho

SYNOPSIS

Requires school districts, charter schools, nonpublic schools, and contracted service providers to review employment history of prospective employees to ascertain allegations of child abuse or sexual misconduct and includes penalties for certain willful violations.

CURRENT VERSION OF TEXT

As reported by the Senate Education Committee on January 25, 2018, with amendments.



(Sponsorship Updated As Of: 2/2/2018)

1 AN ACT concerning ¹**[public]**¹ school employees and
 2 supplementing chapter 6 of Title 18A of the New Jersey Statutes.

3
 4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 5 *of New Jersey:*

6
 7 ¹1. As used in this act:

8 “Child abuse” means any conduct that falls under the purview
 9 and reporting requirements of P.L.1971, c.437 (C.9:6-8.8 et seq.)
 10 and is directed toward or against a child or student, regardless of the
 11 age of the child or student.

12 “Sexual misconduct” means any verbal, nonverbal, written, or
 13 electronic communication, or any other act directed toward or with
 14 a student that is designed to establish a sexual relationship with the
 15 student, including a sexual invitation, dating or soliciting a date,
 16 engaging in sexual dialogue, making sexually suggestive comments,
 17 self-disclosure or physical exposure of a sexual or erotic nature, and
 18 any other sexual, indecent or erotic contact with a student.¹

19
 20 ¹**[1.]** ^{2.}¹ A school district, charter school, ¹nonpublic school,¹
 21 or contracted service provider holding a contract with a school
 22 district ¹**[or]** ¹, ¹charter school ¹, ¹or nonpublic school¹ shall not
 23 employ for pay or contract for the paid services of any person
 24 serving in a position which involves regular contact with students
 25 unless the school district, charter school, ¹nonpublic school,¹ or
 26 contracted service provider:

27 a. Requires the applicant to provide:

28 (1) A list, including name, address, telephone number and other
 29 relevant contact information of the applicant’s:

30 (a) current employer;

31 (b) all former employers that were schools; and

32 (c) all former employers where the applicant was employed in a
 33 position that involved direct contact with children; and

34 (2) A written authorization that consents to and authorizes
 35 disclosure of the information requested under subsection b. of this
 36 section and the release of related records by the applicant’s
 37 employers listed under paragraph (1) of this subsection, and that
 38 releases those employers from liability that may arise from the
 39 disclosure or release of records;

40 (3) A written statement as to whether the applicant:

41 (a) has been the subject of any child abuse or sexual misconduct
 42 investigation by any employer, State licensing agency, law
 43 enforcement agency, or the Division of Child Protection and
 44 Permanency in the Department of Children and Families, unless the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
 not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SED committee amendments adopted January 25, 2018.

1 investigation resulted in a finding that the allegations were false or
2 the incident of child abuse was not substantiated;

3 (b) has ever been disciplined, discharged, nonrenewed, asked to
4 resign from employment, resigned from or otherwise separated from
5 any employment while allegations of child abuse or sexual
6 misconduct were pending or under investigation, or due to an
7 adjudication or finding of child abuse or sexual misconduct; or

8 (c) has ever had a license, professional license, or certificate
9 suspended, surrendered, or revoked while allegations of child abuse
10 or sexual misconduct were pending or under investigation, or due to
11 an adjudication or finding of child abuse or sexual misconduct;
12 and

13 b. Conducts a review of the employment history of the
14 applicant by contacting those employers listed by the applicant
15 under the provisions of paragraph (1) of subsection a. of this section
16 and requesting the following information:

17 (1) The dates of employment of the applicant; and

18 (2) A statement as to whether the applicant:

19 (a) was the subject of any child abuse or sexual misconduct
20 investigation by any employer, State licensing agency, law
21 enforcement agency, or the Division of Child Protection and
22 Permanency in the Department of Children and Families, unless the
23 investigation resulted in a finding that the allegations were false or
24 the incident of child abuse was not substantiated;

25 (b) was disciplined, discharged, nonrenewed, asked to resign
26 from employment, resigned from or otherwise separated from any
27 employment while allegations of child abuse or sexual misconduct
28 were pending or under investigation, or due to an adjudication or
29 finding of child abuse or sexual misconduct; or

30 (c) has ever had a license, professional license, or certificate
31 suspended, surrendered, or revoked while allegations of child abuse
32 or sexual misconduct were pending or under investigation, or due to
33 an adjudication or finding of child abuse or sexual misconduct.

34 ¹The review of the employment history may be conducted
35 through telephonic, electronic, or written communications. If the
36 review is conducted by telephone, the results of the review shall be
37 documented in writing by the prospective employer.¹
38

39 ¹**[2.] 3.**¹ a. An applicant who ¹willfully¹ provides false
40 information or willfully fails to disclose information required in
41 subsection a. of section ¹**[1] 2**¹ of this act:

42 (1) shall be subject to discipline up to, and including,
43 termination or denial of employment;

44 (2) may be deemed in violation of N.J.S.2C:28-3;

45 (3) may be subject to a civil penalty of not more than \$500
46 which shall be collected in proceedings in accordance with the
47 “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10
48 et seq.).

1 b. A school district, charter school, 'nonpublic school.'¹ or
2 contracted service provider holding a contract with a school district
3 'or'¹ charter school ', or nonpublic school'¹ shall include a
4 notification of the penalties set forth in this section on all
5 applications for employment for positions which involve regular
6 contact with students.

7
8 '[3.] 4. a.'¹ No later than 20 days after receiving a request for
9 information under subsection b. of section '[1] 2'¹ of this act, an
10 employer that has or had an employment relationship with the
11 applicant shall disclose the information requested '[on a
12 standardized form developed by the Department of Education]'¹.

13 'b. The prospective employer, in conducting the review of the
14 employment history of an out-of-State applicant, shall make, and
15 document with specificity, diligent efforts to:

16 (1) verify the information provided by the applicant pursuant to
17 subsection a. of section 2 of this act; and

18 (2) obtain from any out-of-State employers listed by the
19 applicant the information requested pursuant to subsection b. of
20 section 2 of this act.

21 c. The failure of an employer to provide the information
22 requested pursuant to subsection b. of section 2 of this act within
23 the 20 day timeframe established under subsection a. of this section
24 may be grounds for the automatic disqualification of an applicant
25 from employment with a school district, charter school, nonpublic
26 school, or contracted service provider. A school district, charter
27 school, nonpublic school, or contracted service provider shall not be
28 liable for any claims brought by an applicant who is not offered
29 employment or whose employment is terminated:

30 (1) because of any information received by the school district,
31 charter school, nonpublic school, or contracted service provider
32 from an employer pursuant to section 2 of this act; or

33 (2) due to the inability of the school district, charter school,
34 nonpublic school, or contracted service provider to conduct a full
35 review of the applicant's employment history pursuant to subsection
36 b. of section 2 of this act.

37 d. A school district, charter school, nonpublic school, or
38 contracted service provider shall have the right to immediately
39 terminate an individual's employment or rescind an offer of
40 employment if:

41 (1) the applicant is offered employment or commences
42 employment with the school district, charter school, nonpublic
43 school, or contracted service provider following the effective date
44 of this act; and

45 (2) information regarding the applicant's history of sexual
46 misconduct or child abuse is subsequently discovered or obtained
47 by the employer that the employer determines disqualifies the

1 applicant or employee from employment with the school district,
2 charter school, nonpublic school, or contracted service provider.

3 The termination of employment pursuant to this subsection shall
4 not be subject to any grievance or appeals procedures or tenure
5 proceedings pursuant to any collective bargaining agreement or any
6 law, rule, or regulation.¹

7
8 ¹**[4.] 5. a.**¹ After reviewing the information disclosed under
9 subsection b. of section ¹**[1] 2**¹ of this act and finding an
10 affirmative response to any of the inquiries in paragraph (2) of
11 subsection b. of section ¹**[1] 2**¹ of this act, the prospective
12 employer, prior to determining to continue with the applicant's job
13 application process, shall make further inquiries of the applicant's
14 current or former employer to ascertain additional details regarding
15 the matter disclosed.

16 ¹**b.** A school district, charter school, nonpublic school, or
17 contracted service provider may employ or contract with an
18 applicant on a provisional basis for a period not to exceed 90 days
19 pending review by the school district, charter school, nonpublic
20 school, or contracted service provider of information received
21 pursuant to section 2 of this act, provided that all of the following
22 conditions are satisfied:

23 (1) the applicant has complied with subsection a. of section 2 of
24 this act;

25 (2) the school district, charter school, nonpublic school, or
26 contracted service provider has no knowledge or information
27 pertaining to the applicant that the applicant is required to disclose
28 pursuant to paragraph (3) of subsection a. of section 2 of this act;
29 and

30 (3) the school district, charter school, nonpublic school, or
31 contracted service provider determines that special or emergent
32 circumstances exist that justify the temporary employment of the
33 applicant.¹

34
35 ¹**[5.] 6.**¹ a. Information received by an employer under this act
36 shall not be deemed a public record under P.L.1963, c.73 (C.47:1A-
37 1 et seq.) or the common law concerning access to public records.

38 b. An employer, school district, charter school, ¹nonpublic
39 school,¹ school administrator, or contracted service provider that
40 provides information or records about a current or former employee
41 or applicant shall be immune from criminal and civil liability for
42 the disclosure of the information, unless the information or records
43 provided were knowingly false. The immunity shall be in addition
44 to and not in limitation of any other immunity provided by law.

45
46 ¹**[6.] 7.**¹ a. On or after the effective date of this act, a school
47 district, charter school, ¹nonpublic school,¹ or contracted service

1 provider may not enter into a collective negotiations agreement, an
2 employment contract, an agreement for resignation or termination, a
3 severance agreement, or any other contract or agreement or take any
4 action that:

5 (1) has the effect of suppressing or destroying information
6 relating to an investigation related to a report of suspected child
7 abuse or sexual misconduct by a current or former employee;

8 (2) affects the ability of the school district, charter school,
9 'nonpublic school,'¹ or contracted service provider to report
10 suspected child abuse or sexual misconduct to the appropriate
11 authorities; or

12 (3) requires the school district, charter school, 'nonpublic
13 school,'¹ or contracted service provider to expunge information
14 about allegations or finding of suspected child abuse or sexual
15 misconduct from any documents maintained by the school district,
16 charter school, 'nonpublic school,'¹ or contracted service provider,
17 unless after investigation the allegations are found to be false or the
18 incident of child abuse has not been substantiated.

19 b. Any provision of an employment contract or agreement for
20 resignation or termination or a severance agreement that is
21 executed, amended, or entered into after the effective date of this
22 act and that is contrary to this section shall be void and
23 unenforceable.
24

25 ¹8. a. The Department of Education shall establish a public
26 awareness campaign to publicize the provisions of this act and to
27 ensure applicants and employers are aware of their respective rights
28 and responsibilities under this act. The department shall post on its
29 website guidance documents and any other informational materials
30 that may assist applicants and employers in the implementation of
31 and compliance with this act.

32 b. The department shall develop forms for applicants and
33 employers that may be used to comply with the requirements of
34 subsections a. and b. of section 2 of this act, as well as any other
35 forms necessary to carry out the provisions of this act.¹
36

37 ¹[7.] 9.¹ This act shall take effect ¹[immediately] on the first
38 day of the second month following enactment, but the Department
39 of Education may take any anticipatory administrative action in
40 advance as may be necessary for the implementation of this act¹.