

No. 2014-168

AN ACT

HB 1816

Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto," in preliminary provisions, providing for employment history review and for electronic public safety and criminal justice information; in certification of teachers, further providing for continuing professional development; providing for baccalaureate certification basic skills assessment; and further providing for Pennsylvania School Leadership Standards.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, is amended by adding sections to read:

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

(b) In addition to fulfilling the requirements of section 111 and 23 Pa.C.S. § 6344.2 (relating to information relating to other persons having contact with children), before a school entity or independent contractor may offer employment to an applicant who would be employed by or in a school entity in a position involving direct contact with children, the school entity or independent contractor shall:

(1) Require the applicant to provide:

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

(A) Current employer.

(B) All former employers that were school entities.

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

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

(iii) A written statement of 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 the investigation resulted in a finding that the allegations were false;

(B) has ever been disciplined, discharged, nonrenewed, asked to resign from employment, resigned from or otherwise separated from any employment while allegations of abuse or sexual misconduct as described in clause (A) were pending or under investigation, or due to an

adjudication or findings of abuse or sexual misconduct as described in clause (A); or

(C) has ever had a license, professional license or certificate suspended, surrendered or revoked while allegations of abuse or sexual misconduct as described in clause (A) were pending or under investigation, or due to an adjudication or findings of abuse or sexual misconduct as described in clause (A).

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

(i) The dates of employment of the applicant.

(ii) A statement as to whether the applicant:

(A) was 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 were false;

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

(C) has ever had a license, professional license or certificate suspended, surrendered or revoked while allegations of abuse or sexual misconduct as described in clause (A) were pending or under investigation, or due to an adjudication or findings of abuse or sexual misconduct as described in clause (A).

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

(4) Inquire whether the Department of Education has received notification of pending criminal charges against the applicant.

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

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

(2) The employer shall disclose the information on a standardized form developed by the Department of Education.

(3) (i) After reviewing the information initially disclosed under paragraph (1) and finding an affirmative response to subsection (b)(1)(iii)(A), (B) or (C), (2)(ii)(A), (B) or (C) where the prospective employing school entity or contractor makes a determination to further

consider the applicant for employment, the school entity or contractor shall request that former employers provide additional information about the matters disclosed and all related records.

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

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

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

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

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

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

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

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

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

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

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

(iv) *The applicant is not permitted by the school entity or independent contractor to work alone with children and is required to work in the immediate vicinity of a permanent employe.*

(f) *On or after the effective date of this section, a school entity or independent contractor 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:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) An applicant who has undergone the employment history review required under this section and seeks transfer to or to provide services to another school in the same district, diocese or religious judicatory or to another school established and supervised by the same organization shall not be required to obtain additional reports before making such transfer.

(k) Nothing in this section shall be construed:

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

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

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

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

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

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

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

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

"Abuse." Conduct that falls under the purview and reporting requirements of 23 Pa.C.S. Ch. 63 and is directed toward or against a child or a student, regardless of the age of the child or student.

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

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

"Sexual misconduct." Any act, including, but 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. Such acts include, but are not limited to:

(1) Sexual or romantic invitation.

(2) Dating or soliciting dates.

(3) Engaging in sexualized or romantic dialog.

(4) Making sexually suggestive comments.

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

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

Section 111.2. Electronic Public Safety and Criminal Justice Information.—(a) *Subject to subsection (b), the Department of Education shall obtain and monitor public safety and criminal justice information, including, but not limited to, arrest and disposition information, for all educators from any Statewide electronic database to the extent such public safety and criminal justice information is available to the Department of Education and shall use such information for certification and discipline purposes.*

(b) *For purposes of this section, "educator" shall mean all of the following:*

(1) *Any person who holds a Commonwealth of Pennsylvania certificate, commission, letter of eligibility or permit issued under this act or under the act of January 28, 1988 (P.L.24, No.11), known as the "Private Academic Schools Act," or who has applied for a certificate, commission, letter of eligibility or permit.*

(2) *Any person who is a charter or cyber charter school staff member or who is a contracted educational provider or contracted educational provider staff member as those terms are defined in the act of December 12, 1973 (P.L.397, No.141), known as the "Educator Discipline Act."*

(3) *Any person over whom the Professional Standards and Practices Commission has disciplinary authority pursuant to the "Educator Discipline Act."*

Section 2. Section 1205.1(c.1) of the act, amended July 11, 2006 (P.L.1092, No.114), is amended to read:

Section 1205.1. Continuing Professional Development.—* * *

(c.1) The continuing professional education plan shall specify the professional education needs that will be met by completion of each continuing professional education option and how it relates to areas of assignment and certification or potential administrative certification. The options may include, but shall not be limited to:

- (1) Collegiate studies.
- (2) Continuing professional education courses taken for credit.
- (3) Other programs, activities or learning experiences taken for credit or hourly, to include:
 - (i) curriculum development and other program design and delivery activities at the school entity or grade level as determined by the school entity and approved by the board of directors;
 - (ii) participation in professional conferences and workshops;
 - (iii) education in the workplace, where the work relates to the professional educator's area of assignment and is approved by the board of directors;
 - (iv) review, redesign and restructuring of school programs, organizations and functions as determined by the school entity and approved by the board of directors;
 - (v) in-service programs that comply with guidelines established by the department;
 - (vi) early childhood and child development activities for professional educators whose area of assignment includes kindergarten through third grade;

(vii) special education activities for professional educators whose area of assignment includes students with special needs;

(viii) successful completion of department training for service as a Distinguished Educator if the professional educator participates in and completes at least one assignment in the Distinguished Educators Program; [or]

(ix) other continuing professional education courses, programs, activities or learning experiences sponsored by the department[.]; or

(x) visits by educators to a manufacturing workplace for orientation and demonstrations to give the professional educator a greater understanding of job opportunities in manufacturing for students.

* * *

Section 3. The act is amended by adding a section to read:

Section 1207.3. Baccalaureate Certification Basic Skills Assessment.—
(a) Notwithstanding any other provision of law, an assessment of basic skills required under 22 Pa. Code § 49.18 (relating to assessment) shall be completed and a satisfactory achievement level shall be obtained prior to entry into a Pennsylvania baccalaureate teacher preparation program.

(b) An assessment of basic skills shall not be required for entry into a Pennsylvania postbaccalaureate teacher preparation program or for any applicant for certification who completes a postbaccalaureate certification program or holds a postbaccalaureate degree.

(c) No baccalaureate certification program shall admit a student who has not met the requirements of this section by August 1, 2015.

Section 4. Section 1217(a) of the act, added July 20, 2007 (P.L.278, No.45), is amended to read:

Section 1217. Pennsylvania School Leadership Standards.—(a) Programs provided under section 1205.5(c) and (d) to prepare school or system leaders and for purposes of issuing administrator certificates or letters of eligibility and approved programs for the induction and continuing professional education of school or system leaders shall address:

(1) The following core standards:

(i) The knowledge and skills to think and plan strategically to create an organizational vision around personalized student success.

(ii) An understanding of standards-based systems theory and design and the ability to transfer that knowledge to the school or system leader's job as the architect of standards-based reform in the school.

(iii) The ability to access and use appropriate data to inform decision-making at all levels of the system.

(2) The following corollary standards:

(i) Creating a culture of teaching and learning with an emphasis on learning, *including teaching and learning in manufacturing and vocational fields.*

(ii) Managing resources for effective results.

(iii) Collaborating, communicating, engaging and empowering others inside and outside of the organization to pursue excellence in learning.

(iv) Operating in a fair and equitable manner with personal and professional integrity.

(v) Advocating for children and public education in the larger political, social, economic, legal and cultural context.

(vi) Supporting professional growth of self and others through practice and inquiry.

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Section 5. This act shall take effect in 60 days.

APPROVED—The 22nd day of October, A.D. 2014

TOM CORBETT