

[Second Reprint]

## **SENATE, No. 414**

# **STATE OF NEW JERSEY**

## **218th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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**SYNOPSIS**

Requires school districts, charter schools, nonpublic schools, and contracted service providers to review employment history of prospective employees who will have regular contact with students to ascertain allegations of child abuse or sexual misconduct.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Education Committee on February 12, 2018, with amendments.

(Sponsorship Updated As Of: 2/16/2018)

1 AN ACT concerning <sup>1</sup>**[public]**<sup>1</sup> 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 <sup>1</sup>1. 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.<sup>1</sup>

19  
20 <sup>1</sup>**[1.]** 2.<sup>1</sup> A school district, charter school, <sup>1</sup>nonpublic school,<sup>1</sup>  
21 or contracted service provider holding a contract with a school  
22 district <sup>1</sup>**[or]** <sup>1</sup>, charter school <sup>1</sup>, or nonpublic school<sup>1</sup> 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, <sup>1</sup>nonpublic school,<sup>1</sup> 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 <sup>2</sup>within the last 20 years<sup>2</sup> that were  
32 schools; and

33 (c) all former employers <sup>2</sup>within the last 20 years<sup>2</sup> where the  
34 applicant was employed in a position that involved direct contact  
35 with children; and

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

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

**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:

<sup>1</sup>Senate SED committee amendments adopted January 25, 2018.

<sup>2</sup>Assembly AED committee amendments adopted February 12, 2018.

1 (a) has been the subject of any child abuse or sexual misconduct  
2 investigation by any employer, State licensing agency, law  
3 enforcement agency, or the <sup>2</sup>【Division of Child Protection and  
4 Permanency in the】<sup>2</sup> Department of Children and Families, unless  
5 the investigation resulted in a finding that the allegations were false  
6 or the <sup>2</sup>alleged<sup>2</sup> incident of child abuse <sup>2</sup>or sexual misconduct<sup>2</sup> was  
7 not substantiated;

8 (b) has ever been disciplined, discharged, nonrenewed, asked to  
9 resign from employment, resigned from or otherwise separated from  
10 any employment while allegations of child abuse or sexual  
11 misconduct were pending or under investigation, or due to an  
12 adjudication or finding of child abuse or sexual misconduct; or

13 (c) has ever had a license, professional license, or certificate  
14 suspended, surrendered, or revoked while allegations of child abuse  
15 or sexual misconduct were pending or under investigation, or due to  
16 an adjudication or finding of child abuse or sexual misconduct;

17 and

18 b. Conducts a review of the employment history of the  
19 applicant by contacting those employers listed by the applicant  
20 under the provisions of paragraph (1) of subsection a. of this section  
21 and requesting the following information:

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

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

24 (a) was the subject of any child abuse or sexual misconduct  
25 investigation by any employer, State licensing agency, law  
26 enforcement agency, or the <sup>2</sup>【Division of Child Protection and  
27 Permanency in the】<sup>2</sup> Department of Children and Families, unless  
28 the investigation resulted in a finding that the allegations were false  
29 or the <sup>2</sup>alleged<sup>2</sup> incident of child abuse <sup>2</sup>or sexual misconduct<sup>2</sup> was  
30 not substantiated;

31 (b) was disciplined, discharged, nonrenewed, asked to resign  
32 from employment, resigned from or otherwise separated from any  
33 employment while allegations of child abuse or sexual misconduct  
34 were pending or under investigation, or due to an adjudication or  
35 finding of child abuse or sexual misconduct; or

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

40 <sup>1</sup>The review of the employment history may be conducted  
41 through telephonic, electronic, or written communications. If the  
42 review is conducted by telephone, the results of the review shall be  
43 documented in writing by the prospective employer.<sup>1</sup>

44  
45 <sup>1</sup>【2.】3.<sup>1</sup> a. An applicant who <sup>1</sup>willfully<sup>1</sup> provides false  
46 information or willfully fails to disclose information required in  
47 subsection a. of section <sup>1</sup>【1】2<sup>1</sup> of this act:

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

3 (2) may be deemed in violation of <sup>2</sup>subsection a. of<sup>2</sup>  
4 N.J.S.2C:28-3; <sup>2</sup>and<sup>2</sup>

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

9 b. A school district, charter school, <sup>1</sup>nonpublic school,<sup>1</sup> or  
10 contracted service provider holding a contract with a school district  
11 <sup>1</sup>[or],<sup>1</sup> charter school <sup>1</sup>, or nonpublic school<sup>1</sup> shall include a  
12 notification of the penalties set forth in this section on all  
13 applications for employment for positions which involve regular  
14 contact with students.

15

16 <sup>1</sup>**[3.]** 4. a.<sup>1</sup> No later than 20 days after receiving a request for  
17 information under subsection b. of section <sup>1</sup>**[1]** <sup>2</sup>2<sup>1</sup> of this act, an  
18 employer that has or had an employment relationship <sup>2</sup>within the  
19 last 20 years<sup>2</sup> with the applicant shall disclose the information  
20 requested <sup>1</sup>[on a standardized form developed by the Department of  
21 Education]<sup>1</sup>.

22 <sup>1</sup>b. The prospective employer, in conducting the review of the  
23 employment history of an out-of-State applicant, shall make, and  
24 document with specificity, diligent efforts to:

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

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

30 c. The failure of an employer to provide the information  
31 requested pursuant to subsection b. of section 2 of this act within  
32 the 20 day timeframe established under subsection a. of this section  
33 may be grounds for the automatic disqualification of an applicant  
34 from employment with a school district, charter school, nonpublic  
35 school, or contracted service provider. A school district, charter  
36 school, nonpublic school, or contracted service provider shall not be  
37 liable for any claims brought by an applicant who is not offered  
38 employment or whose employment is terminated:

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

42 (2) due to the inability of the school district, charter school,  
43 nonpublic school, or contracted service provider to conduct a full  
44 review of the applicant’s employment history pursuant to subsection  
45 b. of section 2 of this act.

46 d. A school district, charter school, nonpublic school, or  
47 contracted service provider shall have the right to immediately

1 terminate an individual's employment or rescind an offer of  
2 employment if:

3 (1) the applicant is offered employment or commences  
4 employment with the school district, charter school, nonpublic  
5 school, or contracted service provider following the effective date  
6 of this act; and

7 (2) information regarding the applicant's history of sexual  
8 misconduct or child abuse is subsequently discovered or obtained  
9 by the employer that the employer determines disqualifies the  
10 applicant or employee from employment with the school district,  
11 charter school, nonpublic school, or contracted service provider.

12 The termination of employment pursuant to this subsection shall  
13 not be subject to any grievance or appeals procedures or tenure  
14 proceedings pursuant to any <sup>2</sup>[collective bargaining] collectively  
15 bargained or negotiated<sup>2</sup> agreement or any law, rule, or regulation.<sup>1</sup>  
16

17 <sup>1</sup>[4.] 5. a.<sup>1</sup> After reviewing the information disclosed under  
18 subsection b. of section <sup>1</sup>[1] 2<sup>1</sup> of this act and finding an  
19 affirmative response to any of the inquiries in paragraph (2) of  
20 subsection b. of section <sup>1</sup>[1] 2<sup>1</sup> of this act, the prospective  
21 employer, prior to determining to continue with the applicant's job  
22 application process, shall make further inquiries of the applicant's  
23 current or former employer to ascertain additional details regarding  
24 the matter disclosed.

25 <sup>1</sup>b. A school district, charter school, nonpublic school, or  
26 contracted service provider may employ or contract with an  
27 applicant on a provisional basis for a period not to exceed 90 days  
28 pending review by the school district, charter school, nonpublic  
29 school, or contracted service provider of information received  
30 pursuant to section 2 of this act, provided that all of the following  
31 conditions are satisfied:

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

34 (2) the school district, charter school, nonpublic school, or  
35 contracted service provider has no knowledge or information  
36 pertaining to the applicant that the applicant is required to disclose  
37 pursuant to paragraph (3) of subsection a. of section 2 of this act;  
38 and

39 (3) the school district, charter school, nonpublic school, or  
40 contracted service provider determines that special or emergent  
41 circumstances exist that justify the temporary employment of the  
42 applicant.<sup>1</sup>  
43

44 <sup>1</sup>[5.] 6.<sup>1</sup> a. Information received by an employer under this act  
45 shall not be deemed a public record under P.L.1963, c.73 (C.47:1A-  
46 1 et seq.) or the common law concerning access to public records.

1       b. An employer, school district, charter school, <sup>1</sup>nonpublic  
2 school,<sup>1</sup> school administrator, or contracted service provider that  
3 provides information or records about a current or former employee  
4 or applicant shall be immune from criminal and civil liability for  
5 the disclosure of the information, unless the information or records  
6 provided were knowingly false. The immunity shall be in addition  
7 to and not in limitation of any other immunity provided by law.

8  
9       <sup>1</sup>[6.] 7.<sup>1</sup> a. On or after the effective date of this act, a school  
10 district, charter school, <sup>1</sup>nonpublic school,<sup>1</sup> or contracted service  
11 provider may not enter into a <sup>2</sup>[collective negotiations] collectively  
12 bargained or negotiated<sup>2</sup> agreement, an employment contract, an  
13 agreement for resignation or termination, a severance agreement, or  
14 any other contract or agreement or take any action that:

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

18       (2) affects the ability of the school district, charter school,  
19 <sup>1</sup>nonpublic school,<sup>1</sup> or contracted service provider to report  
20 suspected child abuse or sexual misconduct to the appropriate  
21 authorities; or

22       (3) requires the school district, charter school, <sup>1</sup>nonpublic  
23 school,<sup>1</sup> or contracted service provider to expunge information  
24 about allegations or finding of suspected child abuse or sexual  
25 misconduct from any documents maintained by the school district,  
26 charter school, <sup>1</sup>nonpublic school,<sup>1</sup> or contracted service provider,  
27 unless after investigation the allegations are found to be false or the  
28 <sup>2</sup>alleged<sup>2</sup> incident of child abuse <sup>2</sup>or sexual misconduct<sup>2</sup> has not  
29 been substantiated.

30       b. Any provision of an employment contract or agreement for  
31 resignation or termination or a severance agreement that is  
32 executed, amended, or entered into after the effective date of this  
33 act and that is contrary to this section shall be void and  
34 unenforceable.

35  
36       <sup>1</sup>8. a. The Department of Education shall establish a public  
37 awareness campaign to publicize the provisions of this act and to  
38 ensure applicants and employers are aware of their respective rights  
39 and responsibilities under this act. The department shall post on its  
40 website guidance documents and any other informational materials  
41 that may assist applicants and employers in the implementation of  
42 and compliance with this act.

43       b. The department shall develop forms for applicants and  
44 employers that may be used to comply with the requirements of  
45 subsections a. and b. of section 2 of this act, as well as any other  
46 forms necessary to carry out the provisions of this act.<sup>1</sup>

1       <sup>1</sup>**[7.]** 9.<sup>1</sup> This act shall take effect <sup>1</sup>**[immediately]** on the first  
2 day of the second month following enactment, but the Department  
3 of Education may take any anticipatory administrative action in  
4 advance as may be necessary for the implementation of this act<sup>1</sup>.