

“Pass the Trash” Legislation

[House Bill 1816](#) (Rep. Mike Tobash), which dealt with allowing visits to manufacturing workplaces to be included in professional development plans, was amended amidst that flurry of activity at the end of the legislative session to include language from previous Pass the Trash proposals.

This legislation adds new requirements for the hiring of all positions at school entities and independent contractors of school entities that involve direct contact with children (defined as “the possibility of care, supervision, guidance or control of children or routine interaction with children”). The goal of the legislation is to identify those applicants that have been the subject of allegations, investigations or finding of abuse or sexual misconduct involving a child.

Role of School Entity/Independent Contractor in Applicant Review

Prior to a school entity/independent contractor of a school entity offering employment to an applicant for a position involving direct contact with children, the school entity/independent contractor **MUST** complete 4 requirements:

1. On a standards form to be developed by PDE, the school entity/independent contractor must require the applicant to provide the following information:
 - The name, address, phone number and other relevant contact information for the applicant’s current employer, all former employers that were school entities and all former employers in which the applicant had direct contact with children.
 - Written authorization that authorizes the applicant’s current and former employers to disclose information about the applicant and records related to the applicant and releases the current and former employers from liability for disclosing information or releasing records.
 - Written statement of:
 - whether the applicant has been the subject of an abuse or sexual misconduct investigation by an employer, state licensing agency, law enforcement agency or child protective services agency (unless the investigation showed the allegations were false);
 - Whether the applicant has been disciplined, discharged, non-renewed, asked to resign, resigned or separated from employment while
 - Whether the applicant had had a license, professional license or certification suspended, surrendered or revoked while allegations of abuse or sexual misconduct were pending or due to a finding of abuse or sexual misconduct.

2. Once a school entity/independent contractor of a school entity offering employment to an applicant for a position involving direct contact with children receives the information from the applicant, the school entity/independent contractor **MUST** conduct a review of those employers listed by the applicant and the school entity/independent contractor must request the following information from the applicant’s current and/or former employers:
 - The dates of employment of the applicant
 - A statement as to whether the applicant was:
 - the subject of an abuse or sexual misconduct investigation by an employer, state licensing agency, law enforcement agency or child protective services agency (unless the investigation showed the allegations were false);

- was disciplined, discharged, non-renewed, asked to resign, resigned or separated from employment while
 - had a license, professional license or certification suspended, surrendered or revoked while allegations of abuse or sexual misconduct were pending or due to a finding of abuse or sexual misconduct.
3. The school entity/independent contractor must then check the eligibility for employment or certification status of the applicant to determine if the applicant has a valid and active certification
 4. The school entity/independent contractor must inquire whether PDE has received notification of pending criminal charges against the applicant

Role of Current/Former Employer

The legislation requires current and former employers of the applicant to disclose the information requested within 20 days from receiving the request from the school entity/independent contractor. This information must be disclosed on a standard form developed by PDE.

If, following receipt of the information from current or former employers of an applicant, the school entity/independent contractor receives information that indicated there was an allegation, investigation, resignation, etc. relating to abuse or sexual misconduct, the school entity/independent contractor must request that current or former employers provide additional information and disclose all related records. Current and former employers have 60 days from the request for additional information to make the necessary disclosures.

Right to Know

The legislation makes clear that none of the information received by the school entity/independent contractor is subject to the Right to Know law. The information received can be used by the school entity/contractor to make hiring decisions and can be reported to PDE, a state licensing agency, law enforcement agency, child protective services agency or another school entity or prospective employer.

Immunity from Liability

A school entity/contractor, employer or school administrator that provides information or records about a current or former employee or applicant is immune from criminal liability under the Child Protective Services Law and the Educator Discipline Act and is immune from civil liability for the disclosure of the information (unless the information disclosed is knowingly false).

A school entity/contractor, employer or school administrator that willfully fails to disclose the information may be subject to civil penalties and professional discipline.

Hiring

A school entity/contractor may not hire an applicant who does not provide the requested information for a position involving direct contact with children; however, an applicant may be hired on a provisional basis for up to 90 days pending the school entity's/contractor's review of the information requested if:

- The applicant provided all the information and documentation;

- The school administrator has no knowledge of information that would disqualify the applicant;
- The applicant affirms that he or she is not disqualified
- The applicant is not permitted to work alone with children and works in the immediate vicinity of a permanent employee

Agreements/Contracts

Collective bargaining agreements, contracts, termination/resignation agreements or severance agreements entered into after the effective date of the legislation cannot suppress any information related to abuse or sexual misconduct, affect the ability of the school entity/contractor to report abuse or sexual misconduct or require the school entity/contractor to expunge information relating to abuse or sexual misconduct from documents, unless allegations are determined to be false.

Substitute Employees

The employment history requirements are only required prior to the initial hiring of a substitute or placement on the school's approved substitute list, and they remain valid as long as the substitute is employed by the school entity or remains on the substitute list.

If a substitute wants to be added to another school entity's list, a new employment history check is required, unless the initial employment history check was completed by an independent contractor, IU or other entity furnishing substitute staffing services to school entities. In those cases, the employment history check will be valid for all school entities using the services of that contractor, IU or other service. The legislation clarifies that "substitute employee" does not include a bus driver hired by an independent contractor.

Independent Contractors

For employees of independent contractors, employment history checks must be done at the time of initial hiring or just prior to an existing employee working in a school entity in direct contact with children. The check will remain valid as long as the employee is employed by the independent contractor.

Prior to assigning an employee to perform work in a school entity involving direct contact with children, the contractor must inform the school entity of any instance in which the employee was:

- the subject of an abuse or sexual misconduct investigation by an employer, state licensing agency, law enforcement agency or child protective services agency (unless the investigation showed the allegations were false);
- was disciplined, discharged, non-renewed, asked to resign, resigned or separated from employment while
- had a license, professional license or certification suspended, surrendered or revoked while allegations of abuse or sexual misconduct were pending or due to a finding of abuse or sexual misconduct.

The contractor may not assign the employee to work in a school entity in a position involving direct contact with children if the school entity objects due to information disclosed.

Transfer

If an applicant has completed an employment history check and wants to transfer to another school in the same district, no additional check is required.

PDE's Role

PDE will investigate violations of this process and can assess a civil penalty for a willful violation. School entities will be barred from contracting with independent contractors that willfully violate these requirements, and PDE can begin disciplinary action under the Educator Discipline Act for willful violations.

PDE must develop the forms required for applicants to and for employers.

PDE must also obtain and monitor public safety and criminal justice information for all educators from statewide databases and must use this information for certification and discipline purposes.

Effective Date

The legislation will go into effect 60 days from the date the bill is signed by Governor Corbett. The bill will be signed shortly, so the legislation will go into effect in mid-December 2014.