

CHAPTER 5

AN ACT concerning school employees and supplementing chapter 6 of Title 18A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.18A:6-7.6 Definitions relative to certain school employees.

1. As used in this act:

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

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

C.18A:6-7.7 Requirements for certain school employees.

2. A school district, charter school, nonpublic school, or contracted service provider holding a contract with a school district, charter school, or nonpublic school shall not employ for pay or contract for the paid services of any person serving in a position which involves regular contact with students unless the school district, charter school, nonpublic school, or contracted service provider:

a. Requires the applicant to provide:

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

(a) current employer;

(b) all former employers within the last 20 years that were schools; and

(c) all former employers within the last 20 years where the applicant was employed in a position that involved direct contact with children; and

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

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

(a) has been the subject of any child abuse or sexual misconduct investigation by any employer, State licensing agency, law enforcement agency, or the Department of Children and Families, unless the investigation resulted in a finding that the allegations were false or the alleged incident of child abuse or sexual misconduct was not substantiated;

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

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

and

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

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

(2) A statement as to whether the applicant:

(a) was the subject of any child abuse or sexual misconduct investigation by any employer, State licensing agency, law enforcement agency, or the Department of Children and Families, unless the investigation resulted in a finding that the allegations were false or the alleged incident of child abuse or sexual misconduct was not substantiated;

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

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

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

C.18A:6-7.8 Certain actions by applicant; penalties.

3. a. An applicant who willfully provides false information or willfully fails to disclose information required in subsection a. of section 2 of this act:

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

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

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

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

C.18A:6-7.9 Verification, disclosure of information.

4. a. No later than 20 days after receiving a request for information under subsection b. of section 2 of this act, an employer that has or had an employment relationship within the last 20 years with the applicant shall disclose the information requested.

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

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

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

c. The failure of an employer to provide the information requested pursuant to subsection b. of section 2 of this act within the 20-day timeframe established under subsection a. of this section may be grounds for the automatic disqualification of an applicant from employment with a school district, charter school, nonpublic school, or contracted

service provider. A school district, charter school, nonpublic school, or contracted service provider shall not be liable for any claims brought by an applicant who is not offered employment or whose employment is terminated:

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

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

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

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

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

The termination of employment pursuant to this subsection shall not be subject to any grievance or appeals procedures or tenure proceedings pursuant to any collectively bargained or negotiated agreement or any law, rule, or regulation.

C.18A:6-7.10 Review, further inquiries.

5. a. After reviewing the information disclosed under subsection b. of section 2 of this act and finding an affirmative response to any of the inquiries in paragraph (2) of subsection b. of section 2 of this act, the prospective employer, prior to determining to continue with the applicant's job application process, shall make further inquiries of the applicant's current or former employer to ascertain additional details regarding the matter disclosed.

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

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

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

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

C.18A:6-7.11 Information not deemed public record; immunity.

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

b. An employer, school district, charter school, nonpublic school, school administrator, or contracted service provider that provides information or records about a current or former employee or applicant shall be immune from criminal and civil liability for the disclosure of

the information, unless the information or records provided were knowingly false. The immunity shall be in addition to and not in limitation of any other immunity provided by law.

C.18A:6-7.12 Prohibited actions relative to certain agreements, employment contracts.

7. a. On or after the effective date of this act, a school district, charter school, nonpublic school, or contracted service provider may not enter into a collectively bargained or negotiated 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 or destroying information relating to an investigation related to a report of suspected child abuse or sexual misconduct by a current or former employee;

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

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

b. 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 act and that is contrary to this section shall be void and unenforceable.

C.18A:6-7.13 Public awareness campaign.

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

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

9. This act shall take effect on the first day of the second month following enactment, but the Department of Education may take any anticipatory administrative action in advance as may be necessary for the implementation of this act.

Approved April 11, 2018.