

SENATE BILL 541

F1, E4
HB 1571/18 – W&M

9lr1290
CF HB 486

By: ~~Senators Lam and Nathan Pulliam~~, Nathan Pulliam, Pinsky, Bailey, Carozza, Ellis, Gallion, Kagan, Patterson, Simonaire, and Young

Introduced and read first time: February 4, 2019

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 12, 2019

CHAPTER _____

1 AN ACT concerning

2 **Education – Personnel Matters – Child Sexual Abuse and Sexual Misconduct**
3 **Prevention**

4 FOR the purpose of requiring county boards of education, nonpublic schools, and certain
5 contracting agencies to require an applicant for a position involving direct contact
6 with minors to provide certain information; requiring the county board, nonpublic
7 school, or contracting agency to conduct a certain review of the employment history
8 of a certain applicant; requiring the county board, nonpublic school, or contracting
9 agency to check certain eligibility of a certain applicant; requiring certain employers
10 to disclose certain information within a certain time period; requiring certain
11 employers to disclose certain supplemental information within a certain time period
12 ~~to certain parties; authorizing a county board, nonpublic school, or contracting~~
13 ~~agency to hire an applicant on a certain provisional basis under certain~~
14 ~~circumstances~~; requiring the county board, nonpublic school, or contracting agency
15 to conduct a certain review of the employment history of a certain applicant for a
16 substitute position; requiring a certain contracting agency to perform a certain
17 review before making a certain assignment; requiring a certain contracting agency
18 to maintain certain records; requiring a certain contracting agency to inform the
19 county board or nonpublic school of certain information; prohibiting a certain
20 contracting agency from assigning a certain employee to perform certain work under
21 certain circumstances; providing that certain information received is not subject to
22 the Maryland Public Information Act; authorizing a county board, nonpublic school,
23 or contracting agency to use certain information and records received in a certain
24 manner and to report certain information to certain entities under certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 circumstances; prohibiting a county board, nonpublic school, or contracting agency
 2 from entering into a certain agreement under certain circumstances; providing that
 3 a certain agreement is void and unenforceable under certain circumstances;
 4 requiring the State Department of Education to notify certain entities within a
 5 certain time period if there is a lapse or suspension in the use of certain screening
 6 systems; providing that a certain applicant shall be subject to certain discipline
 7 under certain circumstances; providing for a certain immunity from criminal and
 8 civil liability; providing for the construction of this Act; authorizing the Department
 9 to initiate certain disciplinary action under certain circumstances and to adopt
 10 certain regulations; defining certain terms; and generally relating to hiring school
 11 employees.

12 BY adding to
 13 Article – Education
 14 Section 6–113.2
 15 Annotated Code of Maryland
 16 (2018 Replacement Volume and 2018 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 18 That the Laws of Maryland read as follows:

19 **Article – Education**

20 **6–113.2.**

21 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 22 INDICATED.

23 (2) ~~“CHILD SEXUAL ABUSE” MEANS AN ACT BY AN ADULT INVOLVING~~
 24 ~~A MINOR OR A STUDENT THAT CONSTITUTES A SEXUAL OFFENSE UNDER THE LAWS~~
 25 ~~OF THE STATE, OR ANY SEXUAL CONTACT BETWEEN AN ADULT AND A MINOR HAS~~
 26 ~~THE MEANING STATED IN § 6–113.1 OF THIS SUBTITLE.~~

27 (3) “CONTRACTING AGENCY” MEANS AN ENTITY THAT CONTRACTS
 28 WITH A COUNTY BOARD OR NONPUBLIC SCHOOL TO PROVIDE A SERVICE TO A
 29 SCHOOL OR THE STUDENTS OF A SCHOOL.

30 (4) “DIRECT CONTACT WITH MINORS” MEANS THE POSSIBILITY OF
 31 CARE, SUPERVISION, GUIDANCE, OR CONTROL OF A MINOR OR ROUTINE
 32 INTERACTION WITH A MINOR.

33 (5) ~~“JOB PERFORMANCE” INCLUDES ABILITIES, ATTENDANCE,~~
 34 ~~ATTITUDE, AWARDS, DEMOTIONS, DISCIPLINARY ACTIONS, DUTIES, EFFORT,~~
 35 ~~KNOWLEDGE, PROMOTIONS, SKILLS, AND, IN THE CASE OF A FORMER SCHOOL~~
 36 ~~EMPLOYEE, THE REASONS FOR SEPARATION.~~

1 ~~(6)~~ (5) “SCHOOL” MEANS A PUBLIC OR NONPUBLIC SCHOOL.

2 ~~(7)~~ (6) “SEXUAL MISCONDUCT” ~~MEANS AN ACT BY AN ADULT,~~
3 ~~INCLUDING AN ORAL, NONVERBAL, WRITTEN, OR ELECTRONIC COMMUNICATION, OR~~
4 ~~A PHYSICAL ACTIVITY DIRECTED TOWARD OR WITH A MINOR THAT IS DESIGNED TO~~
5 ~~PROMOTE A ROMANTIC OR SEXUAL RELATIONSHIP WITH THE MINOR, INCLUDING:~~

6 ~~(I)~~ ~~SEXUAL OR ROMANTIC INVITATION;~~

7 ~~(II)~~ ~~DATING OR SOLICITING DATES;~~

8 ~~(III)~~ ~~ENGAGING IN SEXUALIZED OR ROMANTIC DIALOGUE;~~

9 ~~(IV)~~ ~~MAKING SEXUALLY SUGGESTIVE COMMENTS;~~

10 ~~(V)~~ ~~GROOMING BEHAVIORS;~~

11 ~~(VI)~~ ~~SELF DISCLOSURE OR PHYSICAL EXPOSURE OF A SEXUAL,~~
12 ~~ROMANTIC, OR EROTIC NATURE; AND~~

13 ~~(VII)~~ ~~A SEXUAL, INDECENT, ROMANTIC, OR EROTIC CONTACT~~
14 ~~WITH THE MINOR HAS THE MEANING STATED IN § 6-113.1 OF THIS SUBTITLE.~~

15 (B) A COUNTY BOARD, NONPUBLIC SCHOOL, OR CONTRACTING AGENCY
16 SHALL REQUIRE AN APPLICANT FOR A POSITION INVOLVING DIRECT CONTACT WITH
17 MINORS TO SUBMIT:

18 (1) THE CONTACT INFORMATION OF THE FOLLOWING EMPLOYERS:

19 (I) THE CURRENT EMPLOYER;

20 (II) ALL FORMER SCHOOL EMPLOYERS; AND

21 (III) ALL FORMER EMPLOYERS OF THE APPLICANT IN WHICH
22 THE APPLICANT WAS EMPLOYED IN A POSITION INVOLVING DIRECT CONTACT WITH
23 MINORS;

24 (2) A WRITTEN CONSENT FORM, SIGNED BY THE APPLICANT,
25 AUTHORIZING AN EMPLOYER LISTED UNDER ITEM (1) OF THIS SUBSECTION TO
26 RELEASE ALL RECORDS RELATING TO ~~THE APPLICANT'S JOB PERFORMANCE~~ CHILD
27 SEXUAL ABUSE OR SEXUAL MISCONDUCT; AND

28 (3) A WRITTEN STATEMENT OF WHETHER THE APPLICANT:

1 (I) HAS BEEN THE SUBJECT OF A CHILD SEXUAL ABUSE OR
2 SEXUAL MISCONDUCT INVESTIGATION BY ANY EMPLOYER, ARBITRATOR, COUNTY
3 BOARD, STATE LICENSING AGENCY, LAW ENFORCEMENT AGENCY, OR CHILD
4 PROTECTIVE SERVICES AGENCY, UNLESS THE INVESTIGATION RESULTED IN A
5 FINDING ~~THAT THE ALLEGATIONS WERE FALSE~~ BY:

6 1. THE EMPLOYER THAT ALLEGATIONS THAT THE
7 APPLICANT ENGAGED IN SEXUAL MISCONDUCT LACKED SUFFICIENT EVIDENCE
8 ACCORDING TO THE POLICIES OF THE COUNTY BOARD OR NONPUBLIC SCHOOL;

9 2. AN ARBITRATOR OR A COUNTY BOARD TO REJECT ANY
10 DISCIPLINARY ACTION IN RESPONSE TO ALLEGATIONS THAT THE APPLICANT
11 ENGAGED IN SEXUAL MISCONDUCT;

12 3. A STATE LICENSING AGENCY THAT ALLEGATIONS
13 THAT THE APPLICANT ENGAGED IN SEXUAL MISCONDUCT LACKED SUFFICIENT
14 EVIDENCE ACCORDING TO:

15 A. STATE LAW; OR

16 B. THE POLICIES OF THE COUNTY BOARD OR
17 NONPUBLIC SCHOOL;

18 4. A LAW ENFORCEMENT AGENCY THAT ALLEGATIONS
19 THAT THE APPLICANT ENGAGED IN CHILD SEXUAL ABUSE WERE UNFOUNDED; OR

20 5. A CHILD PROTECTIVE SERVICES AGENCY THAT
21 ALLEGATIONS THAT THE APPLICANT ENGAGED IN CHILD SEXUAL ABUSE WERE
22 RULED OUT;

23 (II) HAS EVER BEEN DISCIPLINED, DISCHARGED,
24 NONRENEWED, OR ASKED TO RESIGN FROM EMPLOYMENT, OR HAS EVER RESIGNED
25 FROM OR OTHERWISE SEPARATED FROM ANY EMPLOYMENT WHILE ALLEGATIONS
26 OF CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT WERE PENDING OR WERE UNDER
27 INVESTIGATION, OR DUE TO AN ADJUDICATION OR FINDINGS OF CHILD SEXUAL
28 ABUSE OR SEXUAL MISCONDUCT; OR

29 (III) HAS EVER HAD A LICENSE, PROFESSIONAL LICENSE, OR
30 CERTIFICATE SUSPENDED, SURRENDERED, OR REVOKED WHILE ALLEGATIONS OF
31 CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT WERE PENDING OR UNDER
32 INVESTIGATION, OR DUE TO AN ADJUDICATION OR FINDINGS OF CHILD SEXUAL
33 ABUSE OR SEXUAL MISCONDUCT.

1 (C) BEFORE HIRING AN APPLICANT FOR A POSITION INVOLVING DIRECT
2 CONTACT WITH MINORS, THE COUNTY BOARD, NONPUBLIC SCHOOL, OR
3 CONTRACTING AGENCY SHALL:

4 (1) REVIEW AN APPLICANT'S EMPLOYMENT HISTORY BY CONTACTING
5 THE EMPLOYERS LISTED BY THE APPLICANT UNDER SUBSECTION (B)(1) OF THIS
6 SECTION AND REQUESTING THE FOLLOWING INFORMATION:

7 (I) THE DATES OF EMPLOYMENT OF THE APPLICANT; AND

8 (II) ANSWERS TO THE QUESTIONS REGARDING CHILD SEXUAL
9 ABUSE OR SEXUAL MISCONDUCT REQUIRED UNDER SUBSECTION (B)(3) OF THIS
10 SECTION; AND

11 (2) REQUEST A REPORT FROM THE DEPARTMENT REGARDING THE
12 APPLICANT'S ELIGIBILITY FOR EMPLOYMENT OR CERTIFICATION STATUS TO
13 DETERMINE WHETHER THE APPLICANT:

14 (I) HOLDS A VALID AND ACTIVE CERTIFICATION APPROPRIATE
15 FOR THE POSITION AND IS OTHERWISE ELIGIBLE FOR EMPLOYMENT; AND

16 (II) HAS BEEN THE SUBJECT OF PROFESSIONAL DISCIPLINE
17 RELATED TO CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT.

18 (D) (1) NOT LATER THAN 20 DAYS AFTER RECEIVING A REQUEST FOR
19 INFORMATION UNDER SUBSECTION (C) OF THIS SECTION, AN EMPLOYER SHALL
20 SEND TO THE COUNTY BOARD, NONPUBLIC SCHOOL, OR CONTRACTING AGENCY THE
21 INFORMATION REQUESTED ON THE FORM PRESCRIBED BY THE DEPARTMENT.

22 (2) IF THE INFORMATION FROM AN EMPLOYER INCLUDES AN
23 AFFIRMATIVE RESPONSE TO THE CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT
24 QUESTIONS UNDER SUBSECTION (B)(3) OF THIS SECTION, AND THE COUNTY BOARD,
25 NONPUBLIC SCHOOL, OR CONTRACTING AGENCY MAKES A DETERMINATION TO
26 FURTHER CONSIDER THE APPLICANT FOR EMPLOYMENT, THE COUNTY BOARD,
27 NONPUBLIC SCHOOL, OR CONTRACTING AGENCY SHALL REQUEST THAT THE
28 FORMER EMPLOYER PROVIDE ADDITIONAL INFORMATION ABOUT THE
29 INFORMATION PROVIDED, INCLUDING ALL ~~RELATED~~ RELATED TO CHILD
30 SEXUAL ABUSE OR SEXUAL MISCONDUCT.

31 (3) AN EMPLOYER THAT RECEIVES A REQUEST FOR ADDITIONAL
32 INFORMATION UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL PROVIDE THE
33 ADDITIONAL INFORMATION WITHIN 60 DAYS OF THE DATE OF THE PROSPECTIVE
34 EMPLOYER'S REQUEST TO:

1 **(I) THE REQUESTING COUNTY BOARD, NONPUBLIC SCHOOL, OR**
 2 **CONTRACTING AGENCY; AND**

3 **(II) THE APPLICANT WHO IS UNDER CONSIDERATION FOR**
 4 **EMPLOYMENT.**

5 ~~**(E) A COUNTY BOARD, NONPUBLIC SCHOOL, OR CONTRACTING AGENCY MAY**~~
 6 ~~**HIRE AN APPLICANT ON A PROVISIONAL BASIS FOR A PERIOD NOT TO EXCEED 90**~~
 7 ~~**DAYS PENDING THE REVIEW OF INFORMATION AND RECORDS RECEIVED UNDER**~~
 8 ~~**SUBSECTION (D) OF THIS SECTION, IF THE FOLLOWING CRITERIA ARE SATISFIED:**~~

9 ~~**(1) THE APPLICANT HAS PROVIDED ALL THE INFORMATION AND**~~
 10 ~~**SUPPORTING DOCUMENTATION REQUIRED;**~~

11 ~~**(2) THE SCHOOL ADMINISTRATOR HAS NO KNOWLEDGE OF**~~
 12 ~~**INFORMATION REGARDING THE APPLICANT THAT WOULD DISQUALIFY THE**~~
 13 ~~**APPLICANT FROM EMPLOYMENT;**~~

14 ~~**(3) THE APPLICANT SWEARS OR AFFIRMS THAT THE APPLICANT IS**~~
 15 ~~**NOT DISQUALIFIED FROM EMPLOYMENT; AND**~~

16 ~~**(4) THE APPLICANT IS NOT AUTHORIZED TO WORK ALONE WITH**~~
 17 ~~**MINORS AND WORKS IN THE IMMEDIATE VICINITY OF A PERMANENT EMPLOYEE.**~~

18 ~~**(E)**~~ **(1) (I) A COUNTY BOARD, NONPUBLIC SCHOOL, OR**
 19 **CONTRACTING AGENCY SHALL CONDUCT AN EMPLOYMENT HISTORY REVIEW OF AN**
 20 **APPLICANT FOR A SUBSTITUTE POSITION INVOLVING DIRECT CONTACT WITH**
 21 **MINORS AS REQUIRED UNDER SUBSECTION (C) OF THIS SECTION BEFORE THE**
 22 **INITIAL HIRING OF THE SUBSTITUTE EMPLOYEE OR PLACEMENT ON THE SCHOOL'S**
 23 **APPROVED SUBSTITUTE EMPLOYEE LIST OF THE COUNTY BOARD, NONPUBLIC**
 24 **SCHOOL, OR CONTRACTING AGENCY.**

25 **(II) AN EMPLOYMENT HISTORY REVIEW OF A SUBSTITUTE**
 26 **EMPLOYEE SHALL REMAIN VALID AS LONG AS THE SUBSTITUTE EMPLOYEE**
 27 **CONTINUES TO BE EMPLOYED BY THE SAME SCHOOL COUNTY BOARD OR REMAINS**
 28 **ON THE SCHOOL'S APPROVED SUBSTITUTE EMPLOYEE LIST OF THE NONPUBLIC**
 29 **SCHOOL OR CONTRACTING AGENCY.**

30 **(2) IF A SUBSTITUTE EMPLOYEE IS SEEKING TO BE ADDED TO**
 31 ~~**ANOTHER SCHOOL'S**~~ **THE SUBSTITUTE EMPLOYEE LIST OF ANOTHER COUNTY**
 32 **BOARD, NONPUBLIC SCHOOL, OR CONTRACTING AGENCY, A NEW EMPLOYMENT**
 33 **HISTORY REVIEW IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION IS**
 34 **REQUIRED.**

1 **(3) THE APPEARANCE OF A SUBSTITUTE EMPLOYEE ON ~~ONE~~**
2 **SCHOOL'S THE SUBSTITUTE EMPLOYEE LIST OF ONE COUNTY BOARD, NONPUBLIC**
3 **SCHOOL, OR CONTRACTING AGENCY DOES NOT RELIEVE ANOTHER ~~SCHOOL~~ COUNTY**
4 **BOARD, NONPUBLIC SCHOOL, OR CONTRACTING AGENCY OF THE DUTY OF**
5 **COMPLIANCE WITH THIS SECTION.**

6 **(4) AN EMPLOYMENT HISTORY REVIEW CONDUCTED ON THE INITIAL**
7 **HIRING OF A SUBSTITUTE EMPLOYEE BY A CONTRACTING AGENCY, AN**
8 **INTERMEDIATE UNIT, OR ANY OTHER ENTITY THAT PROVIDES SUBSTITUTE**
9 **STAFFING SERVICES TO ~~SCHOOLS~~ A COUNTY BOARD OR A NONPUBLIC SCHOOL**
10 **SHALL SATISFY THE REQUIREMENTS OF THIS SECTION FOR ALL ~~SCHOOLS~~ SCHOOL**
11 **ENTITIES USING THE SERVICES OF THAT CONTRACTING AGENCY, INTERMEDIATE**
12 **UNIT, OR OTHER ENTITY.**

13 **(5) A CONTRACTING AGENCY, AN INTERMEDIATE UNIT, OR ANY**
14 **OTHER ENTITY PROVIDING SUBSTITUTE STAFFING SERVICES TO ~~SCHOOLS~~ A SCHOOL**
15 **ENTITY SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION.**

16 ~~(C)~~ **(F) (1) (I) A CONTRACTING AGENCY SHALL CONDUCT AN**
17 **EMPLOYMENT HISTORY REVIEW OF AN APPLICANT FOR EMPLOYMENT WITH THE**
18 **CONTRACTING AGENCY AS REQUIRED UNDER SUBSECTION (C) OF THIS SECTION:**

19 **1. AT THE TIME OF THE INITIAL HIRING OF THE**
20 **EMPLOYEE; OR**

21 **2. BEFORE THE EMPLOYEE IS ASSIGNED TO WORK FOR A**
22 **SCHOOL ENTITY IN A POSITION INVOLVING DIRECT CONTACT WITH MINORS.**

23 **(II) THE EMPLOYMENT HISTORY REVIEW UNDER**
24 **SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL REMAIN VALID AS LONG AS THE**
25 **EMPLOYEE CONTINUES TO BE EMPLOYED BY THE HIRING CONTRACTING AGENCY.**

26 **(III) A CONTRACTING AGENCY SHALL:**

27 **1. MAINTAIN A RECORD OF EACH EMPLOYEE'S**
28 **EMPLOYMENT HISTORY REVIEW REQUIRED UNDER THIS SUBSECTION; AND**

29 **2. ON REQUEST OF THE SCHOOL ENTITY TO WHICH AN**
30 **EMPLOYEE IS ASSIGNED, PROVIDE ACCESS TO THE CONTRACTING AGENCY'S**
31 **RECORDS OF THAT EMPLOYEE.**

32 **(2) (I) BEFORE ASSIGNING AN EMPLOYEE TO PERFORM WORK FOR**
33 **A SCHOOL ENTITY IN A POSITION INVOLVING DIRECT CONTACT WITH MINORS, A**
34 **CONTRACTING AGENCY SHALL PROVIDE NOTICE TO THE SCHOOL ENTITY OF ANY**

1 AFFIRMATIVE RESPONSES TO THE CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT
2 QUESTIONS REQUIRED UNDER SUBSECTION (B)(3) OF THIS SECTION.

3 (II) A CONTRACTING AGENCY MAY NOT ASSIGN AN EMPLOYEE
4 TO PERFORM WORK FOR A SCHOOL ENTITY IN A POSITION INVOLVING DIRECT
5 CONTACT WITH MINORS IF THE SCHOOL ENTITY OBJECTS TO THE ASSIGNMENT
6 AFTER RECEIVING THE NOTICE REQUIRED UNDER SUBPARAGRAPH (I) OF THIS
7 PARAGRAPH.

8 ~~(H)~~ (G) (1) INFORMATION AND RECORDS ABOUT AN APPLICANT
9 RECEIVED BY A COUNTY BOARD, NONPUBLIC SCHOOL, OR CONTRACTING AGENCY
10 UNDER THIS SECTION ARE NOT A PUBLIC RECORD FOR THE PURPOSES OF THE
11 MARYLAND PUBLIC INFORMATION ACT.

12 (2) A COUNTY BOARD, NONPUBLIC SCHOOL, OR CONTRACTING
13 AGENCY THAT RECEIVES INFORMATION AND RECORDS FROM AN EMPLOYER ABOUT
14 AN APPLICANT UNDER THIS SECTION MAY:

15 (I) USE THE INFORMATION AND RECORDS FOR THE PURPOSE
16 OF EVALUATING THE APPLICANT'S FITNESS TO BE HIRED OR FOR CONTINUED
17 EMPLOYMENT; AND

18 (II) REPORT THE INFORMATION TO THE DEPARTMENT, A STATE
19 LICENSING AGENCY, A LAW ENFORCEMENT AGENCY, A CHILD PROTECTIVE
20 SERVICES AGENCY, ANOTHER SCHOOL ENTITY, OR ANY OTHER PROSPECTIVE
21 EMPLOYER, AS APPROPRIATE.

22 ~~(H)~~ (H) (1) A COUNTY BOARD, NONPUBLIC SCHOOL, OR CONTRACTING
23 AGENCY MAY NOT ENTER INTO A COLLECTIVE BARGAINING AGREEMENT, AN
24 EMPLOYMENT CONTRACT, AN AGREEMENT FOR RESIGNATION OR TERMINATION, A
25 SEVERANCE AGREEMENT, OR ANY OTHER CONTRACT OR AGREEMENT THAT:

26 (I) HAS THE EFFECT OF SUPPRESSING INFORMATION
27 RELATING TO AN INVESTIGATION ~~OF~~ OR DISCIPLINARY ACTION IN RESPONSE TO A
28 REPORT OF SUSPECTED CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT BY A
29 CURRENT OR FORMER EMPLOYEE;

30 (II) AFFECTS THE ABILITY OF THE COUNTY BOARD, NONPUBLIC
31 SCHOOL, OR CONTRACTING AGENCY TO REPORT SUSPECTED CHILD SEXUAL ABUSE
32 OR SEXUAL MISCONDUCT TO THE APPROPRIATE AUTHORITIES; OR

33 (III) REQUIRES THE COUNTY BOARD, NONPUBLIC SCHOOL, OR
34 CONTRACTING AGENCY TO EXPUNGE INFORMATION ABOUT ALLEGATIONS OR
35 FINDINGS OF SUSPECTED CHILD SEXUAL ABUSE OR SEXUAL MISCONDUCT FROM ANY

1 DOCUMENT MAINTAINED BY THE EMPLOYER UNLESS ~~AFTER INVESTIGATION THE~~
 2 ~~ALLEGATIONS ARE FOUND TO BE FALSE~~ THE INVESTIGATION RESULTED IN A
 3 FINDING BY:

4 1. THE EMPLOYER THAT ALLEGATIONS THAT THE
 5 APPLICANT ENGAGED IN SEXUAL MISCONDUCT LACKED SUFFICIENT EVIDENCE
 6 ACCORDING TO THE POLICIES OF THE COUNTY BOARD OR NONPUBLIC SCHOOL;

7 2. AN ARBITRATOR OR A COUNTY BOARD TO REJECT ANY
 8 DISCIPLINARY ACTION IN RESPONSE TO ALLEGATIONS THAT THE APPLICANT
 9 ENGAGED IN SEXUAL MISCONDUCT;

10 3. A STATE LICENSING AGENCY THAT ALLEGATIONS
 11 THAT THE APPLICANT ENGAGED IN SEXUAL MISCONDUCT LACKED SUFFICIENT
 12 EVIDENCE ACCORDING TO:

13 A. STATE LAW; OR

14 B. THE POLICIES OF THE COUNTY BOARD OR
 15 NONPUBLIC SCHOOL;

16 4. A LAW ENFORCEMENT AGENCY THAT ALLEGATIONS
 17 THAT THE APPLICANT ENGAGED IN CHILD SEXUAL ABUSE WERE UNFOUNDED; OR

18 5. A CHILD PROTECTIVE SERVICES AGENCY THAT
 19 ALLEGATIONS THAT THE APPLICANT ENGAGED IN CHILD SEXUAL ABUSE WERE
 20 RULED OUT.

21 (2) A PROVISION OF AN EMPLOYMENT CONTRACT, AN AGREEMENT
 22 FOR RESIGNATION OR TERMINATION, OR A SEVERANCE AGREEMENT THAT IS
 23 EXECUTED, AMENDED, OR ENTERED INTO ON OR AFTER JULY 1, 2019, AND THAT IS
 24 CONTRARY TO THIS SECTION IS VOID AND UNENFORCEABLE.

25 ~~(H)~~ (I) IF THERE IS A LAPSE IN THE OPERATION OF OR THE DEPARTMENT
 26 SUSPENDS THE USE OF A SYSTEM OR DATABASE THAT THE DEPARTMENT USES TO
 27 CHECK AN APPLICANT'S ELIGIBILITY FOR EMPLOYMENT OR CERTIFICATION
 28 STATUS, THE DEPARTMENT SHALL NOTIFY THE COUNTY BOARDS, NONPUBLIC
 29 SCHOOLS, AND ANY CONTRACTING AGENCIES WITHIN 48 HOURS OF THE LAPSE OR
 30 THE SUSPENSION OF THE USE OF THE SYSTEM OR DATABASE.

31 ~~(K)~~ (J) (1) A PERSON ACTING IN GOOD FAITH MAY NOT BE HELD
 32 LIABLE FOR DISCLOSING ANY INFORMATION OR RECORDS RELATED TO CHILD
 33 SEXUAL ABUSE OR SEXUAL MISCONDUCT, INCLUDING PERSONNEL RECORDS, ABOUT
 34 A CURRENT OR FORMER EMPLOYEE'S ~~JOB PERFORMANCE,~~ PROFESSIONAL

1 CONDUCT, OR REASON FOR TERMINATION OF EMPLOYMENT TO A COUNTY BOARD, A
2 NONPUBLIC SCHOOL, A CONTRACTING AGENCY, THE DEPARTMENT, OR ANY OTHER
3 POTENTIAL EMPLOYER IN ACCORDANCE WITH THIS SECTION UNLESS THE PERSON:

4 (I) ACTED WITH ACTUAL MALICE TOWARD THE EMPLOYEE OR
5 FORMER EMPLOYEE; OR

6 (II) INTENTIONALLY OR RECKLESSLY DISCLOSED FALSE
7 INFORMATION ABOUT THE EMPLOYEE OR FORMER EMPLOYEE.

8 (2) THE IMMUNITY FROM LIABILITY UNDER PARAGRAPH (1) OF THIS
9 SUBSECTION SHALL BE IN ADDITION TO, AND NOT A LIMITATION OF, ANY OTHER
10 IMMUNITY PROVIDED BY LAW OR ANY ABSOLUTE OR CONDITIONAL PRIVILEGE
11 APPLICABLE TO THE DISCLOSURE OF INFORMATION OR RECORDS OR THE
12 APPLICANT'S CONSENT TO THE DISCLOSURE.

13 ~~(J)~~ (K) (1) AN APPLICANT WHO PROVIDES FALSE INFORMATION OR
14 WILLFULLY FAILS TO DISCLOSE MATERIAL INFORMATION REQUIRED UNDER THIS
15 SECTION SHALL BE SUBJECT TO PROFESSIONAL DISCIPLINE, INCLUDING
16 TERMINATION OR DENIAL OF EMPLOYMENT, AND MAY BE SUBJECT TO
17 PROFESSIONAL DISCIPLINE IN ACCORDANCE WITH THE REGULATIONS OF THE
18 DEPARTMENT.

19 (2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE
20 WILLFUL FAILURE OF AN EMPLOYER OR FORMER EMPLOYER TO RESPOND TO OR
21 PROVIDE THE INFORMATION AND RECORDS REQUESTED BY A COUNTY BOARD,
22 NONPUBLIC SCHOOL, OR CONTRACTING AGENCY UNDER THIS SECTION MAY RESULT
23 IN CIVIL PENALTIES OR PROFESSIONAL DISCIPLINE, IF APPROPRIATE.

24 (II) AN EMPLOYER OR A FORMER EMPLOYER MAY NOT BE HELD
25 LIABLE FOR FAILURE TO RESPOND TO A REQUEST FOR INFORMATION ABOUT AN
26 APPLICANT UNDER THIS SECTION IF:

27 1. THE LAWS OF THE STATE IN WHICH THE EMPLOYER
28 OR FORMER EMPLOYER IS LOCATED PROHIBIT THE RELEASE OF THE INFORMATION
29 OR RECORDS REQUESTED; OR

30 2. THE DISCLOSURE OF THE INFORMATION AND
31 RECORDS REQUESTED IS RESTRICTED BY THE TERMS OF A CONTRACT ENTERED
32 INTO ON OR BEFORE JUNE 30, 2019.

33 (3) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE
34 DEPARTMENT MAY INITIATE DISCIPLINARY ACTION BEFORE A HEARING OFFICER IN
35 ACCORDANCE WITH THE DEPARTMENT'S REGULATIONS AGAINST AN APPLICANT, AN

1 EMPLOYEE, A CONTRACTING AGENCY, OR A SCHOOL ADMINISTRATOR FOR WILLFUL
2 VIOLATIONS OF THIS SECTION.

3 (II) THE DEPARTMENT MAY ADOPT REGULATIONS
4 ESTABLISHING PROCEDURES FOR DISCIPLINARY PROCEEDINGS AND THE
5 ASSESSMENT OF PENALTIES IN ACCORDANCE WITH THIS SECTION.

6 ~~(M)~~ (L) NOTHING IN THIS SECTION SHALL BE CONSTRUED:

7 (1) TO PREVENT A COUNTY BOARD, NONPUBLIC SCHOOL, OR
8 CONTRACTING AGENCY FROM:

9 (I) CONDUCTING FURTHER INVESTIGATIONS OF PROSPECTIVE
10 EMPLOYEES;

11 (II) ~~REQUIRING~~ REQUESTING APPLICANTS TO PROVIDE
12 ADDITIONAL BACKGROUND INFORMATION OR AUTHORIZATIONS BEYOND THE
13 INFORMATION OR AUTHORIZATIONS REQUIRED UNDER THIS SECTION; OR

14 (III) REQUESTING THAT AN EMPLOYER OR A FORMER EMPLOYER
15 PROVIDE MORE INFORMATION THAN IS REQUIRED UNDER THIS SECTION;

16 (2) TO RELIEVE A COUNTY BOARD, A NONPUBLIC SCHOOL, A
17 CONTRACTING AGENCY, OR ANY OTHER MANDATED REPORTER OF THE LEGAL
18 RESPONSIBILITY TO REPORT SUSPECTED INCIDENTS OF CHILD SEXUAL ABUSE OR
19 SEXUAL MISCONDUCT IN ACCORDANCE WITH STATE LAW OR THE REPORTING
20 REQUIREMENTS OF THE DEPARTMENT; OR

21 (3) TO PROHIBIT THE RIGHT OF AN EXCLUSIVE REPRESENTATIVE
22 UNDER A COLLECTIVE BARGAINING AGREEMENT TO GRIEVE AND ARBITRATE THE
23 VALIDITY OF AN EMPLOYEE'S TERMINATION OR DISCIPLINE FOR JUST CAUSE OR
24 FOR THE CAUSES SET FORTH IN THIS SECTION.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
26 1, 2019.