

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1571

(Delegate Wilson, *et al.*)

Ways and Means

Education, Health, and Environmental Affairs

Education - Child Sexual Abuse Prevention - Employment Process

This bill sets forth a process, including requirements for specific documentation regarding whether an individual has ever been disciplined for allegations of “child sexual abuse” or “sexual misconduct,” for the hiring of public school and specified nonpublic school employees who have direct contact with minors. **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: The Maryland State Department of Education (MSDE) can comply with the bill’s provisions using existing budgeted resources.

Local Effect: County boards of education can comply with the bill’s provisions using existing budgeted resources.

Small Business Effect: Minimal impact for contracting agencies.

Analysis

Bill Summary: A county board, a nonpublic school, and a contracting agency must require an applicant for a position involving direct contact with minors to provide specified information, including a list of all former employers in which the applicant was employed in a position that involved contact with minors through the previous five years. An application must also provide a written statement of whether the applicant (1) has ever been disciplined, discharged, nonrenewed, or asked to resign from employment, or has ever resigned from or otherwise separated from employment while such allegations were pending or under investigation, or due to an adjudication or findings of such actions or (2) has ever had a license, professional license, or certificate suspended, surrendered, or revoked in connection with child sexual abuse or sexual misconduct allegations.

Before hiring an applicant, a county board, nonpublic school, or contracting agency must conduct a review of the employment history of the applicant by contacting the employers listed by the applicant and requesting specified information, including statements regarding the circumstances specified above to the extent authorized under State law. MSDE, a nonpublic school, or a contracting agency must also check the eligibility for employment or certification status of the applicant to determine whether the applicant (1) holds a valid and active certification appropriate for the position and is otherwise eligible for employment and (2) has ever been terminated for cause from any previous employer or has had a professional license or certificate suspended or revoked. If there is a lapse or suspension in MSDE's use of a system or database to check the eligibility for employment or certification status of an applicant, MSDE must notify a county board within 48 hours of the lapse or decision to suspend the use of the system or database.

An applicant who provides false information or willfully fails to disclose material information as required must be subject to discipline up to and including termination or denial of employment and may be subject to professional discipline in accordance with MSDE regulations.

A contracting agency, an intermediate unit, or any other entity furnishing substitute staffing services to a school must comply with the bill's provisions.

A contracting agency must maintain records documenting employment history reviews for all employees and, on request, must provide a school entity to which an employee is assigned access to the pertinent records.

Before assigning an employee to perform work for a school in a position involving direct contact with minors, a contracting agency must inform the school of any instances known to the contracting agency involving child sexual abuse or sexual misconduct, as specified. If the school objects to the assignment after being informed of such instances, the contracting agency may not assign the employee to perform work for the school in a position involving direct contact with minors.

The bill may not be construed to (1) prevent a prospective employer from conducting further investigations of prospective employees or requiring applicants to provide additional background information; (2) relieve a school, school administrator, or contracting agency of its legal responsibility to report suspected incidents of child sexual abuse or misconduct in accordance with State law or MSDE's reporting requirements; or (3) prohibit the right of the exclusive representative under a collective bargaining agreement to grieve and arbitrate the validity of an employee's termination or discipline for just cause or the causes set forth in the bill.

Selected Definitions

“Child sexual abuse” means an act involving a minor or student by an adult that constitutes a sexual offense under the laws of the State or any sexual contact between an adult and a minor.

“Sexual misconduct” is an act, including an oral, a nonverbal, a written, or an electronic communication, or a physical activity directed toward or with a minor that is designed to promote a romantic or sexual relationship with the minor, including (1) sexual or romantic invitations; (2) dating or soliciting dates; (3) engaging in sexualized or romantic dialogue; (4) making sexually suggestive comments; (5) self-disclosure or physical exposure of a sexual, romantic, or erotic nature; and (6) a sexual, indecent, romantic, or erotic contact with the minor.

A “nonpublic school” is a nonpublic school receiving State funds.

Current Law: A county board may not knowingly hire or retain any individual who has been convicted of specified crimes, including crimes of violence and child sexual abuse. Nonpublic school contracts and local school system contracts must prohibit contractors or subcontractors from knowingly assigning an employee to work on school premises with direct, unsupervised, and uncontrolled access to children if the employee has been convicted of such crimes.

Employers and employees who care for or supervise children or have access to children in specified facilities, including public schools and private or nonpublic schools that are required to report to the State Board of Education, must apply for a criminal history records check. Contractors and subcontractors must require an employee who has direct, unsupervised, and uncontrolled access to children in specific facilities, including schools, to submit to a criminal history records check.

Pursuant to §5-423 of the Courts and Judicial Proceedings Article, an employer acting in good faith may not be liable for disclosing any information about the job performance or the reason for termination of employment of an employee or former employee of the employer, as specified.

State Aid to Nonpublic Schools

The State provides some aid to nonpublic schools through numerous programs, all of which are administered by MSDE. There is a nonpublic school aid program for textbooks, computer hardware, and computer software that are secular (*i.e.*, nonreligious) in character and acceptable for use in any public elementary or secondary school in Maryland for use by students in eligible schools. To be eligible to participate in the program, a nonpublic

school must hold a certificate of approval or be registered with the State Board of Education and meet other specified requirements.

The State also provides some scholarship aid for students who are eligible for free- and reduced-price meals to attend nonpublic schools, known as the Broadening Options and Opportunities for Students Today (BOOST) program, subject to several specified conditions. To be eligible to participate in the program, a nonpublic school must participate in the aid to nonpublic schools for textbooks and computer hardware and software program described above and meet other specified requirements.

In addition, the State provides capital funding for the Nonpublic Aging Schools Program. To be eligible to participate in the program, like BOOST, a nonpublic school must participate in the textbook and computer hardware and software program and meet other eligibility requirements.

Local Fiscal Effect: Although the bill establishes an enhanced process for the employment of individuals who will have direct contact with minors, it is nevertheless anticipated that necessary procedures can be implemented and enforced with existing budgeted resources. It is also assumed that some of the bill's requirements (*e.g.*, verifying an applicant's employment history) are already done as part of the routine hiring process.

Additional Comment: It is anticipated that nonpublic schools can implement procedures to comply with the bill's requirements with minimal impact.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of Boards of Education; Maryland Department of Health; Department of Human Services; Department of State Police; Department of Legislative Services

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