

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 373
Ways and Means

(Delegate Wilson)

Education, Health, and Environmental Affairs

Education - Child Abuse and Sexual Misconduct Prevention - Hiring Emergent Employees

This bill authorizes a local board of education or nonpublic school to hire an applicant as an emergent employee for up to 60 days pending a specified review of information and records regarding an individual’s employment history, as required under current law for applicants who will have direct contact with minors. The bill also (1) alters statutory provisions that specify the employment history that schools are required to obtain before hiring an individual who will have direct contact with minors; (2) alters the definition of “direct contact with minors”; (3) authorizes a local board or nonpublic school to share an employment history record with other local boards or nonpublic schools; (4) authorizes a contracting agency to share an employment history with other contracting agencies; (5) establishes conditions under which a local board or nonpublic school may use an employment history review completed by a current or former employer; and (6) establishes conditions under which a contracting agency may use an employment history review completed by another contracting agency. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: The bill does not materially affect the finances or operations of the Maryland State Department of Education (MSDE).

Local Effect: Potential minimal decrease in expenditures and significant operational efficiencies for local boards of education.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: “Direct contact with minors” is the care, supervision, guidance, or control of, or routine interaction with, a minor. The bill repeals the inclusion of the *possibility of* such interactions from the definition in current law. The bill alters the requirements in current law for applicants for a position involving direct contact with minors to submit contact information (1) for all former school employers, *including employers for which the applicant was an emergent employee* and (2) for all former employers of the applicant in which the applicant was employed in a position involving direct contact with minors *within the previous 10 years*, instead of for the applicant’s entire employment history.

A local board or nonpublic school may hire an applicant as an emergent employee only if (1) the applicant has provided all the information and supporting documentation required under statutory provisions; (2) an employer has no knowledge of information regarding the applicant that would disqualify the applicant from employment; (3) the applicant swears or affirms that the applicant is not disqualified from employment; and (4) the applicant is not authorized to work alone with minors unless the applicant works in the immediate vicinity of a permanent employee or, if the applicant is a school vehicle driver, is subject to audio and video monitoring and recording, which is promptly reviewed by school administrators.

At any time within 60 days after hiring an emergent employee, the local board or nonpublic school may rescind the offer of employment or complete the emergent employee’s hiring process in accordance with statutory provisions, with any executed contract reflecting the first day worked as an emergent employee.

A local board’s decision to dismiss the employee may be appealed, as specified.

A local board or nonpublic school may use an employment history review completed as specified by a current or former employer if the employer is a local board or nonpublic school and the applicant (1) swears or affirms that the completed employment history review includes all prior employment required to be reported and (2) provides information about any employment subsequent to the previous employment history review by the current or former local board or school.

Likewise, a contracting agency may use an employment history review completed as specified by a current or former employer if the employer is a contracting agency and the applicant (1) swears or affirms that the completed employment history review includes all prior employment required to be reported and (2) provides information about any employment subsequent to the previous employment history review by the contracting agency.

Current Law: Pursuant to Chapter 55 of 2019, local boards, nonpublic schools, and a contracting agency (an entity that contracts with a local board or nonpublic school to provide a service to a school or the students of a school) must require an applicant for a position involving direct contact with minors to provide specified information, including the contact information of all former employers in which the applicant was employed in a position that involved contact with minors and a written authorization that consents to the release of records relating to child sexual abuse or sexual misconduct. An application must also provide a written statement of whether the applicant (1) has been the subject of a child sexual abuse or sexual misconduct investigation by specified entities, unless the investigation resulted in specified findings; (2) 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, under investigation, or due to an adjudication or findings of such actions; or (3) 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 local 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 answers to the questions regarding the circumstances specified above. A local board, nonpublic school, or contracting agency must also request a report from MSDE regarding the applicant's eligibility for employment or certification status 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 been the subject of professional discipline related to child sexual abuse or sexual misconduct.

An employer must, no later than 20 days after receiving a request for information, send to the local board, nonpublic school, or contracting agency the information requested on the form prescribed by MSDE. If the information includes an affirmative response to the child sexual abuse or sexual misconduct questions and the entity makes a determination to further consider the applicant for employment, it must request that the former employer provide additional information, including all records related to child sexual abuse or misconduct. An employer receiving such a request must provide the additional information within 60 days to (1) the requesting local board, nonpublic school, or contracting agency and (2) the applicant who is under consideration for employment.

For substitute employees, the employment history review must be done before the employee's initial hiring or placement on the approved substitute employee list of the local board, nonpublic school, or contracting agency. The review remains valid as long as the substitute employee continues to be employed by the same local board or remains on the approved substitute employee list of the nonpublic school or contracting agency. A substitute employee seeking to be added to the substitute employee list of another local

board, nonpublic school, or contracting agency must undergo a new employment history review. Any other entity furnishing substitute staffing services to a school entity must comply with the law's provisions.

Information and records about an applicant received by a local board, nonpublic school, or contracting agency pursuant to the above provisions are not a public record for the purposes of the Maryland Public Information Act. An entity receiving such information and records may (1) use them for the purpose of evaluating the applicant's fitness to be hired or for continued employment and (2) report the information to other specified entities, including MSDE or child protective service agencies, as appropriate.

Local Expenditures: The bill's provisions may significantly increase operational efficiencies within local boards of education and reduce the level of effort involved in meeting current law requirements regarding applicants who will have direct contact with minors. For example, limiting the definition of "direct contact with minors" and the required employment history review to positions within the previous 10 years, and specifically allowing the sharing of employment history reviews with other local boards, likely result in the need for fewer overall employment history inquiries. Furthermore, allowing the hiring of emergent employees under specified conditions also allows more time for local boards to complete the required employment history check without negatively impacting staffing needs in local schools. Local expenditures *may* decrease minimally to reflect the operational impact.

Small Business Effect: Contracting agencies that are small businesses likely experience similar operational efficiencies to those described above for local boards.

Additional Comments: Nonpublic schools likely experience similar operational efficiencies to those described above for local boards.

Additional Information

Prior Introductions: HB 1008 of 2020 as amended passed the House and was referred to the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Governor's Office; Maryland State Department of Education; Department of Human Services; Department of Public Safety and Correctional Services; Baltimore City Public Schools; Prince George's County Public Schools; Department of Legislative Services

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