



January 25, 2018

Position Statement

SUPPORTING & SEEKING AMENDMENTS to

Senate Bill No. 414 (Pennacchio / Bucco)

Requires school districts, charter schools, and contracted service providers to review employment history of prospective employees to ascertain allegations of child abuse or sexual misconduct and includes penalties for certain willful violations.

The New Jersey School Boards Association (NJSBA), a federation of all of the state's local school districts, supports Senate Bill No. 414, which prohibits a school district from employing a person serving in a position which involves regular contact with students unless the school district conducts a review of the employment history of the applicant by contacting former and current employers and requesting information regarding child abuse and sexual misconduct allegations.

The NJSBA support for this legislation is grounded in long-standing NJSBA positions and policies on student health and academic achievement. The NJSBA believes that local boards of education should provide conditions and establish policies that will ensure the health and safety of students. In addition, the primary mission of the NJSBA is the advancement of student achievement for all children throughout the state of New Jersey. The Association believes that a child's physical and mental well-being is a prerequisite for academic achievement, and that the types of abuse and behavior that this legislation seeks to prevent is a direct threat to this well-being.

The NJSBA also supports policies that ensure that any personnel who will have direct contact with children will be properly vetted before they can enter the school environment. This is why we support existing state law that requires all prospective employees to go through a federal and state criminal background check to safeguard against employing anyone who has a history of conduct that could be detrimental to the learning environment. The provisions of S-414 would provide even greater protections for the health and well-being of students by requiring a comprehensive review of an individual's employment history and any past allegations or instances of child abuse or sexual misconduct.

While the NJSBA supports the overall concept and intent of S-414, the Association would like to offer some suggestions for improving the legislation so that the implementation of its provisions can be accomplished in an efficient and effective manner. These suggestions are as follows:

- Applying the bill's provisions to nonpublic schools, in addition to public school districts, charter schools and contracted service providers. As it is not uncommon for teachers to serve in both public and private school settings throughout their careers, this amendment would help avoid any omissions by a prospective employer in conducting a full review of an applicant's employment history.

- Directing the NJ Department of Education (NJDOE) to play an active role in assisting employers and applicants in carrying out their new responsibilities. The NJDOE could provide such assistance by generating standardized forms, publishing guidance documents and FAQs, and establishing a public awareness campaign. This would promote uniform and robust compliance by all interested parties.
- Inserting clear definitions of the terms “child abuse” and “sexual misconduct” to provide guidance to employers regarding the types of conduct that must be reported and reviewed.
- Allowing an employer impacted by S-414 to hire a prospective employee on a conditional/temporary basis while the employer continues to conduct a review of the applicant’s employment history, provided that: 1) the applicant has satisfied his or her obligations, 2) the school district has no information pertaining to the applicant that would disqualify the applicant from employment, and 3) the applicant swears or affirms that the applicant is not disqualified from employment. Such a provision will be helpful in ensuring that positions, particularly those of critical need, do not remain vacant due to any delays that might occur during in the review process.
- Providing legal protections from any criminal or civil liability for employers that do their due diligence and act in good faith when carrying out the provisions of this act. The bill, as introduced, already includes protections for *previous* employers who must respond to inquiries regarding any history of misconduct by an employee. However, the bill could be strengthened to provide similar assurances to *prospective* employers that, so long they make good faith efforts to abide by the bill’s provision and are not willfully negligent in any way, they will not face legal action from prospective employees or any other interested parties.
- Establishing a specific “lookback” period for an applicant’s employment history (e.g., 20 years, or a specific number of previous employers). While it is no doubt important to conduct a comprehensive review of an applicant’s history before making a hiring decision, prospective employers could encounter difficulty obtaining information from an employer that an applicant worked for decades ago. There could also be instances in which a previous employer is no longer in operation (e.g., the school has closed) or does not maintain adequate personnel records.
- Setting the legislation’s effective date so that it allows sufficient time for school districts, other employers, and the NJDOE to put appropriate policies and procedures in place that will facilitate a smooth implementation. The NJSBA has suggested that the legislation become effective six months after enactment.

Thank you for your consideration of the NJSBA’s position on, and recommended changes to, this critically important legislative initiative. Any questions may be directed to Jonathan Pushman, NJSBA Legislative Advocate, at (609) 278-5248 or jpushman@njsba.org.