

December 16, 2014

As part of our commitment to provide you with a legal resource that can offer cogent day-to-day advice and clear strategies for a secure future, we offer our pledge to also be your partner in information. We recognize the need for you to be immediately responsive to the changing requirements of the law, government regulations, and community needs. As such, our office will prepare *Action Papers* in response to the ever-changing laws and regulations affecting public education. Receipt of an Action Paper is an indication that your School District may want to consider changing a practice or policy. It also may indicate that your District is required by law to initiate or discontinue a practice or policy.

IN RE: ACT 168 (“Pass the Trash” Law)

Act 168 of 2014 (“Act 168”) was recently signed into law and is known as the “Pass the Trash” Law. Act 168 amends section 1-111.1 of the Pennsylvania Public School Code to require a comprehensive employment history review of all prospective school employees, and employees of independent contractors who are directly in contact with school children. The requirements apply to prospective and former employers, as well as the applicant. The following summarizes the employment history review requirements.

1. School Districts must now require that applicants complete employment history review forms supplied by PDE.
2. What Must Applicants Provide?
 - (a) a list detailing information of all current and former employers that were schools, or employers where the applicant was in direct contact with children;

Action Paper

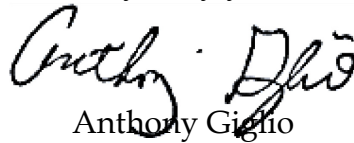
- (b) a written authorization that current and former employers may release the required employment information, and release employers from liability that may arise from disclosure of employment history; and
 - (c) a written statement of whether the applicant (1) was the subject of an investigation relating to abuse or sexual misconduct (unless determined to be false) by any employer, state licensing agency, law enforcement agency or child protective services agency; (2) was disciplined, discharged, resigned, requested to resign, or otherwise separated from employment from the investigation; and (3) has ever lost any license from an investigation or adjudication of allegations of abuse or sexual misconduct.
3. Abuse is defined under the Act as conduct requiring reporting under the Child Protective Services Act and directed toward or against a child or student regardless of age.
 4. Sexual misconduct is defined under the Act as any act, whether verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or student regardless of age, and designed to establish a romantic or sexual relationship with them. Listed examples are: sexual or romantic invitation; dating or soliciting dates; engaging in sexualized or romantic dialogue; sexually suggestive comments; self or physical disclosure that is sexual, romantic or erotic in nature; or any sexual, indecent, romantic or erotic contact with the child or student.
 5. Further Review Required by School Districts: After the initial disclosures are made, the District must conduct a further employment history review by requesting employment information from former employers. They must request dates of employment, as well as a statement as to whether the applicant satisfied any items listed in 2 (c) above. School employers must also verify valid certifications for the position and whether the applicant has been the subject of any professional discipline. They must also inquire with PDE whether it has received notice of any pending criminal charges against the applicant.
 6. Former Employers' Duty to Disclose: Former employers must disclose the requested information on a standardized form from PDE within 20 days of the prospective employers' request for information. If the prospective employer

finds that additional information is needed due to an affirmative response to the item in 2(c), it may request that information which must be provided by the former employer within 60 days of the request.

7. Immunity: The new law provides that employers, administrators and independent contractors are immune from civil and criminal liability from disclosing information obtained (unless the employer provides information that it knows is false.)
8. Schools and independent contractors may not hire an applicant who does not provide the employment history information required by Act 168.
9. Provisional hiring: Schools and independent contractors may hire applicants for up to 90 days pending review of information received by former employers so long as (a) the applicant has provided all required information; (b) administrators have no knowledge of information that would disqualify the applicant from employment; (c) the applicant affirms that he or she is not disqualified from employment; and (c) the applicant does not work alone with the child and is in the immediate vicinity of a permanent employee.
10. Collective Bargaining and Employment Agreements: Schools and independent contractors are prohibited from entering into collective bargaining or other agreements that will suppress or expunge information relating to investigation of an employee for sexual misconduct or suspected abuse.
11. Substitute Employees: For substitute employees, satisfying the requirement at the initial hiring on the substitute list satisfies the requirements of the law.
12. Penalties: Willful failure by former employer, school, administrator or independent contractor to comply with the law may result in civil penalties of up to \$10,000.00 after hearing by PDE, or professional discipline. Schools will be barred from contracting with independent contractors found to willfully violate this law.
13. Information disclosed under these provisions is not subject to the Right-To-Know Law.

Please share this action paper with all appropriate personnel. Should you have any questions, please feel free to contact our office.

Very truly yours,

A handwritten signature in black ink that reads "Anthony Giglio". The signature is written in a cursive style with a large initial "A".

Anthony Giglio