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“Public Act 101-531: New Procedures and Obligations Regarding Abuse Investigations and Employee Criminal Backgrounds”

On

August 23, 2019, Governor Pritzker signed Public Act 101-0531 which takes effect immediately. As further described in this briefing, the Public Act changes several areas of the School Code. Most notably, the Public Act significantly changes the procedure for investigating sexual abuse allegations made against a school district’s staff members, vendors, or volunteers. The Public Act also makes several additional changes that impact school districts’ hiring processes; applicant and



employee

background checks; staff mandated reporting obligations under the Abused and Neglected Child Reporting Act; and, the suspension of a teacher's license for improperly resigning.

Sexual Abuse Investigations

The Public Act adds Section 22-85 to the School Code. This section requires boards of education to adopt a policy and procedure governing the investigation of alleged incidents of sexual abuse upon a child by an employee, school vendor or volunteer ("school staff member") either on or off school grounds. This procedure must include the following:



1. If any mandated reporter at a school becomes aware of an allegation of sexual abuse by a school staff member, he/she must “immediately” contact DCFS after obtaining the “minimal information necessary to make a report”.

2. Any incident of alleged sexual abuse reported to DCFS or local law enforcement which is accepted for investigation must also be referred by the “entity that received the report” to the local Children’s Advocacy Center. This requirement applies to “schools in a county with an accredited Children’s Advocacy Center.” We recommend that you become familiar with your local Children’s Advocacy Center’s contact information and reporting protocols.



3. The school will need to designate a contact person to communicate with the local Children's Advocacy Center. This can be the school's Title IX officer, a school resource officer or the employee selected to lead the investigation into the allegation.

4. After a complaint is accepted for investigation by DCFS or local law enforcement:

a. The school **may not** interview the alleged victim regarding the details of the incident until after completion of a forensic interview of the victim by the Children's Advocacy Center; and

b. If asked by DCFS or local law enforcement, the school must provide any evidence the school has gathered to local law



enforcement or DCFS provided said disclosure does not violate State and federal law.

The Public Act also creates a process by which school personnel may view the electronic recordings of the alleged victim, or to interview the alleged victim if there are delays in the forensic interview or if the school determines that the information learned from the forensic interview is insufficient to complete the school's investigation.

Finally, every two (2) years each district must review all existing policies and procedures that it has concerning sexual abuse investigations to ensure compliance with Section



22-85.

Given some of the procedural requirements to conduct this interview, we recommend you work with your attorneys to ensure compliance with the new statutory obligations.

Hiring and Background Checks

Under the Public Act, the following actions are now required of local school districts:

1. Each employee must be checked every five (5) years of

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employment through the Statewide Sex Offender Database and the Murderer and Violent Offender Against Youth Database. We recommend that each District complete this check of all employees who have been employed with the District for more than five (5) years within the next sixty (60) days and keep records of the check. You can then establish a rolling review for all employees employed less than five (5) years so that this is completed on an annual basis.

- Each district must “consider” the status of a person with an indicated finding of abuse or neglect by DCFS or another child welfare agency prior to hire. This does not preclude the hiring of individuals with an indicated finding but only requires that the finding be considered. We recommend keeping

information outlining the steps taken in considering the employment of such an individual and the reasons that a decision was made to hire such a person.

- If the district becomes aware that an employee has a prohibited conviction under Section 21B-80 or which requires registration under the Statewide Sex Offender Database or the Murderer and Violent Offender Against Youth Database, the district Superintendent is required to notify the State Superintendent in writing of the conviction or registration within fifteen (15) business days.

Prohibited
Criminal Offenses

The following prohibited convictions have been added to the School Code by the Public Act:

1. Luring
of a Minor – 720 ILCS 5/10-5.1
2. Involuntary
Sexual Servitude of a Minor – 720 ILCS 10-9(c)
3. Solicitation
to Meet with a Child – 720 ILCS 5/11-6.6
4. Sexual
Relations within Families – 720 ILCS 5/11-11
5. Aggravated
Battery – 720 ILCS 5/12-3.05
6. Aggravated
Domestic Battery – 720 ILCS 5/12-3.3
7. Criminal
Street Gang Recruitment on School Grounds – 720 ILCS
5/12-6.4
8. Hate
Crime – 720 ILCS 5/12-7.1
9. Female

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Genital Mutilation – 720 ILCS 5/12-34

10. Inducement

to Commit Suicide – 720 ILCS 5/12-34.5

11. Sexual

Conduct or Sexual Contact with an Animal – 720 ILCS
5/12-35

It

is our opinion that you are not required to terminate any current employees who were employed prior to August 23, 2019 who have been convicted of one of these newly added offenses prior to their employment. Any new applicants for employment would not be eligible for employment if they have any of these convictions. In addition, any current employees who are convicted of one of these offenses subsequent to August 23, 2019 would also be ineligible for employment.



Mandated Reporting

The Public Act requires that all mandated reporters employed by a district annually review ISBE developed materials and DCFS developed materials on reporting obligations. We recommend that an annual sign-off sheet or similar acknowledgement be created which documents compliance with this provision.

The Public Act also permits the immediate termination of non-licensed employees based upon a negligent or willful failure to report an instance of suspected child abuse and further permits the suspension of any licensed employee for the same



conduct.

Another major change made by the Public Act is that the State Superintendent is required to immediately suspend the license of any employee “charged” with any offense prohibited under Section 21-80 of the School Code. While the Public Act does not require it, we recommend that a school district report any employee charged with a prohibited offense to the State Superintendent, so that she may fulfill her role in this process.

Teacher Resignations

The Public Act modifies Section 24-14 of the School Code, which deals with

resignations by teachers. As you are likely aware, a tenured teacher may only resign after providing thirty (30) days written notice upon the secretary of a board of education or obtaining the board's consent. Moreover, no teacher (probationary or tenured) may resign during a school term in order to accept another teaching position without the board of education's concurrence. As amended, if a teacher resigns improperly the Board of Education may pass a resolution reflecting that the teacher's resignation was not in conformity with Section 24-14 and serve it upon the State Superintendent. The State Superintendent is then required to convene an informal evidentiary hearing within ninety (90) days after the date of the resolution. If it is determined at this hearing that the resignation was not in conformity with the School Code, the teacher's license "shall" be suspended for a period of one (1) year.



A teacher may also agree to a “lesser licensure sanction” in lieu of such a hearing and finding, at the State Superintendent’s discretion. We are happy to work with your District to create a resolution that is in conformity with the requirements of the State Superintendent should you have any resignations which are unauthorized.

As you can see, the changes made by the Public Act are numerous and will impact several areas of the day-to-day operations of local school districts. If you have questions regarding the Public Act or would like recommendations on implementing its new requirements, please call one of our attorneys in Flossmoor at 708-799-6766 or in Oak Brook at 630-928-1200.