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BILL: House Bill 373
TITLE: Education - Child Abuse and Sexual Misconduct Prevention - Hiring Emergent Employees
DATE: January 20, 2021
POSITION: SUPPORT
COMMITTEE: Ways and Means Committee
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The Maryland Association of Boards of Education (MABE) supports House Bill 373 to improve the operation of the important legislation enacted in 2019 to require employer history reviews of all school employees to protect our students from potential abuse to a greater extent than provided by traditional criminal background checks.

MABE and all local boards place a very high priority on providing a well-rounded public education to students in a healthy learning environment with well-trained, professional educators, administrators, and staff dedicated to ensuring the highest degree of student safety. Based in part on several high profile heinous child sexual abuse cases perpetrated by school employees, there is now heightened awareness regarding the need to revisit longstanding practices and procedures in the hiring and, supervision, discipline and discharge of school employees based on a broad range of misconduct.

In 2019, MABE supported passage of House Bill 486 in order to establish and define the process of determining whether an applicant for employment with a local school system has ever been disciplined for allegations of “child sexual abuse” or “sexual misconduct.” MABE assures the legislature that this process is in place in all 24 local school systems. Today, school systems are complying with the law’s requirements, and urge support for House Bill 1008 to improve the administration of the hiring and placement of teachers and other staff.

One key facet of the Pennsylvania law on which our legislation was based is the allowance for the hiring and placement of an employee, pending completion of the employer history review, as proposed in this bill. This provision of the Pennsylvania law was initially included but amended out of the bill passed in 2019. As school systems have begun to fully implement the new law, the benefits of this provision are very apparent. Without this provision, the employment status of a newly hired employee whose employer history review is incomplete is unclear. During the weeks a school system is waiting on responses from all past employers, a prospective employee is either not fully hired and asked to wait, which may result in their accepting another position elsewhere, or fully hired, and if a negative finding arises from a past employer’s response, the employee may be entitled to a full year’s salary. Neither of these scenarios is ideal.

The employee in the new “emergent employee” category would be able to begin working immediately pending the results of the employer history review, and would have more limited causes of action to dispute their dismissal based on a negative finding based on input from a past employer. Most importantly, House Bill 373 provides additional protections and assurances before placing the “emergent employee,” and limits any such placement to 60 days. In addition, the law does not at this time place any limit on how far back in an employee’s history one must go to retrieve background information from all former employers where an applicant had direct contact with minors. This legislation would clarify a 10 year scope of review of past employers.

Again, MABE believes House Bill 373 is consistent with the significant improvements in recent years to secure the highest possible degree of safety for our more than 900,000 public school students from the misconduct of school employees. For these reasons, MABE requests a favorable report on House Bill 373.

Background

In 2018, MABE supported passage of House Bill 1072 (Ch. 31) which now requires each local board of education and nonpublic school that receives State funds to require each employee to receive instruction with specified elements annually on the prevention, identification, and reporting of child sexual abuse. In addition, each local board of education must: (1) establish and implement policies that support the prevention of child sexual abuse through ongoing training of staff that include specified elements and; (2) develop employee codes of conduct that address appropriate contact between staff and students.

Under the law passed in 2018, each local board of education must establish and implement policies that support the prevention of child sexual abuse through ongoing training of staff regarding (1) behavior that constitutes adult perpetration; (2) reporting obligations and procedures; and (3) for staff involved in the hiring process, comprehensive screening of prospective employees.

In 2016, the General Assembly passed Erin's Law to establish a comprehensive sexual abuse and assault awareness and prevention program (House Bill 72, Ch. 609). The law now requires the State Board of Education, local school systems, and nonpublic schools to develop and implement a program of age-appropriate education on the awareness and prevention of sexual abuse and assault. The program must be taught by teachers who are trained to provide instruction on the awareness and prevention of sexual abuse and assault and incorporated into the health curriculum of local boards of education and nonpublic schools.

Another significant law was passed in 2015 to ensure that local school system and nonpublic school 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 specified crimes (Senate Bill 508, Ch. 180).

The law now requires contractors and subcontractors to require an employee who has direct, unsupervised, and uncontrolled access to children in specific facilities to submit to a criminal history records check. This legislation also expanded the underlying crimes for which prohibitions against the hiring, retaining, or assignment of individuals who have been convicted of specified crimes apply to include fourth-degree sexual offenses and offenses committed in another state that would constitute a third- or fourth-degree sexual offense if committed in this State.

In addition, Maryland law places a high priority on responding to the failure to report by revoking an educator's teaching certificate. In Maryland, a certificated educator who fails to report even suspected child abuse under the "mandatory reporter" statute will lose their teaching certificate. State regulations, under COMAR 13A.12.05.02C(2), provide that a certificate "shall be suspended or revoked" if the certificate holder "willfully and knowingly" makes a material misrepresentation or concealment of information on the application for a certificate, including knowingly failing to report suspected child abuse.