



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4896

Introduced 2/7/2024, by Rep. Michelle Mussman

SYNOPSIS AS INTRODUCED:

105 ILCS 5/22-85.5
105 ILCS 5/22-94

Amends the School Code. In provisions concerning sexual misconduct in schools, provides that guidelines established for certain situations and all available methods for how to report staff-student boundary violations within a school and to external agencies must be posted on the website, if any, of each school district, charter school, or nonpublic school and must be included in any staff, student, or parent handbook provided by the school district, charter school, or nonpublic school. In provisions concerning an employment history review, provides that a job applicant shall provide the name, address, telephone number, and other relevant contact information of the applicant's current employer only if the applicant has direct contact with children or students at the applicant's current employer. Provides that for a substitute employee licensed by the State Board of Education and seeking employment in more than one school district, the employment history review shall be conducted by the regional office of education or intermediate service center in which the school districts are located. Provides for when this review is required and how the review remains valid, and provides for immunity for regional offices of education and intermediate service centers.

LRB103 37153 RJT 67272 b

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The School Code is amended by changing Sections
5 22-85.5 and 22-94 as follows:

6 (105 ILCS 5/22-85.5)

7 Sec. 22-85.5. Sexual misconduct in schools.

8 (a) This Section applies beginning on July 1, 2022.

9 (b) The General Assembly finds that:

10 (1) the success of students in school relies on safe
11 learning environments and healthy relationships with
12 school personnel;

13 (2) it is important for staff to maintain a
14 professional relationship with students at all times and
15 to define staff-student boundaries to protect students
16 from sexual misconduct by staff and staff from the
17 appearance of impropriety;

18 (3) many breaches of staff-student boundaries do not
19 rise to the level of criminal behavior but do pose a
20 potential risk to student safety;

21 (4) repeated violations of staff-student boundaries
22 can indicate the grooming of a student for sexual abuse;

23 (5) it is necessary to uphold the State Board of

1 Education's Code of Ethics for Illinois Educators and for
2 each school district, charter school, or nonpublic school
3 to have an employee code of professional conduct policy;

4 (6) each school district, charter school, or nonpublic
5 school must have the ability to discipline educators for
6 breaches of its employee code of professional conduct
7 policy;

8 (7) each school district, charter school, or nonpublic
9 school must have the ability to know if any of its
10 educators have violated professional staff-student
11 boundaries in previous employment; and

12 (8) as bystanders, educators may have knowledge of
13 concerning behaviors that no one else is aware of, so they
14 need adequate training on sexual abuse, the employee code
15 of professional conduct policy, and federal and State
16 reporting requirements.

17 (c) In this Section, "sexual misconduct" means any act,
18 including, but not limited to, any verbal, nonverbal, written,
19 or electronic communication or physical activity, by an
20 employee or agent of the school district, charter school, or
21 nonpublic school with direct contact with a student that is
22 directed toward or with a student to establish a romantic or
23 sexual relationship with the student. Such an act includes,
24 but is not limited to, any of the following:

25 (1) A sexual or romantic invitation.

26 (2) Dating or soliciting a date.

1 (3) Engaging in sexualized or romantic dialog.

2 (4) Making sexually suggestive comments that are
3 directed toward or with a student.

4 (5) Self-disclosure or physical exposure of a sexual,
5 romantic, or erotic nature.

6 (6) A sexual, indecent, romantic, or erotic contact
7 with the student.

8 (d) To prevent sexual misconduct with students, each
9 school district, charter school, or nonpublic school shall
10 develop an employee code of professional conduct policy that
11 addresses all of the following:

12 (1) Incorporates the Code of Ethics for Illinois
13 Educators.

14 (2) Incorporates the definition of "sexual misconduct"
15 in this Section.

16 (3) Identifies the expectations for employees and
17 agents of the school district, charter school, or
18 nonpublic school regarding how to maintain a professional
19 relationship with students, including the expectations for
20 staff-student boundaries, recognizing the age and
21 developmental level of the students served, and
22 establishes guidelines for all of the following
23 situations:

24 (A) Transporting a student.

25 (B) Taking or possessing a photo or a video of a
26 student.

1 (C) Meeting with a student or contacting a student
2 outside of the employee's or agent's professional
3 role.

4 (4) References the employee reporting requirements
5 required under the Abused and Neglected Child Reporting
6 Act and under Title IX of the federal Education Amendments
7 of 1972.

8 (5) References required employee training that is
9 related to child abuse and educator ethics that are
10 applicable under State and federal law.

11 (e) The employee code of professional conduct policy,
12 guidelines established for all of the situations identified in
13 paragraph (3) subsection (d), and all available methods for
14 how to report staff-student boundary violations within a
15 school and to external agencies must be posted on the website,
16 if any, of each school district, charter school, or nonpublic
17 school and must be included in any staff, student, or parent
18 handbook provided by the school district, charter school, or
19 nonpublic, ~~nonsectarian elementary or secondary~~ school.

20 (f) A violation of the employee code of professional
21 conduct policy may subject an employee to disciplinary action
22 up to and including dismissal from employment. Failure to
23 report a violation of the employee code of professional
24 conduct policy may subject an employee to disciplinary action
25 up to and including dismissal from employment.

26 (Source: P.A. 102-676, eff. 12-3-21.)

1 (105 ILCS 5/22-94)

2 Sec. 22-94. Employment history review.

3 (a) This Section applies to all permanent and temporary
4 positions for employment with a school or a contractor of a
5 school involving direct contact with children or students.

6 (b) In this Section:

7 "Contractor" means firms holding contracts with any school
8 including, but not limited to, food service workers, school
9 bus drivers and other transportation employees, who have
10 direct contact with children or students.

11 "Direct contact with children or students" means the
12 possibility of care, supervision, guidance, or control of
13 children or students or routine interaction with children or
14 students.

15 "School" means a public or nonpublic elementary or
16 secondary school.

17 "Sexual misconduct" has the meaning ascribed to it in
18 subsection (c) of Section 22-85.5 of this Code.

19 (c) Prior to hiring an applicant to work directly with
20 children or students, a school or contractor must ensure that
21 the following criteria are met:

22 (1) the school or contractor has no knowledge or
23 information pertaining to the applicant that would
24 disqualify the applicant from employment;

25 (2) the applicant swears or affirms that the applicant

1 is not disqualified from employment;

2 (3) using the template developed by the State Board of
3 Education, the applicant provides all of the following:

4 (A) a list, including the name, address, telephone
5 number, and other relevant contact information of the
6 following:

7 (i) the applicant's current employer if the
8 applicant has direct contact with children or
9 students at the applicant's current employer;

10 (ii) all former employers of the applicant
11 that were schools or school contractors, as well
12 as all former employers at which the applicant had
13 direct contact with children or students;

14 (B) A written authorization that consents to and
15 authorizes disclosure by the applicant's current and
16 former employers under subparagraph (A) of this
17 paragraph (3) of the information requested under
18 paragraph (4) of this subsection (c) and the release
19 of related records and that releases those employers
20 from any liability that may arise from such disclosure
21 or release of records pursuant to subsection (e).

22 (C) A written statement of whether the applicant:

23 (i) has been the subject of a sexual
24 misconduct allegation, unless a subsequent
25 investigation resulted in a finding that the
26 allegation was false, unfounded, or

1 unsubstantiated;

2 (ii) has ever been discharged from, been asked
3 to resign from, resigned from, or otherwise been
4 separated from any employment, has ever been
5 disciplined by an employer, or has ever had an
6 employment contract not renewed due to an
7 adjudication or finding of sexual misconduct or
8 while an allegation of sexual misconduct was
9 pending or under investigation, unless the
10 investigation resulted in a finding that the
11 allegation was false, unfounded, or
12 unsubstantiated; or

13 (iii) has ever had a license or certificate
14 suspended, surrendered, or revoked or had an
15 application for licensure, approval, or
16 endorsement denied due to an adjudication or
17 finding of sexual misconduct or while an
18 allegation of sexual misconduct was pending or
19 under investigation, unless the investigation
20 resulted in a finding that the allegation was
21 false, unfounded, or unsubstantiated.

22 (4) The school or contractor shall initiate a review
23 of the employment history of the applicant by contacting
24 those employers listed by the applicant under subparagraph
25 (A) of paragraph (3) of this subsection (c) and, using the
26 template developed by the State Board of Education,

1 request all of the following information:

2 (A) the dates of employment of the applicant;

3 (B) a statement as to whether the applicant:

4 (i) has been the subject of a sexual
5 misconduct allegation, unless a subsequent
6 investigation resulted in a finding that the
7 allegation was false, unfounded, or
8 unsubstantiated;

9 (ii) was discharged from, was asked to resign
10 from, resigned from, or was otherwise separated
11 from any employment, was disciplined by the
12 employer, or had an employment contract not
13 renewed due to an adjudication or finding of
14 sexual misconduct or while an allegation of sexual
15 misconduct was pending or under investigation,
16 unless the investigation resulted in a finding
17 that the allegation was false, unfounded, or
18 unsubstantiated; or

19 (iii) has ever had a license or certificate
20 suspended, surrendered, or revoked due to an
21 adjudication or finding of sexual misconduct or
22 while an allegation of sexual misconduct was
23 pending or under investigation, unless the
24 investigation resulted in a finding that the
25 allegation was false, unfounded, or
26 unsubstantiated.

1 (C) The template shall include the following
2 option: if the employer does not have records or
3 evidence regarding the questions in items (i) through
4 (iii) of subparagraph (B) of paragraph (4) of
5 subsection (c), the employer may state that there is
6 no knowledge of information pertaining to the
7 applicant that would disqualify the applicant from
8 employment.

9 (5) For applicants licensed by the State Board of
10 Education, the school district, charter school, or
11 nonpublic school shall verify the applicant's reported
12 previous employers with previous employers in the State
13 Board of Education's educator licensure database to ensure
14 accuracy.

15 (d) An applicant who provides false information or
16 willfully fails to disclose information required in subsection
17 (c) shall be subject to discipline, up to and including
18 termination or denial of employment.

19 (e) No later than 20 days after receiving a request for
20 information required under paragraph (4) of subsection (c), an
21 employer who has or had an employment relationship with the
22 applicant shall disclose the information requested. If the
23 employer has an office of human resources or a central office,
24 information shall be provided by that office. The employer who
25 has or had an employment relationship with the applicant shall
26 disclose the information on the template developed by the

1 State Board of Education. For any affirmative response to
2 items (i) through (iii) of subparagraph (B) of paragraph (4)
3 or subsection (c), the employer who has or had an employment
4 relationship with the applicant shall provide additional
5 information about the matters disclosed and all related
6 records.

7 A school shall complete the template at time of separation
8 from employment, or at the request of the employee, and
9 maintain it as part of the employee's personnel file. If the
10 school completes an investigation after an employee's
11 separation from employment, the school shall update the
12 information accordingly.

13 Information received under this Section shall not be
14 deemed a public record.

15 A school or contractor who receives information under this
16 subsection (e) may use the information for the purpose of
17 evaluating an applicant's fitness to be hired or for continued
18 employment and may report the information, as appropriate, to
19 the State Board of Education, a State licensing agency, a law
20 enforcement agency, a child protective services agency,
21 another school or contractor, or a prospective employer.

22 An employer, school, school administrator, regional office
23 of education or intermediate service center, or contractor who
24 provides information or records about a current or former
25 employee or applicant under this Section is immune from
26 criminal and civil liability for the disclosure of the

1 information or records, unless the information or records
2 provided were knowingly false. This immunity shall be in
3 addition to and not a limitation on any other immunity
4 provided by law or any absolute or conditional privileges
5 applicable to the disclosure by virtue of the circumstances or
6 the applicant's consent to the disclosure and shall extend to
7 any circumstances when the employer, school, school
8 administrator, or contractor in good faith shares findings of
9 sexual misconduct with another employer.

10 Unless the laws of another state prevent the release of
11 the information or records requested or disclosure is
12 restricted by the terms of a contract entered into prior to the
13 effective date of this amendatory Act of the 102nd General
14 Assembly, and notwithstanding any other provisions of law to
15 the contrary, an employer, school, school administrator,
16 contractor, or applicant shall report and disclose, in
17 accordance with this Section, all relevant information,
18 records, and documentation that may otherwise be confidential.

19 (f) A school or contractor may not hire an applicant who
20 does not provide the information required under subsection (c)
21 for a position involving direct contact with children or
22 students.

23 (g) Beginning on the effective date of this amendatory Act
24 of the 102nd General Assembly, a school or contractor may not
25 enter into a collective bargaining agreement, an employment
26 contract, an agreement for resignation or termination, a

1 severance agreement, or any other contract or agreement or
2 take any action that:

3 (1) has the effect of suppressing information
4 concerning a pending investigation or a completed
5 investigation in which an allegation was substantiated
6 related to a report of suspected sexual misconduct by a
7 current or former employee;

8 (2) affects the ability of the school or contractor to
9 report suspected sexual misconduct to the appropriate
10 authorities; or

11 (3) requires the school or contractor to expunge
12 information about allegations or findings of suspected
13 sexual misconduct from any documents maintained by the
14 school or contractor, unless, after an investigation, an
15 allegation is found to be false, unfounded, or
16 unsubstantiated.

17 (h) Any provision of an employment contract or agreement
18 for resignation or termination or a severance agreement that
19 is executed, amended, or entered into on or after the
20 effective date of this amendatory Act of the 102nd General
21 Assembly and that is contrary to this Section is void and
22 unenforceable.

23 (i) For substitute employees, all of the following apply:

24 (1) Except as otherwise provided in paragraph (1.5) of
25 this subsection (i), the ~~The~~ employment history review
26 required by this Section is required only prior to the

1 initial hiring of a substitute employee or placement on a
2 school's approved substitute list and shall remain valid
3 as long as the substitute employee continues to be
4 employed by the same school or remains on the school's
5 approved substitute list.

6 (1.5) For a substitute employee licensed by the State
7 Board of Education under Section 21B-20 and seeking
8 employment in more than one school district, the
9 employment history review required by this Section shall
10 be conducted by the regional office of education or
11 intermediate service center in which the school districts
12 are located. An employment history review under this
13 paragraph (1.5) is required only prior to the initial
14 hiring of a substitute employee by one of the school
15 districts served by the regional office of education or
16 intermediate service center or the initial placement of
17 the substitute employee on the regional office of
18 education's or intermediate service center's approved
19 substitute list and shall remain valid as long as the
20 substitute employee continues to be employed by a school
21 district served by the regional office of education or
22 intermediate service center or remains on the regional
23 office of education's or intermediate service center's
24 approved substitute list.

25 (2) Except as otherwise provided in paragraph (1.5) of
26 this subsection (i), a ~~A~~ substitute employee seeking to be

1 added to another school's substitute list shall undergo an
2 additional employment history review under this Section.
3 Except as otherwise provided in paragraph (1.5) or
4 ~~paragraph~~ (3) of this subsection (i) or in subsection (k),
5 the appearance of a substitute employee on one school's
6 substitute list does not relieve another school from
7 compliance with this Section.

8 (3) An employment history review conducted upon
9 initial hiring of a substitute employee by a contractor or
10 any other entity that furnishes substitute staffing
11 services to schools shall satisfy the requirements of this
12 Section for all schools using the services of that
13 contractor or other entity.

14 (4) A contractor or any other entity furnishing
15 substitute staffing services to schools shall comply with
16 paragraphs (3) and (4) of subsection (j).

17 (j) For employees of contractors, all of the following
18 apply:

19 (1) The employment history review required by this
20 Section shall be performed, either at the time of the
21 initial hiring of an employee or prior to the assignment
22 of an existing employee to perform work for a school in a
23 position involving direct contact with children or
24 students. The review shall remain valid as long as the
25 employee remains employed by the same contractor, even if
26 assigned to perform work for other schools.

1 (2) A contractor shall maintain records documenting
2 employment history reviews for all employees as required
3 by this Section and, upon request, shall provide a school
4 for whom an employee is assigned to perform work access to
5 the records pertaining to that employee.

6 (3) Prior to assigning an employee to perform work for
7 a school in a position involving direct contact with
8 children or students, the contractor shall inform the
9 school of any instance known to the contractor in which
10 the employee:

11 (A) has been the subject of a sexual misconduct
12 allegation unless a subsequent investigation resulted
13 in a finding that the allegation was false, unfounded,
14 or unsubstantiated;

15 (B) has ever been discharged, been asked to resign
16 from, resigned from, or otherwise been separated from
17 any employment, been removed from a substitute list,
18 been disciplined by an employer, or had an employment
19 contract not renewed due to an adjudication or finding
20 of sexual misconduct or while an allegation of sexual
21 misconduct was pending or under investigation, unless
22 the investigation resulted in a finding that the
23 allegation was false, unfounded, or unsubstantiated;
24 or

25 (C) has ever had a license or certificate
26 suspended, surrendered, or revoked due to an

1 adjudication or finding of sexual misconduct or while
2 an allegation of sexual misconduct was pending or
3 under investigation, unless the investigation resulted
4 in a finding that the allegation was false, unfounded,
5 or unsubstantiated.

6 (4) The contractor may not assign an employee to
7 perform work for a school in a position involving direct
8 contact with children or students if the school objects to
9 the assignment after being informed of an instance listed
10 in paragraph (3).

11 (k) An applicant who has undergone an employment history
12 review under this Section and seeks to transfer to or provide
13 services to another school in the same school district,
14 diocese, or religious jurisdiction, or to another school
15 established and supervised by the same organization is not
16 required to obtain additional reports under this Section
17 before transferring.

18 (1) Nothing in this Section shall be construed:

19 (1) to prevent a prospective employer from conducting
20 further investigations of prospective employees or from
21 requiring applicants to provide additional background
22 information or authorizations beyond what is required
23 under this Section, nor to prevent a current or former
24 employer from disclosing more information than what is
25 required under this Section;

26 (2) to relieve a school, school employee, contractor

1 of the school, or agent of the school from any legal
2 responsibility to report sexual misconduct in accordance
3 with State and federal reporting requirements;

4 (3) to relieve a school, school employee, contractor
5 of the school, or agent of the school from any legal
6 responsibility to implement the provisions of Section 7926
7 of Chapter 20 of the United States Code; or

8 (4) to prohibit the right of the exclusive bargaining
9 representative under a collective bargaining agreement to
10 grieve and arbitrate the validity of an employee's
11 termination or discipline for just cause.

12 (m) The State Board of Education shall develop the
13 templates required under paragraphs (3) and (4) of subsection
14 (c).

15 (Source: P.A. 102-702, eff. 7-1-23.)