

# VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

## CHAPTER 555

*An Act to amend and reenact §§ 22.1-296.1, 22.1-296.4, 22.1-307, and 63.2-1505 of the Code of Virginia, relating to complaints of child abuse and neglect against certain school employees.*

[H 1242]

Approved March 11, 2008

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 22.1-296.1, 22.1-296.4, 22.1-307, and 63.2-1505 of the Code of Virginia are amended and reenacted as follows:**

§ 22.1-296.1. Data on convictions for certain crimes and child abuse and neglect required; penalty.

A. As a condition of employment for all of its public school employees, whether full-time or part-time, permanent, or temporary, every school board shall require on its application for employment certification (i) that the applicant has not been convicted of a felony or any offense involving the sexual molestation, physical or sexual abuse or rape of a child; and (ii) whether the applicant has been convicted of a crime of moral turpitude. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor and upon conviction, the fact of said conviction shall be grounds for the Board of Education to revoke such person's license to teach.

B. Every school board shall also require on its application for employment, as a condition of employment requiring direct contact with students, whether full-time or part-time, permanent, or temporary, certification that the applicant has not been the subject of a founded case of child abuse and neglect. *Any person making a materially false statement regarding a finding of child abuse and neglect shall be guilty of a Class 1 misdemeanor and upon conviction, the fact of said conviction shall be grounds for the Board of Education to revoke such person's license to teach.*

C. As a condition of awarding a contract for the provision of services that require the contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the school board shall require the contractor to provide certification that all persons who will provide such services have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child.

Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. School boards shall not be liable for materially false statements regarding the certifications required by this subsection.

This subsection shall not apply to a contractor or his employees providing services to a school division in an emergency or exceptional situation, such as when student health or safety is endangered or when repairs are needed on an urgent basis to ensure that school facilities are safe and habitable, when it is reasonably anticipated that the contractor or his employees will have no direct contact with students.

§ 22.1-296.4. Child abuse and neglect data required.

A. On and after July 1, 1997, every school board shall require, as a condition of employment, that any applicant who is offered or accepts employment requiring direct contact with students, whether full-time or part-time, permanent or temporary, provide written consent and the necessary personal information for the school board to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § 63.2-1515. The school board shall ensure that all such searches are requested in conformance with the regulations of the Board of Social Services. *In addition, where the applicant has resided in another state within the last five years, the school board shall require as a condition of employment that such applicant provide written consent and the necessary personal information for the school board to obtain information from each relevant state as to whether the applicant was the subject of a founded complaint of child abuse and neglect in such state. The school board shall take reasonable steps to determine whether the applicant was the subject of a founded complaint of child abuse and neglect in the relevant state. Such reasonable steps shall include, but not be limited to, contacting any central child abuse and neglect registry maintained by the relevant state. The Department of Social Services shall maintain a database of central child abuse and neglect registries in other states for use by local school boards.* The applicant may be required to pay the cost of ~~the~~ any search conducted pursuant to this subsection at the discretion of the school board. From such funds as may be available for this purpose, however, the school board may pay for the search.

The Department of Social Services shall respond to such request by the school board in cases where there is no match within the central registry regarding applicants for employment within ten business

days of receipt of such request. In cases where there is a match within the central registry regarding applicants for employment, the Department of Social Services shall respond to such request by the school board within thirty business days of receipt of such request. The response may be by first-class mail or facsimile transmission.

*B. If the response obtained pursuant to subsection A indicates that the applicant is the subject of a founded case of child abuse and neglect, such applicant shall be denied employment, or the employment shall be rescinded.*

C. If an applicant is denied employment because of information appearing on his record in the registry, the school board shall provide a copy of the information obtained from the registry to the applicant. The information provided to the school board by the Department of Social Services shall be confidential and shall not be disseminated by the school board.

§ 22.1-307. Dismissal, etc., of teacher; grounds.

A. Teachers may be dismissed or placed on probation for incompetency, immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence when in compliance with federal law, conviction of a felony or a crime of moral turpitude or other good and just cause. *A teacher shall be dismissed if such teacher is or becomes the subject of a founded complaint of child abuse and neglect, pursuant to § 63.2-1505, and after all rights to an appeal provided by § 63.2-1526 have been exhausted. The fact of such finding, after all rights to an appeal provided by § 63.2-1526 have been exhausted, shall be grounds for the local school division to recommend that the Board of Education revoke such person's license to teach.* No teacher shall be dismissed or placed on probation solely on the basis of the teacher's refusal to submit to a polygraph examination requested by the school board.

B. For the purposes of this article, "incompetency" may be construed to include, but shall not be limited to, consistent failure to meet the endorsement requirements for the position or performance that is documented through evaluation to be consistently less than satisfactory.

§ 63.2-1505. Investigations by local departments.

A. An investigation requires the collection of information necessary to determine:

1. The immediate safety needs of the child;
2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
3. Risk of future harm to the child;
4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;
5. Whether abuse or neglect has occurred;
6. If abuse or neglect has occurred, who abused or neglected the child; and
7. A finding of either founded or unfounded based on the facts collected during the investigation.

B. If the local department responds to the report or complaint by conducting an investigation, the local department shall:

1. Make immediate investigation and, if the report or complaint was based upon one of the factors specified in subsection B of § 63.2-1509, the local department may file a petition pursuant to § 16.1-241.3;

2. Complete a report and transmit it forthwith to the Department, except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in subsection B of § 63.2-1509 and the mother sought substance abuse counseling or treatment prior to the child's birth;

3. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family;

4. Petition the court for services deemed necessary including, but not limited to, removal of the child or his siblings from their home;

5. Determine within 45 days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the Department and to the person who is the subject of the investigation. However, upon written justification by the local department, such determination may be extended, not to exceed a total of 60 days. If through the exercise of reasonable diligence the local department is unable to find the child who is the subject of the report, the time the child cannot be found shall not be computed as part of the 45-day or 60-day period and documentation of such reasonable diligence shall be placed in the record; ~~and~~

6. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect; *and*

*7. If a report of child abuse and neglect is founded, and the subject of the report is a full-time, part-time, permanent, or temporary teacher in a school division located within the Commonwealth, notify the relevant school board of the founded complaint. Any information exchanged for the purposes of this subsection shall not be considered a violation of § 63.2-102, 63.2-104 or 63.2-105.*

C. Each local board may obtain and consider, in accordance with regulations adopted by the Board,

statewide criminal history record information from the Central Criminal Records Exchange and results of a search of the child abuse and neglect central registry of any individual who is the subject of a child abuse or neglect investigation conducted under this section when there is evidence of child abuse or neglect and the local board is evaluating the safety of the home and whether removal will protect a child from harm. The local board also may obtain such a criminal records or registry search on all adult household members residing in the home where the individual who is the subject of the investigation resides and the child resides or visits. If a child abuse or neglect petition is filed in connection with such removal, a court may admit such information as evidence. Where the individual who is the subject of such information contests its accuracy through testimony under oath in hearing before the court, no court shall receive or consider the contested criminal history record information without certified copies of conviction. Further dissemination of the information provided to the local board is prohibited, except as authorized by law.