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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 78

AN ACT TO AMEND TITLE 14 AND TITLE 31 OF THE DELAWARE CODE RELATING TO QUALIFICATIONS FOR MEMBERS OF SCHOOL BOARDS AND THE STATE BOARD OF EDUCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Subchapter I, Chapter 2, Title 14 of the Delaware Code by making deletions as shown by strike
2 through and insertions as shown by underline as follows:

3 § 209. Qualifications of board members; disqualifying crimes.

4 (a) An individual may not serve as a member of the State Board of Education or the board of a public school
5 district or vocational-technical school district if any of the following apply to the individual:

6 (1) The individual has ever been convicted or has ever pleaded guilty or nolo contendere to any of the
7 following:

8 a. Any crime constituting a violent felony as defined in § 4201(c) of Title 11.

9 b. Any crime against a child constituting a felony.

10 c. Any sexual offense against a child.

11 d. Any crime constituting a felony sexual offense or unlawful sexual contact in the third degree under §
12 767 of Title 11.

13 e. Any crime constituting a felony offense against public administration involving bribery, improper
14 influence or abuse of office.

15 (2) The individual has been convicted or has pleaded guilty or nolo contendere within the preceding 10 years
16 to any crime constituting a felony that is not a permanent disqualification under paragraph (a)(1) of this section.

17 (3) The individual has been convicted or has pleaded guilty or nolo contendere within the preceding 5 years to
18 any of the following:

19 a. Any crime against a child constituting a misdemeanor, except for unlawful sexual contact in the third
20 degree under § 767 of Title 11.

21 b. Possession of a controlled substance or a counterfeit controlled substance classified as such in
22 Schedule I, II, III, IV, or V of Chapter 47 of Title 16.

23 c. Any crime constituting a misdemeanor offense against public administration involving bribery,
24 improper influence or abuse of office.

25 (4) The individual fails to comply with subsection (c) of this section.

26 (b) Before an individual may be appointed to or qualify as a candidate for membership on the State Board of
27 Education or the board of a public school district or vocational-technical school district, the individual must obtain a
28 criminal background check and Child Protection Registry check under § 309 of Title 31.

29 (c)(1)a. A member of the State Board of Education or a vocational-technical school district board must inform the
30 Governor if the member is charged with a crime under subsection (a) of this section.

31 b. The Governor may require a member of the State Board of Education or a vocational-technical school
32 district board to obtain a new background check under § 309 of Title 31 if the Governor has reasonable suspicion
33 that the member has been charged with a crime under subsection (a) of this section.

34 (2)a. A member of the board of a public school district must inform the superintendent of the school district
35 and other members of that school district board if the member is charged with a crime under subsection (a) of this
36 section.

37 b. The superintendent of a school district may require a member of the district school board to obtain a
38 new background check under § 309 of Title 31 if the superintendent has reasonable suspicion that the member has
39 been charged with a crime under subsection (a) of this section.

40 Section 2. Amend § 104, Title 14 of the Delaware Code by making deletions as shown by strike through and
41 insertions as shown by underline as follows:

42 § 104. State Board of Education; composition; term; powers and duties; qualifications; vacancies; staggered
43 appointments; office location; compensation; removal.

44 ~~(e)~~; (e)(1) If, after appointment, a State Board member is convicted or pleads guilty or nolo contendere to a crime
45 under § 209(a) of this title, the Governor must remove the member.

46 (2) If, after appointment, a State Board member is charged with a crime under § 209(a) of this title, the
47 Governor must do 1 of the following:

48 a. Suspend the member until the charges are resolved in favor of the member.

49 b. Remove the member.

50 Section 3. Amend § 511, Title 14 of the Delaware Code by making deletions as shown by strike through and
51 insertions as shown by underline as follows:

52 § 511. Approval procedure.

53 (r)(1) Charter school board members and founders shall ~~be required to~~ complete the criminal background checks in
54 the same manner as persons seeking employment with a public school ~~pursuant to~~ under § 309 of Title 31. In addition, the
55 authorizer shall complete a check of the Child Protection Registry established by § 921 of Title 16 for charter school
56 founders and board members. The results of ~~said the~~ background and Child Protection Registry checks ~~shall~~ must be
57 provided to the authorizer for review as part of the application process and on an ongoing basis if new board members are
58 seated or current board members are convicted of a crime or placed on the Child Protection Registry. Any person convicted
59 of a felony offense or of any crime against a child in this State or any other jurisdiction ~~shall is not be~~ permitted to serve as
60 a founder or member of a charter school board of directors. ~~No~~ An individual ~~shall be permitted to~~ may not serve as a
61 charter school founder or board member if the individual would not be permitted to be employed in a public school
62 ~~pursuant to~~ under § 309 of Title 31 regarding the Child Protection Registry. Other crimes may be considered disqualifying,
63 in the discretion of the authorizer. The State Bureau of Identification may release any subsequent criminal history to the
64 authorizer. ~~Individuals currently serving as board members of a charter school must complete a criminal background check~~
65 ~~and the Department shall complete a Child Protection Registry check for such members on or before February 1, 2012.~~

66 (2) If a charter school board member is charged with a crime that would disqualify the individual under
67 paragraph (r)(1) of this section, the board member must inform the other members of the charter school board of the
68 charges and is suspended until 1 of the following occur:

69 a. The charter school board member resigns.

70 b. The suspended charter school board member's term expires.

71 c. The charges are resolved in favor of the charter school board member.

72 d. The charter school board member is convicted or pleads guilty or nolo contendere to a disqualifying
73 crime and is removed from the charter school board under paragraph (r)(1) of this section.

74 (3) If a charter school board member is charged with a crime that would disqualify the individual under
75 paragraph (r)(1) of this section, the charter school must provide all of the following to the authorizer:

76 a. The name of the charter school board member.

77 b. The charges against the charter school board member and the date the charges were filed.

78 c. The status of the charter school board member under paragraph (r)(2) of this section.

79 Section 4. Amend § 1052, Title 14 of the Delaware Code by making deletions as shown by strike through and
80 insertions as shown by underline as follows:

81 § 1052. Number; qualifications of members; 1 member elected each year; term of members.

82 (a) Unless otherwise provided in this chapter, each school board ~~shall be~~ is composed of 5 members.

83 (b) Each member ~~shall~~ must be a citizen of the State and resident of the school district in which elected or
84 appointed and ~~shall~~ must be qualified to vote at a school election in that district at the time of such election or appointment.

85 (c) Unless otherwise provided in this chapter, 1 school board member ~~shall be~~ is elected each year except where an
86 unexpired term of a former member is also to be filled.

87 (d) Unless otherwise provided in this chapter each school board member ~~shall be~~ is elected for a term of 5 years
88 except when such election is to fill an unexpired term, said term commencing on July 1 following such member's election.

89 (e)(1) If a school board member is charged with a crime under § 209(a) of this title, the school board member is
90 immediately suspended pending the final resolution of the charges.

91 a. If the charges under § 209(a) of this title that are the basis of the suspension under this paragraph (e)(1)
92 are resolved in favor of the suspended school board member before the expiration of the suspended school board
93 member's unexpired term, the school board member may immediately return to service as a school board member.

94 b. If a school board member who is suspended under this paragraph (e)(1) is convicted or pleads guilty or
95 nolo contendere of a crime under § 209(a) of this title that is the basis of the suspension, the suspended school
96 board member ceases to be a member of the school board.

97 (2) If a school board member is suspended under paragraph (e)(1) of this section, the school board member's
98 seat is treated as vacant and may be filled, at the discretion of the school board, under § 1054 of this title until 1 of the
99 following occur:

100 a. The suspended school board member resigns.

101 b. The suspended school board member's term expires.

102 c. The suspended school board member returns to service under paragraph (e)(1)a. of this section.

103 d. The suspended school board member ceases to be a member of the school board under paragraph
104 (e)(1)b. of this section.

105 (f)(1) A school board member who is suspended or removed under paragraph (e)(1) of this section may mail or
106 deliver a written request for a hearing to the school district superintendent within 20 days of the suspension or removal.

107 (2) A hearing under paragraph (f)(1) of this section is for the limited purpose of determining if the school
108 board member was charged, convicted, or pleaded guilty or nolo contendere to a crime under § 209(a) of this title and
109 the burden of proof is on the school board member who requested the hearing.

110 (3) A hearing under paragraph (f)(1) of this section is conducted by a hearing panel selected by the
111 Commissioner of Elections as follows:

112 a. The Delaware School Board Association must provide names of 3 or more school board members from
113 a school district in each county for the hearing panel.

114 b. The Commissioner of Elections must select the members of the hearing panel from the list provided
115 under paragraph (f)(3)a. of this section and must select 1 member from a school district in each county.

116 c. A member of the hearing panel may not be a member of the same school board as the school board
117 member that requested the hearing under paragraph (f)(1) of this section.

118 (4) A decision made by the hearing panel under paragraph (f)(3) of this section is final, unless a party to the
119 hearing files a civil action in the Superior Court within 30 days of the date of the decision. In an action under this
120 subsection, the complaining party has the burden of proving that the hearing panel exceeded their powers under
121 paragraph (f)(2) of this section.

122 Section 5. Amend § 1064, Title 14 of the Delaware Code by making deletions as shown by strike through and
123 insertions as shown by underline as follows:

124 § 1064. Reorganized vocational-technical school districts.

125 (d)(1) If a member of the school board of a reorganized vocation-technical school district is convicted or pleads
126 guilty or nolo contendere to a crime under § 209(a) of this title, the Governor must remove the member.

127 (2) If a member of the school board of a reorganized vocation-technical school district is charged with a crime
128 under § 209(a) of this title, the Governor must do 1 of the following:

129 a. Suspend the member until the charges are resolved in favor of the member.

130 b. Remove the member.

131 Section 6. Amend § 1075, Title 14 of the Delaware Code by making deletions as shown by strike through and
132 insertions as shown by underline as follows:

133 § 1075. Filing of candidacy for school board member; withdrawal of candidacy.

134 (a)(1) No later than 4:30 p.m. on the first Friday in March, candidates for election to a board of education shall file
135 a notice of candidacy on the form promulgated by the Commissioner of Elections for that purpose with the Department of

136 Elections responsible for conducting the election. If the last day of filing is a legal holiday, the last day for a person to file
137 ~~shall then be~~ is the first business day next that is not a Saturday, ~~Sunday~~ Sunday, or a legal holiday.

138 (2) Before filing a notice of candidacy, an individual must obtain a criminal background check and Child
139 Protection Registry check under § 309 of Title 31. Information obtained by the Commissioner of Elections under this
140 paragraph (a)(2) is confidential and is not a public record under Chapter 100 of Title 29.

141 (3) The Commissioner of Elections must determine that an individual is qualified under § 209 and § 1052 of
142 this title before the individual may be considered a candidate for election to a board of education.

143 (4) The cost of the criminal background and Child Protection Registry checks required under paragraph (a)(2)
144 of this section are allowed fees for placing the name of the candidate on a ballot under § 8020 of Title 15.

145 Section 7. Amend § 309, Title 31 of the Delaware Code by making deletions as shown by strike through and
146 insertions as shown by underline as follows:

147 § 309. Background checks for child-serving entities.

148 (c) Except as provided in paragraph (c)(4) of this section, all child-serving entities are required to obtain criminal
149 and Child Protection Registry checks for prospective employees, ~~volunteers~~ volunteers, and contractors.

150 (1)a. The SBI shall furnish information pertaining to the identification and criminal history record of
151 prospective employees, ~~volunteers~~ volunteers, and contractors of child-serving entities, except as otherwise allowed or
152 required, provided that the prospective employee, ~~volunteer~~ volunteer, or contractor submits to a reasonable procedure
153 established by standards set forth by the Superintendent of State Police to identify the person whose record is sought.
154 Such procedure ~~shall~~ must include the fingerprinting of the prospective employee, and the provision of such other
155 information as may be necessary to obtain a report of the person's entire criminal history record from SBI and a report
156 of the person's entire federal criminal history record pursuant to the FBI appropriation of Title II of Public Law 92-
157 544. Notwithstanding any provision to the contrary, the information to be furnished by SBI ~~shall~~ must include child sex
158 abuser information. The Division of State Police ~~shall be~~ is the intermediary for purposes of this section.

159 b. The SBI shall furnish the information under paragraph (c)(1)a. of this section pertaining to members
160 and prospective members of public school boards as follows:

161 1. To the Governor, for an individual seeking appointment to or serving on the State Board of
162 Education or a vocational-technical school district.

163 2. To the Commissioner of Elections, for an individual seeking to be a candidate for election to a
164 school district board.

165 3. To the superintendent of a school district, for an individual serving as a member of the school
166 district board.

167 4. To the board of a charter school, for an individual seeking to serve or serving on the charter school
168 board.

169 c. Information provided under paragraph (c)(1)b. of this section is confidential and is not a public record
170 under Chapter 100 of Title 29.

171 Section 8. This Act is effective immediately.

172 Section 9. Sections 209(a) and § 209(b) of Title 14, as contained in Section 1 of this Act, do not apply to an
173 individual who is a member of the State Board of Education or the board of a public school or vocational-technical school
174 district on the effective date of this Act until the expiration of the individual's current term.

SYNOPSIS

This Act enhances the qualifications for an individual to serve as a member of a school board or the State Board of Education.

Specifically, this Act does all of the following:

1. Requires a prospective member of a school district board or State Board of Education to undergo the background check for child-serving entities and provides authority for the State Bureau of Identification to provide the required background check information to the appropriate entities.

2. Provides that background check information provided under this Act is not a public record under the Delaware Freedom of Information Act.

3. Requires that the Commissioner of Elections determine that an individual does not have any disqualifying convictions before the individual can be a candidate for election to a school board.

4. Requires the suspension of a member of a school board or the State Board of Education if the member is charged with a crime that would disqualify the individual from holding the position if convicted.

5. Requires the suspension of a charter school board member who is charged with a disqualifying offense. Existing law requires potential charter school board members to undergo and pass a criminal background check to serve as a charter school board member.

The disqualifying convictions under this Act are similar to those that cause an educator to lose their license or certificate. The qualifications added under this Act do not apply to current school board members until the expiration of the member's current term, unless the member is charged with a disqualifying crime while serving.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

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