



SPONSOR: Sen. Sturgeon & Sen. Sokola & Sen. Lockman &
Sen. Townsend & Rep. Baumbach & Rep. K. Williams &
Rep. Dorsey Walker
Sens. S. McBride, Poore, Walsh; Reps. Brady,
Chukwuocha, K. Johnson, Mitchell

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 2
FOR
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 against a child constituting a felony.

9 b. Any sexual offense against a child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2)a. If a State Board member is charged with a crime under § 209(a) of this title, the State Board member is automatically suspended pending the final resolution of the charges.

b. If the charges under § 209(a) of this title that are the basis of the suspension under paragraph (e)(2)a. of this section are resolved in favor of the suspended State Board member before the expiration of the suspended State Board member's unexpired term, the State Board member may immediately return to service as a member of the school board.

(3) If a State Board member is suspended under paragraph (e)(2)a. of this section, the State Board member's seat is treated as vacant for purposes of quorum under subsection (i) of this section until 1 of the following occur:

a. The suspended school board member resigns.

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

c. The charges that are the basis for the suspension are resolved in favor of the suspended school board member.

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

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

§ 511. Approval procedure.

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

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

a. The charter school board member resigns.

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

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

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

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

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

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

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

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

89 § 1052. Number; qualifications of members; 1 member elected each year; term of members.

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

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

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

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

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

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

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

105 (2) If a school board member is suspended under paragraph (e)(1) of this section, the school board member's
106 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
107 following occur:

108 a. The suspended school board member resigns.

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

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

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

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

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

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

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

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

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

(4) A decision made by the hearing panel under paragraph (f)(3) of this section is final, unless a party to the hearing files a civil action in the Superior Court within 30 days of the date of the decision. In an action under this subsection, the complaining party has the burden of proving that the hearing panel's decision under paragraph (f)(2) of this section was not supported by substantial evidence on the record.

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

§ 1064. Reorganized vocational-technical school districts.

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

(2)a. If a member of the school board of a reorganized vocation-technical school district is charged with a crime under § 209(a) of this title, the school board member is automatically suspended pending the final resolution of the charges.

b. If the charges under § 209(a) of this title that are the basis of the suspension under paragraph (d)(2)a. of this section are resolved in favor of the suspended school board member before the expiration of the suspended school board member's unexpired term, the school board member may immediately return to service as a member of the school board.

(3) If a school board member is suspended under paragraph (d)(2)a. of this section, the school board member's seat is treated as vacant for purposes of quorum until 1 of the following occur:

a. The suspended school board member resigns.

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

c. The charges that are the basis for the suspension are resolved in favor of the suspended school board member.

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

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

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

(a)(1)a. No later than 4:30 p.m. on the first Friday in March, candidates for election to a board of education shall file a notice of candidacy on the form promulgated by the Commissioner of Elections for that purpose with the Department of Elections responsible for conducting the election. If the last day of filing is a legal holiday, the last day for a person to file shall then be is the first business day next that is not a Saturday, ~~Sunday~~ Sunday, or a legal holiday.

b. A candidate must request the background checks required under § 209 of this title and provide proof that the background checks have been requested under § 309 of Title 31 with the notice of candidacy under paragraph (a)(1)a. of this section.

(2) The State Bureau of Investigation and the Department of Services for Children, Youth and Their Families must provide the results of the background checks requested by a candidate under paragraph (a)(1)b. of this section, to the Commissioner of Elections within 15 days of the candidate's request, under § 309(e)(5)a. of Title 31.

(3) Information obtained by the Commissioner of Elections under paragraph (a)(2) of this section is confidential and is not a public record under Chapter 100 of Title 29.

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

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

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

§ 309. Background checks for child-serving ~~entities~~; entities and other organizations.

(a) A background check for employees or volunteers of child-serving entities and members of school boards shall consist of a fingerprinted Delaware and national background check completed by the State Bureau of Identification (SBI) and the Federal Bureau of Investigation (FBI) as well as a Child Protection Registry check completed by the Department of Services for Children, Youth and Their Families (DSCYF).

(b) *Definitions.* — ~~The following words, terms and phrases, when used in this section, shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:~~ For purposes of this section:

(12) “Member of a school board” means a candidate, prospective, or current member of the State Board of Education, or the board of a public school district, vocational-technical school district, or charter school.

(c) Except as provided in paragraph (c)(4) of this section, all child-serving entities are required to obtain criminal and Child Protection Registry checks for prospective employees, ~~volunteers~~ volunteers, and contractors. Members of school boards must obtain criminal and Child Protection Registry checks under § 209 or § 511 of Title 14.

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

(2) Any ~~employer person~~ who is required to request a Child Protection Registry check under this section shall obtain a statement signed by the prospective board member, employee, volunteer, or contractor wherein the ~~person~~ individual authorizes a full release for the ~~employer person~~ to obtain the information provided ~~pursuant to such as a~~

197 result of a check. The DSCYF will process a Child Protection Registry check of the individual upon receipt of the
198 above-mentioned statement which shall be attached to the request from the ~~employer~~ person for the Child Protection
199 Registry check.

200 (5) Costs associated with obtaining said criminal history information and Child Protection Registry
201 information shall be borne by the applicant, except for those designated in paragraph (b)(4)d. of this section, whose
202 costs shall be borne by the State. Notwithstanding the ~~foregoing, public~~ foregoing:

203 a. Public schools may use funds other than state funds to pay for criminal background check costs and
204 may enter into consortia of school districts to pay such costs for persons covered by this act who work in more
205 than 1 school district during the course of a year.

206 b. A candidate for election to a school board may use campaign funds to pay for background check costs
207 under § 1075 of Title 14.

208 (e) Upon completion of the criminal background and Child Protection Registry checks:

209 (5)a. When the background checks are for a member of a school board, the SBI shall provide the criminal
210 background information and DSCYF shall provide the Child Protection Registry check information pertaining to
211 members and prospective members within 15 days of a request under subsection (c) of this section as follows:

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

214 2. To the Commissioner of Elections, for an individual seeking to be a candidate for election to a
215 school board.

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

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

220 b. Information provided under paragraph (e)(5)a. of this section is confidential and is not a public record
221 under Chapter 100 of Title 29.

222 Section 8. Sections 209(a) and § 209(b) of Title 14, as contained in Section 1 of this Act, do not apply to an
223 individual who is a member of the State Board of Education or the board of a public school or vocational-technical school
224 district on the effective date of this Act until the expiration of the individual's current term.

SYNOPSIS

Senate Bill No. 78 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.

6. Makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

The disqualifying convictions under Senate Bill No. 78 are similar to those that cause an educator to lose their license or certificate and the additional qualifications 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.

Senate Substitute No. 1 for Senate Bill No. 78 differs from Senate Bill No. 78 as follows:

1. Automatically suspends a member of the State Board of Education or a vocational-technical school district board if the member is charged with a disqualifying crime instead of requiring the Governor to suspend the member.

2. Imposes a 10-year period of ineligibility, instead of a lifetime bar, for someone convicted of a violent felony.

3. Removes the section making this Act effective immediately because legislation is always effective immediately, unless otherwise provided, so that section is unnecessary.

Senate Substitute No. 2 for Senate Bill No. 78 differs from Senate Substitute No. 1 for Senate Bill No. 78 and Senate Bill No. 78 as follows:

1. Changes the permanent disqualification of an individual convicted of a felony offense against public administration to a 10-year disqualification like other felonies.

2. Requires a candidate for election to a school board to have requested the background checks by the deadline to file notice of candidacy but provides the State Bureau of Identification and the Department of Services for Children, Youth and Their Families with 15 days to provide the results of the background checks.

3. Revises § 309 to Title 31 so that background check reports required under this Act are provided to the proper entities and makes additional revisions to § 309 to Title 31 for internal consistency within the statute and for consistency with other provisions of this Act.

Author: Senator Sturgeon