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
AS AMENDED BY
SENATE AMENDMENT NO. 1

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:

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

§ 209. Qualifications of board members; disqualifying crimes.

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

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

a. Any crime against a child constituting a felony.

b. Any sexual offense against a child.

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

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

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

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

b. Possession of a controlled substance or a counterfeit controlled substance classified as such in Schedule I, II, III, IV, or V of Chapter 47 of Title 16, except for any of the following:

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1. Possession of a personal use quantity of marijuana under § 4764 of Title 16.

2. Possession of drug paraphernalia under § 4771 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.

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

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

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

a. The name of the charter school board member.

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

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

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

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

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

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

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

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

(e)(1) If a school board member 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.

a. If the charges under § 209(a) of this title that are the basis of the suspension under this paragraph (e)(1) 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 school board member.

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

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

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

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

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

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

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

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

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

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

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

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

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

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