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Date: (Filing No. S-)

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STATE OF MAINE
SENATE
132ND LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT “ ” to COMMITTEE AMENDMENT “A” to S.P. 893, L.D. 2192, “An Act to Protect Students by Ensuring Schools Have Complete Information About School Employees and Applicants for Employment”

Amend the amendment by striking out all of sections 1, 2, 3 and 4.

Amend the amendment by inserting after section 4 the following:

Sec. 5. 20-A MRSA §13025, as amended by PL 2023, c. 643, Pt. Z, §2, is further amended to read:

§13025. Investigations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

B. "Covered investigation" means an investigation by a school entity into the conduct of a ~~holder of a credential~~ school employee that a school entity has a reasonable expectation would affect the ~~credential holder's~~ school employee's employment or contracted service because the alleged conduct involves alcohol; illegal drugs; physical abuse; emotional abuse; inappropriate contact between a ~~credential holder~~ school employee and a student; or a school employee and another school employee; harassment as described in Title 5, chapter 337-A; sexual assault as described in Title 17-A, chapter 11; stalking as described in Title 17-A, section 210-A; sexual exploitation of a minor as described in Title 17-A, chapter 12; or similar behavior that endangers the health, safety or welfare of a student or another school employee.

B-1. "School employee" means any person employed by a school, including, but not limited to, a credential holder, who is subject to the requirements of section 6103.

C. "School entity" means an approved private school, school administrative unit, public charter school, education service center, school in the unorganized territory or school operated by the State.

2. Subpoenas. When conducting an investigation relating to the credentialing of personnel under chapter 501 and this chapter and rules of the state board, the commissioner may issue subpoenas for education records relevant to that investigation.

2-A. Duties of superintendents. Upon receipt of a complaint related to alleged misconduct by a school employee, a superintendent of a school entity shall conduct a

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1 covered investigation. The superintendent shall notify the department immediately upon
2 initiating a covered investigation. For the purposes of this subsection, misconduct means
3 any conduct described in subsection 1, paragraph B.

4 **3. Duties of school entities.** A school entity shall immediately place on paid leave a
5 school employee who is the subject of a covered investigation. A school entity shall notify
6 the department immediately if a ~~credential holder~~ school employee who is the subject of a
7 covered investigation leaves the school entity's employment for any reason prior to the
8 conclusion of the covered investigation. A school entity shall complete a covered
9 investigation, even if the subject of the investigation resigns, is terminated or otherwise
10 leaves employment with the school entity prior to the conclusion of the investigation. A
11 school entity shall notify the department immediately of the findings and final outcome of
12 any covered investigation, including, but not limited to, if the school entity determines that
13 the allegations of misconduct were false or unsubstantiated or if a ~~credential holder~~ school
14 employee is disciplined, suspended or terminated as a result of a covered investigation in
15 which the school entity determined that a student's or another school employee's health,
16 safety or welfare was endangered. The school entity shall provide to the department any
17 final report produced in support of the school entity's decision to discipline, suspend or
18 terminate the ~~credential holder~~ school employee. The ~~credential holder~~ school employee
19 who is the subject of the report may submit to the department a written rebuttal to the report.
20 The written rebuttal must be placed in the department's investigative file.

21 Prior to offering employment to an applicant, a school entity shall review the applicant's
22 educator credentialing records or other school employee records maintained by the
23 department to determine whether the applicant holds a valid and active certification
24 appropriate for the position or is otherwise eligible for employment and whether any
25 notation has been entered on the applicant's records pursuant to subsection 4, paragraphs D
26 and E, and, if so, the current status of that notation.

27 **4. Duties of department.** The department shall act in accordance with this subsection.

28 A. The department shall notify the superintendent or chief administrative officer of a
29 school entity within 15 business days of the department's initiating an investigation into
30 a ~~holder of a credential~~ school employee who works for the school entity and shall
31 notify the school entity immediately if the department takes action ~~on that credential~~
32 against the school employee. Within 5 business days after completion of an
33 investigation, the department shall notify each school entity for which the ~~credential~~
34 holder school employee works of the final outcome of the investigation, including, but
35 not limited to, any actions taken, and shall provide to the school entity any final written
36 decision.

37 B. Immediately upon receipt from a school entity of notification pursuant to subsection
38 3 of the discipline, suspension or termination of a ~~credential holder~~ school employee,
39 or the leaving of employment by a ~~credential holder~~ school employee prior to the
40 completion of a covered investigation of that ~~credential holder~~ school employee, the
41 department shall notify the superintendent or chief administrative officer of all other
42 school entities for which the ~~credential holder~~ school employee works, as reported to
43 the department under section 13026, that the ~~credential holder~~ school employee was
44 disciplined, suspended or terminated as a result of a covered investigation, or that the
45 ~~credential holder~~ school employee left employment prior to completion of a covered
46 investigation. ~~If a credential holder provides consent as part of that credential holder's~~

1 application for employment with a school entity, the department shall notify the
2 superintendent or the chief administrative officer of that school entity if that credential
3 holder left employment with a school entity prior to the completion of a covered
4 investigation of that credential holder.

5 C. The department shall destroy copies of all records and reports related to a finding
6 resulting in discipline, suspension or termination of a ~~credential holder~~ school
7 employee if the finding resulting in that discipline, suspension or termination is
8 reversed upon appeal at the school entity level.

9 D. Upon receipt of notification from a school entity pursuant to subsection 3 of the
10 initiation of a covered investigation, the department shall enter a notation on the
11 educator credentialing records or other school employee records maintained by the
12 department for that school employee indicating that a covered investigation is pending.
13 The notation must be visible to superintendents and other authorized school
14 administrators reviewing school employee records maintained by the department. For
15 the purposes of this paragraph, "authorized school administrator" means a
16 superintendent or any individual the superintendent designates to have superintendent-
17 level capabilities in the department's online credentialing system.

18 E. Upon receipt from a school entity of the outcome of a covered investigation, the
19 department shall:

20 (1) If the investigation concludes with a finding that by a preponderance of the
21 evidence the school employee committed misconduct, update the notation entered
22 pursuant to paragraph D to reflect that finding; or

23 (2) If the investigation concludes, after all appeal rights are exhausted, with a
24 finding that the school employee did not commit misconduct, remove the notation
25 entered pursuant to paragraph D.

26 **5. Confidentiality.** The department may share information that is confidential
27 pursuant to section 6101 or 13004 with a school entity in accordance with subsection 4. A
28 school entity that receives confidential information shall maintain the confidentiality of that
29 information.

30 **7. Certification hearing officers; immunity.** The commissioner shall appoint a
31 certification hearing officer for covered investigations. For the purposes of this section,
32 while carrying out their official duties, certification hearing officers appointed pursuant to
33 this subsection are considered state employees and are entitled to the immunity provided
34 state employees under the Maine Tort Claims Act.

35 **8. Required disclosure of substantiated investigation regardless of agreement.**
36 Notwithstanding any confidentiality clause or any agreement between the school entity and
37 a school employee, if, by a preponderance of the evidence, a school entity determines
38 through its covered investigation pursuant to subsection 3 that a school employee
39 committed misconduct, the information pertaining to that covered investigation and
40 findings of misconduct must be disclosed to the department and to any school entity that
41 requests that information.'

42 Amend the amendment by relettering or renumbering any nonconsecutive Part letter or
43 section number to read consecutively.

SUMMARY

This amendment amends Committee Amendment "A" as follows.

1. It expands the definition of "covered investigation" of a school employee to include misconduct that is harassment as described in the Maine Revised Statutes, Title 5, chapter 337-A; sexual assault as described in Title 17-A, chapter 11; stalking as described in Title 17-A, section 210-A; sexual exploitation of a minor as described in Title 17-A, chapter 12; or similar behavior that endangers the health, safety or welfare of a student or another school employee. This definition captures misconduct of all school employees and captures misconduct of a school employee against another school employee, as well as misconduct against students.

2. Upon receipt of a complaint of alleged misconduct, it requires a superintendent of a school entity to conduct a covered investigation, instead of a preliminary investigation, as required under Committee Amendment "A." The amendment retains the provisions of Committee Amendment "A" that provide that school entities must put anyone who is the subject of a covered investigation on paid leave, must complete covered investigations once they've begun, and superintendents must notify the Department of Education immediately of the outcome of a covered investigation.

3. Upon receipt of notification from a school entity of the initiation of a covered investigation of a school employee, it requires the Department of Education to enter a notation on a school employee's educator credentialing records or other school employee records maintained by the department for that school employee indicating that a covered investigation is pending. The notation must be visible to superintendents and other school administrators authorized to review educator credentialing records and school employee records maintained by the department. Upon receipt from a school entity of the outcome of a covered investigation, the department shall update the notation on the school employee's file. If the school employee is found to have committed the misconduct, the department must update the notation to reflect that finding; if the school employee is found to have not committed the misconduct, the department must remove the notation from the file.

4. It requires that prior to offering employment to an applicant, a school entity must review the applicant's educator credentialing records or other school employee records maintained by the department to determine whether the applicant holds a valid and active certification appropriate for the position or is otherwise eligible for employment and whether any notation regarding a covered investigation has been entered on the applicant's records, and, if so, the current status of that notation.

5. It requires that, notwithstanding any confidentiality clause or any agreement between the school entity and a school employee, if, by a preponderance of the evidence, a school entity determines through its covered investigation that the school employee committed misconduct, the information pertaining to that covered investigation and

1 findings of misconduct must be disclosed to the department and to any school entity that
2 requests that information.

3 **SPONSORED BY:** _____

4 **(Senator RAFFERTY, J.)**

5 **COUNTY: York**