

CHAPTER 417

EDUCATION - PUBLIC SCHOOLS

SENATE BILL 21-017

BY SENATOR(S) Hisey and Zenzinger, Bridges, Cooke, Coram, Gardner, Kirkmeyer, Liston, Lundeen, Priola, Rankin, Scott, Winter, Woodward, Garcia;
also REPRESENTATIVE(S) Larson and Bradfield, Amabile, Bernett, Exum, Gray, Hooton, Kennedy, Lontine, Lynch, Ortiz, Snyder, Kipp.

AN ACT

CONCERNING SEXUAL CONTACT BETWEEN A STUDENT AND AN EDUCATOR IN VIOLATION OF THE PUBLIC TRUST.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 22-30.5-110.5, **amend** (2)(a)(II) and (7)(a); and **add** (7)(c) and (10) as follows:

22-30.5-110.5. Background investigation - charter school employees - information provided to department - definitions. (2) The background investigation of an applicant, at a minimum, must include:

(a) An inquiry by the charter school to the department to determine whether the applicant:

(II) Has been dismissed by, or has resigned from, a school district OR CHARTER SCHOOL as a result of any allegation, including but not limited to unlawful sexual behavior OR AN ALLEGATION OF A SEXUAL ACT INVOLVING A STUDENT WHO IS EIGHTEEN YEARS OF AGE OR OLDER, REGARDLESS OF WHETHER THE STUDENT CONSENTED TO THE SEXUAL ACT, that was supported by a preponderance of the evidence according to information provided to the department pursuant to section 22-32-109.7 (3) or subsection (7) of this section and confirmed by the department pursuant to section 22-2-119 (1)(b);

(7) (a) If an employee of a charter school is dismissed or resigns as a result of an allegation of unlawful behavior involving a child, including unlawful sexual behavior, that is supported by a preponderance of the evidence, the governing board

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

of the charter school shall notify the department and provide any information requested by the department concerning the circumstances of the dismissal or resignation. The charter school shall also notify the employee that information concerning the employee's dismissal or resignation is being forwarded to the department. ~~unless the notice would conflict with the confidentiality requirements of the "Child Protection Act of 1987", part 3 of article 3 of title 19, C.R.S.~~

(c) IF AN EMPLOYEE OF A CHARTER SCHOOL IS DISMISSED OR RESIGNS AS A RESULT OF AN ALLEGATION OF A SEXUAL ACT INVOLVING A STUDENT WHO IS EIGHTEEN YEARS OF AGE OR OLDER, REGARDLESS OF WHETHER THE STUDENT CONSENTED TO THE SEXUAL ACT, THAT IS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE, THE GOVERNING BOARD OF THE CHARTER SCHOOL SHALL NOTIFY THE DEPARTMENT AND PROVIDE ANY INFORMATION REQUESTED BY THE DEPARTMENT CONCERNING THE CIRCUMSTANCES OF THE DISMISSAL OR RESIGNATION. THE CHARTER SCHOOL SHALL ALSO NOTIFY THE EMPLOYEE THAT INFORMATION CONCERNING THE EMPLOYEE'S DISMISSAL OR RESIGNATION IS BEING FORWARDED TO THE DEPARTMENT. A CHARTER SCHOOL SHALL NOT ENTER INTO A SETTLEMENT AGREEMENT THAT WOULD RESTRICT THE CHARTER SCHOOL FROM SHARING ANY RELEVANT INFORMATION RELATED TO AN ALLEGATION OF A SEXUAL ACT INVOLVING A STUDENT WHO IS EIGHTEEN YEARS OF AGE OR OLDER, REGARDLESS OF WHETHER THE STUDENT CONSENTED TO THE SEXUAL ACT, THAT IS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE PERTAINING TO THE EMPLOYEE WITH THE DEPARTMENT, ANOTHER SCHOOL DISTRICT, OR CHARTER SCHOOL PERTAINING TO THE INCIDENT UPON WHICH THE DISMISSAL OR RESIGNATION IS BASED. THIS SUBSECTION (7)(c) DOES NOT AUTHORIZE A CHARTER SCHOOL TO ENTER INTO A SETTLEMENT AGREEMENT THAT WOULD PROHIBIT THE CHARTER SCHOOL FROM SHARING ANY OTHER INFORMATION REQUIRED BY LAW TO BE AVAILABLE TO THE DEPARTMENT, ANOTHER SCHOOL DISTRICT, OR A CHARTER SCHOOL.

(10) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "SEXUAL ACT" MEANS SEXUAL CONTACT, SEXUAL INTRUSION, OR SEXUAL PENETRATION AS THOSE TERMS ARE DEFINED IN SECTION 18-3-401.

(b) "STUDENT" MEANS ANY PERSON ENROLLED AT THE SCHOOL WHERE THE EMPLOYEE IS EMPLOYED AT THE TIME OF THE ALLEGATION, BUT DOES NOT INCLUDE ANOTHER STUDENT.

SECTION 2. In Colorado Revised Statutes, 22-32-109.7, **amend** (1)(b) and (3); and **add** (5) as follows:

22-32-109.7. Board of education - specific duties - employment of personnel - definitions. (1) Prior to the employment of any person by a school district, the board of education shall make an inquiry concerning such person to the department of education for the purpose of determining:

(b) Whether such person has been dismissed by, or has resigned from, a school district OR CHARTER SCHOOL as a result of an allegation of unlawful behavior involving a child, including unlawful sexual behavior OR AN ALLEGATION OF A SEXUAL ACT INVOLVING A STUDENT WHO IS EIGHTEEN YEARS OF AGE OR OLDER,

REGARDLESS OF WHETHER THE STUDENT CONSENTED TO THE SEXUAL ACT, which was supported by a preponderance of the evidence according to information provided to the department by a school district pursuant to subsection (3) of this section and confirmed by the department pursuant to the provisions of section 22-2-119 (1)(b);

(3) (a) If an employee of a school district is dismissed or resigns as a result of an allegation of unlawful behavior involving a child, including unlawful sexual behavior, which is supported by a preponderance of the evidence, within ten business days after the dismissal or resignation, the board of education of the school district shall notify the department of education and provide any information requested by the department concerning the circumstances of the dismissal or resignation. The district shall also notify the employee that information concerning the employee's dismissal or resignation is being forwarded to the department of education. ~~unless the notice would conflict with the confidentiality requirements of the "Child Protection Act of 1987", part 3 of article 3 of title 19, C.R.S.~~ A public school district or charter school shall not enter into a settlement agreement that would restrict the school district or charter school from sharing any relevant information related to a conviction for child abuse or a sexual offense against a child as defined by section 13-80-103.9 (1)(c) ~~C.R.S.~~, pertaining to the employee with the department, another school district, or charter school pertaining to the incident upon which the dismissal or resignation is based. THIS SUBSECTION (3)(a) DOES NOT AUTHORIZE A PUBLIC SCHOOL DISTRICT OR CHARTER SCHOOL TO ENTER INTO A SETTLEMENT AGREEMENT THAT WOULD PROHIBIT THE PUBLIC SCHOOL DISTRICT OR CHARTER SCHOOL FROM SHARING ANY OTHER INFORMATION REQUIRED BY LAW TO BE AVAILABLE TO THE DEPARTMENT, ANOTHER SCHOOL DISTRICT, OR A CHARTER SCHOOL.

(b) IF AN EMPLOYEE OF A SCHOOL DISTRICT IS DISMISSED OR RESIGNS AS A RESULT OF AN ALLEGATION OF A SEXUAL ACT INVOLVING A STUDENT WHO IS EIGHTEEN YEARS OF AGE OR OLDER, REGARDLESS OF WHETHER THE STUDENT CONSENTED TO THE SEXUAL ACT, THAT IS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE, THE SCHOOL DISTRICT SHALL NOTIFY THE DEPARTMENT AND PROVIDE ANY INFORMATION REQUESTED BY THE DEPARTMENT CONCERNING THE CIRCUMSTANCES OF THE DISMISSAL OR RESIGNATION. THE SCHOOL DISTRICT SHALL ALSO NOTIFY THE EMPLOYEE THAT INFORMATION CONCERNING THE EMPLOYEE'S DISMISSAL OR RESIGNATION IS BEING FORWARDED TO THE DEPARTMENT. A SCHOOL DISTRICT SHALL NOT ENTER INTO A SETTLEMENT AGREEMENT THAT WOULD RESTRICT THE SCHOOL DISTRICT FROM SHARING ANY RELEVANT INFORMATION RELATED TO AN ALLEGATION OF A SEXUAL ACT INVOLVING A STUDENT WHO IS EIGHTEEN YEARS OF AGE OR OLDER, REGARDLESS OF WHETHER THE STUDENT CONSENTED TO THE SEXUAL ACT, THAT IS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE PERTAINING TO THE EMPLOYEE WITH THE DEPARTMENT, ANOTHER SCHOOL DISTRICT, OR CHARTER SCHOOL PERTAINING TO THE INCIDENT UPON WHICH THE DISMISSAL OR RESIGNATION IS BASED. THIS SUBSECTION (3)(b)(I) DOES NOT AUTHORIZE A SCHOOL DISTRICT TO ENTER INTO A SETTLEMENT AGREEMENT THAT WOULD PROHIBIT THE SCHOOL DISTRICT FROM SHARING ANY OTHER INFORMATION REQUIRED BY LAW TO BE AVAILABLE TO THE DEPARTMENT, ANOTHER SCHOOL DISTRICT, OR A CHARTER SCHOOL.

(5) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "SEXUAL ACT" MEANS SEXUAL CONTACT, SEXUAL INTRUSION, OR SEXUAL PENETRATION AS THOSE TERMS ARE DEFINED IN SECTION 18-3-401.

(b) "STUDENT" MEANS ANY PERSON ENROLLED AT THE SCHOOL WHERE THE EMPLOYEE IS EMPLOYED AT THE TIME OF THE ALLEGATION, BUT DOES NOT INCLUDE ANOTHER STUDENT.

SECTION 3. In Colorado Revised Statutes, 22-60.5-107, **amend** (4) and (8) as follows:

22-60.5-107. Grounds for denying, annulling, suspending, or revoking license, certificate, endorsement, or authorization - definitions. (4) (a) The department of education may deny, annul, suspend, or revoke any license, certificate, endorsement, or authorization if the state board finds and determines that the applicant or holder thereof is professionally incompetent or guilty of unethical behavior.

(b) THE STATE BOARD OF EDUCATION SHALL PROMULGATE APPROPRIATE RULES DEFINING THE STANDARDS OF UNETHICAL BEHAVIOR AND PROFESSIONAL INCOMPETENCY. UNETHICAL BEHAVIOR MUST INCLUDE CONDUCT INVOLVING A SEXUAL ACT BETWEEN AN APPLICANT OR HOLDER AND A STUDENT, INCLUDING A STUDENT WHO IS EIGHTEEN YEARS OF AGE OR OLDER, REGARDLESS OF WHETHER THE STUDENT CONSENTED TO THE SEXUAL ACT.

(c) FOR PURPOSES OF THIS SUBSECTION (4), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "SEXUAL ACT" MEANS SEXUAL CONTACT, SEXUAL INTRUSION, OR SEXUAL PENETRATION AS THOSE TERMS ARE DEFINED IN SECTION 18-3-401.

(II) "STUDENT" MEANS ANY PERSON ENROLLED AT THE SCHOOL WHERE THE EMPLOYEE IS EMPLOYED AT THE TIME OF THE UNETHICAL BEHAVIOR, BUT DOES NOT INCLUDE ANOTHER STUDENT.

(8) When an applicant's or holder's license is denied, annulled, suspended, or revoked pursuant to ~~the provisions of~~ subsection (2.5), ~~or~~ (2.6), OR (4) of this section, the department of education shall post the name of the person and basis for the denial, annulment, suspension, or revocation on its website.

SECTION 4. In Colorado Revised Statutes, **add** 18-8-410 as follows:

18-8-410. Abuse of public trust by an educator - definitions. (1) ANY EDUCATOR WHO KNOWINGLY SUBJECTS A STUDENT TO ANY SEXUAL INTRUSION OR SEXUAL PENETRATION COMMITS ABUSE OF PUBLIC TRUST BY AN EDUCATOR IF THE STUDENT IS AT LEAST EIGHTEEN YEARS OF AGE AND THE EDUCATOR IS MORE THAN FOUR YEARS OLDER THAN THE STUDENT AND IS NOT THE STUDENT'S SPOUSE.

(2) ABUSE OF PUBLIC TRUST BY AN EDUCATOR IS A CLASS 1 MISDEMEANOR SUBJECT TO THE MODIFIED SENTENCING RANGE SPECIFIED IN SECTION 18-1.3-501 (3).

(3) CONSENT BY THE STUDENT TO THE SEXUAL INTRUSION OR SEXUAL

PENETRATION DOES NOT CONSTITUTE A DEFENSE TO THE OFFENSE.

(4) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CONSENT" HAS THE SAME MEANING AS SET FORTH IN SECTION 18-3-401 (1.5).

(b) (I) "EDUCATOR" MEANS A PERSON EMPLOYED AT THE SAME SCHOOL THE STUDENT ATTENDS AT THE TIME OF THE SEXUAL CONTACT AND WHO:

(A) INSTRUCTS STUDENTS AT THAT SCHOOL;

(B) ADMINISTERS, DIRECTS, OR SUPERVISES THE EDUCATIONAL INSTRUCTION PROGRAM OR A PORTION THEREOF;

(C) PROVIDES HEALTH OR EDUCATIONAL SUPPORT SERVICES DIRECTLY TO STUDENTS OF THE SCHOOL; OR

(D) COACHES STUDENTS OF THE SCHOOL.

(II) "EDUCATOR" DOES NOT INCLUDE ANOTHER STUDENT AT THE SCHOOL WHERE THE EDUCATOR IS EMPLOYED.

(c) "SCHOOL" MEANS ANY INSTITUTION THAT INSTRUCTS PERSONS IN ANY OF GRADES PRESCHOOL THROUGH TWELVE BUT DOES NOT INCLUDE ANY POSTSECONDARY SCHOOL.

(d) "SEXUAL INTRUSION" HAS THE SAME MEANING AS SET FORTH IN SECTION 18-3-401 (5).

(e) "SEXUAL PENETRATION" HAS THE SAME MEANING AS SET FORTH IN SECTION 18-3-401 (6).

(f) "STUDENT" MEANS ANY PERSON ENROLLED IN A SCHOOL WHERE THE EDUCATOR IS EMPLOYED AT THE TIME OF THE INCIDENT, BUT DOES NOT INCLUDE ANOTHER STUDENT.

(5) SCHOOLS SHALL ADVISE ALL EDUCATORS OF THE PROHIBITIONS IN THIS SECTION.

SECTION 5. In Colorado Revised Statutes, **add** 18-8-410 as follows:

18-8-410. Abuse of public trust by an educator - definitions. (1) ANY EDUCATOR WHO KNOWINGLY SUBJECTS A STUDENT TO ANY SEXUAL INTRUSION OR SEXUAL PENETRATION COMMITS ABUSE OF PUBLIC TRUST BY AN EDUCATOR IF THE STUDENT IS AT LEAST EIGHTEEN YEARS OF AGE AND THE EDUCATOR IS MORE THAN FOUR YEARS OLDER THAN THE STUDENT AND IS NOT THE STUDENT'S SPOUSE.

(2) ABUSE OF PUBLIC TRUST BY AN EDUCATOR IS A CLASS 1 MISDEMEANOR.

(3) CONSENT BY THE STUDENT TO THE SEXUAL INTRUSION OR SEXUAL PENETRATION DOES NOT CONSTITUTE A DEFENSE TO THE OFFENSE.

(4) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CONSENT" HAS THE SAME MEANING AS SET FORTH IN SECTION 18-3-401 (1.5).

(b) (I) "EDUCATOR" MEANS A PERSON EMPLOYED AT THE SAME SCHOOL THE STUDENT ATTENDS AT THE TIME OF THE SEXUAL CONTACT AND WHO:

(A) INSTRUCTS STUDENTS AT THAT SCHOOL;

(B) ADMINISTERS, DIRECTS, OR SUPERVISES THE EDUCATIONAL INSTRUCTION PROGRAM OR A PORTION THEREOF;

(C) PROVIDES HEALTH OR EDUCATIONAL SUPPORT SERVICES DIRECTLY TO STUDENTS OF THE SCHOOL; OR

(D) COACHES STUDENTS OF THE SCHOOL.

(II) "EDUCATOR" DOES NOT INCLUDE ANOTHER STUDENT AT THE SCHOOL WHERE THE EDUCATOR IS EMPLOYED.

(c) "SCHOOL" MEANS ANY INSTITUTION THAT INSTRUCTS PERSONS IN ANY OF GRADES PRESCHOOL THROUGH TWELVE BUT DOES NOT INCLUDE ANY POSTSECONDARY SCHOOL.

(d) "SEXUAL INTRUSION" HAS THE SAME MEANING AS SET FORTH IN SECTION 18-3-401 (5).

(e) "SEXUAL PENETRATION" HAS THE SAME MEANING AS SET FORTH IN SECTION 18-3-401 (6).

(f) "STUDENT" MEANS ANY PERSON ENROLLED IN A SCHOOL WHERE THE EDUCATOR IS EMPLOYED AT THE TIME OF THE INCIDENT, BUT DOES NOT INCLUDE ANOTHER STUDENT.

(5) SCHOOLS SHALL ADVISE ALL EDUCATORS OF THE PROHIBITIONS IN THIS SECTION.

SECTION 6. In Colorado Revised Statutes, 18-1.3-501, **amend** (3)(b)(VI) and (3)(b)(VII); and **add** (3)(b)(VIII) as follows:

18-1.3-501. Misdemeanors classified - drug misdemeanors and drug petty offenses classified - penalties - legislative intent - definitions.
(3) (b) Misdemeanors that present an extraordinary risk of harm to society shall include the following:

(VI) Misdemeanor invasion of privacy for sexual gratification, as described in section 18-3-405.6; ~~and~~

(VII) False reporting of an emergency, as described in section 18-8-111; AND

(VIII) ABUSE OF PUBLIC TRUST BY AN EDUCATOR, AS DESCRIBED IN SECTION

18-8-410.

SECTION 7. Act subject to petition - effective date - applicability. (1) This act takes effect upon passage; except that sections 4 and 6 of this act only takes effect if Senate Bill 21-271 does not become law and section 5 of this act only takes effect if Senate Bill 21-271 becomes law, and either sections 4 and 6 or section 5 take effect upon the effective date of this act; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to offenses committed on or after the applicable effective date of this act.

Approved: July 2, 2021