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**TESTIMONY PROVIDED TO:** House Education Committee  
**FROM:** Dr. Amy Fowler, Deputy Agency of Education  
**TOPIC:** H27- Employment Agreements  
**DATE:** April 22, 2018

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*Request:* AOE requests that House Education use the proposed language below for V.S.A. 13 § 1386 and delete the proposed amendment to V.S.A. 16 §253.

In accordance with 21 V.S.A. § 306, it is the policy of the State of Vermont that no confidential employment separation agreement shall inhibit the disclosure to prospective employers **and responsible licensing entities** of factual information about a prospective employee's background that would lead a reasonable person to conclude that the prospective employee has engaged in conduct jeopardizing the safety of a vulnerable adult or minor.

V.S.A. 16 §253 requires that Superintendents and Headmasters must report to the Secretary of Education any suspected unprofessional conduct for licensed educators. Sexual misconduct would fall under this requirement. Inserting language regarding employment agreements here does not resolve the AOE concern.

The AOE wishes to ensure that superintendents, headmasters and their legal counsel are cognizant that separation agreements may not inhibit reporting to licensing boards like the AOE when they are reading the criminal statutes related to vulnerable persons. This same would be true for other occupations licensed by the Office of Professional Regulation and others as well.

The AOE, upon receiving information regarding misconduct, conducts investigations and hearings that may result in the individual losing or having their license suspended if the allegations are found to be true.

The AOE, as a member of the National Association of State Directors of Teacher Education and Certification (NASDTEC) Interstate Agreement, reports all denials, suspensions, revocations and surrenders of licenses for reasons other than failing to meet academic requirements. When prospective applicants apply for licenses in other states, the licensing body in that state reviews the applicant's history and would see that they had faced licensing action in Vermont. Emphasizing that misconduct reports to licensing entities may not be inhibited by confidential employment separation agreements increases the protective nature of this statute beyond our state borders. Below is a screen shot of the disclosure form applicants must complete in Vermont to have an educator's license. Please note that it includes both adjudicated and non-adjudicated issues pertaining to misconduct.

If an applicant responds “yes” to any question, a written explanation is required. The AOE reviews all disclosures and contacts prior employers and states regarding those disclosers before determining if someone can be offered a license in Vermont. If an applicant is found to have misrepresented their history on the application this is grounds for revocation of their license.

The screenshot shows a process flow with steps: PERSONAL INFORMATION, CRC INFORMATION, LICENSE INFORMATION, EDUCATION & EMPLOYMENT DETAILS, GOOD STANDING DECLARATION, DISCLOSURE FORM (highlighted), and ATTESTATION.

**Disclosure Questions**

If the answer to any of the questions “A” through “I” is “yes”, you must provide a complete explanation. A “yes” answer to any of those questions is not an automatic denial of licensure. The circumstances will be investigated and reviewed. If you have previously reported the same incident to the Agency of Education, please indicate so.

Question	Response
<b>A.</b> Have you ever been convicted of a felony or misdemeanor? If yes, please provide a written explanation and specify the court that issued the conviction. Please note that a plea of nolo contendere counts as a conviction of a criminal offense.	<input type="radio"/> Yes <input type="radio"/> No
Please provide a detailed explanation and any additional information pertinent to your response to this question including the name of the court that issued the conviction (if applicable).	
<b>B.</b> Do you have any pending criminal charges? If yes, please provide a written explanation and specify the court that has jurisdiction of the charges.	<input type="radio"/> Yes <input type="radio"/> No
<b>C.</b> Have you ever had an adverse action taken against any application, certificate, or professional license in any state? Adverse action includes but is not limited to the following: letter of warning, reprimand, denial, suspension, revocation, or cancellation.	<input type="radio"/> Yes <input type="radio"/> No
<b>D.</b> Have you ever voluntarily surrendered a professional license or certificate or withdrawn an application for a professional license or certificate?	<input type="radio"/> Yes <input type="radio"/> No
<b>E.</b> Is there any adverse action now pending against you in any state by any professional licensing agency or have you been notified of any ongoing or potential investigation or inquiry regarding any professional license?	<input type="radio"/> Yes <input type="radio"/> No
<b>F.</b> Have you ever resigned, entered into a settlement agreement, or otherwise left employment as a result of alleged misconduct or incompetence?	<input type="radio"/> Yes <input type="radio"/> No
<b>G.</b> Have you ever been disciplined, reprimanded, suspended, removed or discharged from employment or student teaching because of allegations of misconduct or incompetence?	<input type="radio"/> Yes <input type="radio"/> No
<b>H.</b> Are you now, or have you ever been, required to register as a sex offender in any jurisdiction of the United States, including any state, territory, commonwealth, the District of Columbia, or military, federal, or tribal jurisdiction?	<input type="radio"/> Yes <input type="radio"/> No
<b>I.</b> I acknowledge that the Vermont Agency of Education may receive updates to my criminal conviction record via VCCRIS (Vermont Criminal Conviction Record Internet Service) and may use this information to verify my answers to the above questions. I understand that this information will be used for reviewing my suitability for licensure. I further understand that within 30 days of receiving the results of the record check or update, I have the right to appeal the findings in writing to the Vermont Criminal Information Center, Department of Public Safety, 103 South Main Street, Waterbury, Vermont 05671-2101.	<input checked="" type="radio"/> Yes

**Question:** Regarding mandatory reporters of sexual assault in schools, who should make the reports and to whom? What are the possible responses to these reports?

**Answer:** Mandatory reporting relates to suspicion of abuse- to address the Committee’s question, AOE assumes that you are asking about “sexual abuse” rather than “sexual assault” although the two intersect. Any employee of a school system aware of a student who has been sexually abused, whether on a school campus or not, is mandated to report this information to DCF. If there is an immediate threat to the student, the police should be called first. DCF would be the best entity to provide information on the investigations it undertakes and how they intersect with others and the possible outcomes.

**Question:** May superintendents send personnel recommendations to future employers without referencing possible sexual crimes personnel?

**Answer:** Superintendents have discretion on what they do or don’t say to future employers. This bill would limit what could be included in an employee separation agreement precluding the option to agree to non-disclosure; however, it does not compel superintendents to share such information.