

LYNN, LYNN, BLACKMAN & MANITSKY, P.C.

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To whom it may concern:

Our firm represents school districts and supervisory unions throughout the State of Vermont. We work closely with the Vermont Superintendents Association, the Vermont School Boards Association and the Vermont School Boards Insurance Trust in training school employees, identifying areas of concern for students and communities and supporting efforts to increase awareness of legal requirements in public education.

As a preliminary matter, Vermont educators are supportive of any efforts to increase student safety. Although misconduct directed at students is extremely rare in Vermont, when there are allegations, administrators report it to the responsible authorities and take immediate action to remove the offender from the school environment. If an employee is found to have been unprofessional with a student, the employee will be terminated.

I was asked to review S.87 for any language that could create unanticipated difficulties for school districts in their efforts to keep our children safe. The sole area of concern relates to disclosure by school districts of employment information. Under the proposed amendment to 16 V.S.A. section 253, schools would have a duty to disclose factually correct information that would lead a reasonable person to conclude that the employee engaged in conduct jeopardizing the safety of a minor. The statute would create an immunity from civil liability or criminal prosecution only if the school official acted "in good faith" and acted "reasonably."

The unfortunate reality of public school administration in Vermont is that there is frequent turnover. Often administrators are asked to provide information about former employees where they have no personal knowledge of the employee. I worry that the duty to disclose factually correct information creates a difficult challenge. School officials may not know whether the information contained in employment files is "factually accurate." Alternatively, there may be a dispute as to whether information is factually accurate. In either instance, it is not difficult to foresee litigation with former employees who are displeased by the information provided to prospective employers and dispute factual accuracy.

The limited immunity conferred by the proposed statute does not fully protect administrators seeking to comply with the duty to disclose. A disgruntled former employee could easily argue that there was either an absence of good faith as shown by the factual inaccuracy or that the

administrator should have done more to verify accuracy and, therefore, was not acting reasonably. The immunity provision requires both good faith and reasonable investigation.

I suggest that the Committee consider language that permits schools to share personnel files with complete immunity. That would allow prospective employers to review the personnel documents and eliminate any concerns around mischaracterization of those records. Further, there is little danger of any prejudice to school employees. Since most of the teachers and support staff are unionized, they have a right of access to their personnel files and can seek removal of any documents that the employees consider to be improper through grievance proceedings. Such a provision would accomplish the goal of disclosure without the danger of litigation around the manner or substance of disclosure.

Alternatively, the Committee could amend the immunity provision in the statute. I suggest that there be immunity unless it can be shown that the administrator acted in bad faith. That would meet any concerns about administrators intentionally causing former employees to lose job opportunities while at the same time encouraging complete disclosure of information.

I hope that this information has been helpful to the Committee. If there is any other information that I can provide, please do not hesitate to contact me.

Sincerely,

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