

PA 102-702

APRIL 3, 2023

**Use the Q&A
Feature to ask us
questions!**

We will start at 2:00pm!

- Questions and Answers on Faith's Law Trailer Bill with Attorneys at Miller, Tracy, Braun, Funk & Miller, Ltd.

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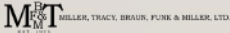
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PA 102-702

FAITH'S LAW TRAILER BILL



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PA 102-696: FAITH'S LAW

Redefined Sexual Misconduct:

- "sexual misconduct" means any act, including, but not limited to, any verbal, nonverbal, written, or electronic communication or physical activity, by an employee or agent of the school district, charter school, or nonpublic school with direct contact with a student that is directed toward or with a student to establish a romantic or sexual relationship with the student. Such an act includes, but is not limited to, any of the following:
 - (1) A sexual or romantic invitation.
 - (2) Dating or soliciting a date.
 - (3) Engaging in sexualized or romantic dialog.
 - (4) Making sexually suggestive comments that are directed toward or with a student.
 - (5) Self-disclosure or physical exposure of a sexual, romantic, or erotic nature.
 - (6) A sexual, indecent, romantic, or erotic contact with the student.



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PA 102-696: FAITH'S LAW

Required policy implementation portions:

- Must refer to staff duty to report to Title IX and DCFS (where applicable)
- Must reflect training requirements and the definition of sexual misconduct
- Must provide training on physical and mental health needs of students, student safety, educator ethics, professional conduct, and other topics that address the well-being of students and improve the academic and social-emotional outcomes of students.
- Must identify expectations for employees and agents of the school district regarding how to maintain a professional relationship with students, and rules regarding (at a minimum):
 - (A) Transporting a student.
 - (B) Taking or possessing a photo or a video of a student.
 - (C) Meeting with a student or contacting a student outside of the employee's or agent's professional role.



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PA 102-702 (Effective July 1, 2023)

- Requires verbal and written notification to parents if their child is the victim of alleged sexual misconduct by a school employee or contractor.
- Requires applicants for employment and contractors who work directly with children to affirm that they did not previously engage in sexual misconduct against a minor.
- Requires applicants for employment and contractors who work directly with students to provide contact information for all previous jobs where they worked with children and requires applicants for employment and contractors to consent to disclosure of certain information from these past employers

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- **NEW** 105 ILCS 5/22-94
- Applies to ALL permanent and temporary positions for employment with a school or a contractor of school involving direct contact with children or students.
- Direct Contact with Children or Students:
- Possibility of care, supervision, guidance or control of children or students or routine interaction with children or students.
- Prior to hiring an applicant to work directly with children or students, district or contractor must ensure that there is no knowledge or information pertaining to the applicant that would disqualify the applicant from employment.

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- The applicant must swear or affirm that they are not disqualified from employment and complete a form based on an ISBE template that includes the following:
- Relevant contact info of current employer and all former employers that were schools, school contractors or where applicant had direct contact with children or students;
- Written authorization that consents to and authorizes disclosure by applicant's current and applicable former employers and releases them from liability for disclosure or records; and
- Written statement of whether the applicant has been the subject of a sexual misconduct allegation, been discharged, been asked to resign, resign, or otherwise separated from, non-renewed, or disciplined due to an adjudication or finding of sexual misconduct or while an allegation of sexual misconduct was pending or under investigation, or has ever had a license or certificate suspended, surrendered, or revoked or had an application for licensure denied due to an adjudication finding of sexual misconduct or while an allegation of sexual misconduct was pending or under investigation, UNLESS the investigation resulted in a finding that the allegation was false, unfounded, or unsubstantiated.



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- The district in receipt of the application shall initiate a review of the employment history ("EHR") by contacting the employers listed and, using ISBE's template, request the following from the current or former employer:
 - *Dates of employment; and*
 - *Statement that confirms applicant's statement regarding prior allegations of sexual misconduct, unless the investigation resulted in a finding that the allegation was false, unfounded, or unsubstantiated, OR if the employer has no knowledge that would disqualify applicant.*
 - Districts in receipt of the application shall verify the applicant's reported previous employers with previous employers in ISBE's licensure database to ensure accuracy.



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- The rule for contractors is different:
 - (j)(1)The employment history review required by this Section shall be performed, either at the time of the initial hiring of an employee **or prior to the assignment of an existing employee to perform work for a school** in a position involving direct contact with children or students.

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- No later than 20 days after receiving a request for information, the employer shall disclose the requested information using ISBE's template.
- If there is an affirmative response regarding allegations of sexual misconduct, the employer shall provide additional information about the matters disclosed and all related records.
- Template shall be maintained as part of the personnel file.
- **Template shall be completed at time of separation from employment.**
- If investigation is completed after separation from employment, school shall update information accordingly.
- Information received shall not be a public record.

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- Districts have immunity for submitting information, unless *knowingly false*.
- Districts cannot hire an applicant until the applicant has provided relevant information and the District has initiated the EHR.
- No right to suppress relevant information regarding sexual misconduct in contracts.
- Employment history review is required for substitute employees.
- Contractors are required to conduct same employment history review and inform school of any instances involving their employees, and schools can object to placement after receiving information.
- Districts can conduct more expansive background checks at their discretion.

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- An applicant who has undergone an employment history review and seeks to transfer to or provide services to another school in the same school district, diocese, or religious jurisdiction, or to another school established and supervised by the same organization is not required to obtain additional reports before transferring.
- Applies to substitutes. A substitute employee seeking to be added another school's substitute list shall undergo an additional employment history review. The appearance of a substitute employee on one school's substitute list does not relieve another school from compliance with these requirements.

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- **NEW** 105 ILCS 5/22-85.10
- Districts are required to develop procedures to notify the parents or guardians of students with whom a district employee, agent, or contractor:
 - *Is alleged to have engaged in sexual misconduct; and*
 - *When any formal action is taken against the employee, including acceptance of the employee's resignation.*

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- First, the student must be notified in a developmentally appropriate manner indicating what information will be given to parent.
- Next, parents shall be notified in writing of the alleged misconduct or board action as soon as feasible, subject to Children's Advocacy Center reporting requirements.
- All notices to parents and students must include available resources within school and community and available counseling services.
- Beginning July 1, 2025, this shall include the name and contact information of the district's domestic and sexual violence and parenting resource coordinator. See 105 ILCS 5/26A-35, added by P.A. 102-466, eff. 7-1-25.

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- Notices do not need to be provided if the student is 18 or older or emancipated.
- Notices should not conflict with the student's IEP or 504 plan.
- The time frame for providing notice should be considered in light of any DCFS or law enforcement investigation.
- If the student is no longer enrolled at the time of formal action taken, written notice to the last known address in the student's file fulfills the notification requirement.
- Prior notification to student shall not be required if district deems it necessary to address an imminent risk of serious physical injury or death of student or another person, including the victim. If not given, student should be notified as soon as practicable after parent notification.



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Notice requirements do not apply if parent or guardian is the alleged perpetrator.

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- The superintendent of the employing school board shall, in writing, notify the State Superintendent of Education and the applicable regional superintendent of schools of any license holder whom he or she has reasonable cause to believe has committed (i) an intentional act of abuse or neglect with the result of making a child an abused child or a neglected child, as defined in Section 3 of the Abused and Neglected Child Reporting Act, or (ii) an act of sexual misconduct, as defined in Section 22-85.5 of this Code, and that act resulted in the license holder's dismissal or resignation from the school district. This notification must be submitted within 30 days after the dismissal or resignation and must include the Illinois Educator Identification Number (IEIN) of the license holder and a brief description of the misconduct alleged. The license holder must also be contemporaneously sent a copy of the notice by the superintendent.



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- **Open questions and issues:**

- What about volunteers? Are they being "hired"?
 - "Direct contact with children or students" means the possibility of care, supervision, guidance, or control of children or students or routine interaction with children or students.
- What happens if a former employer submits "late" – and there is information that is relevant in the response?
- What happens if information comes back *after the employee starts working*?
- What happens if there was an allegation but no conclusion to investigation?
- What happens if the response is "vague" but implies a finding?
- What happens to a school that fails to comply with the 20-day disclosure requirement?



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THANK YOU FOR
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- Questions?



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Miller, Tracy, Braun, Funk & Miller, Ltd.
316 S. Charter Street
Monticello, Illinois 61856
(217)-762-9416

www.millertracy.com

[twitter@millertracy](https://twitter.com/millertracy)



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