

114TH CONGRESS
1ST SESSION

S. 856

To amend the Elementary and Secondary Education Act of 1965 to require criminal background checks for school employees.

IN THE SENATE OF THE UNITED STATES

MARCH 24, 2015

Mr. ALEXANDER (for himself, Mr. KIRK, Mr. ROUNDS, Ms. MURKOWSKI, Mr. ISAKSON, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Elementary and Secondary Education Act of 1965 to require criminal background checks for school employees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stop Sexual Abuse
5 by School Personnel Act of 2015”.

6 **SEC. 2. CRIMINAL BACKGROUND CHECKS FOR SCHOOL EM-**
7 **PLOYEES.**

8 (a) IN GENERAL.—Subpart 2 of part E of title IX
9 of the Elementary and Secondary Education Act of 1965

1 (20 U.S.C. 7901 et seq.) is amended by adding at the end
2 the following:

3 **“SEC. 9537. CRIMINAL BACKGROUND CHECKS FOR SCHOOL**
4 **EMPLOYEES.**

5 “(a) CRIMINAL BACKGROUND CHECK REQUIRE-
6 MENTS.—

7 “(1) IN GENERAL.—Each State educational
8 agency and local educational agency that receives
9 funds under this Act shall have in effect policies and
10 procedures that require a criminal background check
11 for each school employee in each covered school
12 served by such State educational agency and local
13 educational agency.

14 “(2) REQUIREMENTS.—A background check re-
15 quired under paragraph (1) shall be conducted and
16 administered by—

17 “(A) the State;

18 “(B) the State educational agency; or

19 “(C) the local educational agency.

20 “(b) STATE AND LOCAL USES OF FUNDS.—A State,
21 State educational agency, or local educational agency that
22 receives funds under this Act may use such funds to estab-
23 lish, implement, or improve policies and procedures on
24 background checks for school employees required under
25 subsection (a) to—

1 “(1) expand the registries or repositories
2 searched when conducting background checks, such
3 as—

4 “(A) the State criminal registry or reposi-
5 tory of the State in which the school employee
6 resides;

7 “(B) the State-based child abuse and ne-
8 glect registries and databases of the State in
9 which the school employee resides;

10 “(C) the Federal Bureau of Investigation
11 fingerprint check using the Integrated Auto-
12 mated Fingerprint Identification System; and

13 “(D) the National Sex Offender Registry
14 established under section 119 of the Adam
15 Walsh Child Protection and Safety Act of 2006
16 (42 U.S.C. 16919);

17 “(2) provide school employees with training and
18 professional development on how to recognize, re-
19 spond to, and prevent child abuse;

20 “(3) develop, implement, or improve mecha-
21 nisms to assist covered local educational agencies
22 and covered schools in effectively recognizing and
23 quickly responding to incidents of child abuse by
24 school employees;

1 “(4) develop and disseminate information on
2 best practices and Federal, State, and local re-
3 sources available to assist local educational agencies
4 and schools in preventing and responding to inci-
5 dents of child abuse by school employees;

6 “(5) develop professional standards and codes
7 of conduct for the appropriate behavior of school
8 employees;

9 “(6) establish, implement, or improve policies
10 and procedures for covered State educational agen-
11 cies, covered local educational agencies, or covered
12 schools to provide the results of background checks
13 to—

14 “(A) individuals subject to the background
15 checks in a statement that indicates whether
16 the individual is ineligible for such employment
17 due to the background check and includes infor-
18 mation related to each disqualifying crime;

19 “(B) the employer in a statement that in-
20 dicates whether a school employee is eligible or
21 ineligible for employment, without revealing any
22 disqualifying crime or other related information
23 regarding the individual;

24 “(C) another employer in the same State
25 or another State, as permitted under State law,

1 without revealing any disqualifying crime or
2 other related information regarding the indi-
3 vidual; and

4 “(D) another local educational agency in
5 the same State or another State that is consid-
6 ering such school employee for employment, as
7 permitted under State law, without revealing
8 any disqualifying crime or other related infor-
9 mation regarding the individual;

10 “(7) establish, implement, or improve proce-
11 dures that include periodic background checks,
12 which also allows for an appeals process as described
13 in paragraph (8), for school employees in accordance
14 with State policies or the policies of covered local
15 educational agencies served by the covered State
16 educational agency;

17 “(8) establish, implement, or improve a process
18 by which a school employee may appeal the results
19 of a background check, which process is completed
20 in a timely manner, gives each school employee no-
21 tice of an opportunity to appeal, and instructions on
22 how to complete the appeals process;

23 “(9) establish, implement, or improve a review
24 process through which the covered State educational
25 agency or covered local educational agency may de-

1 termine that a school employee disqualified due to a
2 crime is eligible for employment due to mitigating
3 circumstances as determined by a covered local edu-
4 cational agency or a covered State educational agen-
5 cy;

6 “(10) establish, implement, or improve policies
7 and procedures intended to ensure a covered State
8 educational agency or covered local educational
9 agency does not knowingly transfer or facilitate the
10 transfer of a school employee if the agency knows
11 that employee has engaged in sexual misconduct, as
12 defined by State law, with an elementary school or
13 secondary school student;

14 “(11) provide that policies and procedures are
15 published on the website of the covered State edu-
16 cational agency and the website of each covered local
17 educational agency served by the covered State edu-
18 cational agency;

19 “(12) provide school employees with training re-
20 garding the appropriate reporting of incidents of
21 child abuse under section 106(b)(2)(B)(i) of the
22 Child Abuse Prevention and Treatment Act (42
23 U.S.C. 5106a(b)(2)(B)(i)); and

24 “(13) support any other activities determined
25 by the State to protect student safety or improve the

1 comprehensiveness, coordination, and transparency
2 of policies and procedures on criminal background
3 checks for school employees in the State.

4 “(c) NO PRIVATE RIGHT OF ACTION.—Nothing in
5 this section shall be construed to create a private right
6 of action if a State, covered State educational agency, cov-
7 ered local educational agency, or covered school is in com-
8 pliance with State regulations and requirements con-
9 cerning background checks.

10 “(d) BACKGROUND CHECK FEES.—Nothing in this
11 section shall be construed as prohibiting States or local
12 educational agencies from charging school employees for
13 the costs of processing applications and administering a
14 background check as required by State law, provided that
15 the fees charged to school employees do not exceed the
16 actual costs to the State or local educational agency for
17 the processing and administration of the background
18 check.

19 “(e) STATE AND LOCAL PLAN REQUIREMENTS.—
20 Each plan submitted by a State or local educational agen-
21 cy under title I shall include—

22 “(1) an assurance that the State and local edu-
23 cational agency has in effect policies and procedures
24 that meet the requirements of this section; and

1 “(2) a description of laws, regulations, or poli-
2 cies and procedures in effect in the State for con-
3 ducting background checks for school employees de-
4 signed to—

5 “(A) terminate individuals in violation of
6 State background check requirements;

7 “(B) improve the reporting of violations of
8 the background check requirements in the
9 State;

10 “(C) reduce the instance of school em-
11 ployee transfers following a substantiated viola-
12 tion of the State background check require-
13 ments by a school employee;

14 “(D) provide for a timely process by which
15 a school employee may appeal the results of a
16 criminal background check;

17 “(E) provide each school employee, upon
18 request, with a copy of the results of the crimi-
19 nal background check, including a description
20 of the disqualifying item or items, if applicable;

21 “(F) provide the results of the criminal
22 background check to the employer in a state-
23 ment that indicates whether a school employee
24 is eligible or ineligible for employment, without

1 revealing any disqualifying crime or other re-
2 lated information regarding the individual; and

3 “(G) provide for the public availability of
4 the policies and procedures for conducting back-
5 ground checks.

6 “(f) TECHNICAL ASSISTANCE TO STATES, SCHOOL
7 DISTRICTS, AND SCHOOLS.—The Secretary, in collabora-
8 tion with the Secretary of Health and Human Services
9 and the Attorney General, shall provide technical assist-
10 ance and support to States, local educational agencies, and
11 schools, which shall include, at a minimum—

12 “(1) developing and disseminating a com-
13 prehensive package of materials for States, State
14 educational agencies, local educational agencies, and
15 schools that outlines steps that can be taken to pre-
16 vent and respond to child sexual abuse by school
17 personnel;

18 “(2) determining the most cost-effective way to
19 disseminate Federal information so that relevant
20 State educational agencies and local educational
21 agencies, child welfare agencies, and criminal justice
22 entities are aware of such information and have ac-
23 cess to it; and

24 “(3) identifying mechanisms to better track and
25 analyze the prevalence of child sexual abuse by

1 school personnel through existing Federal data col-
2 lection systems, such as the School Survey on Crime
3 and Safety, the National Child Abuse and Neglect
4 Data System, and the National Crime Victimization
5 Survey.

6 “(g) REPORTING REQUIREMENTS.—

7 “(1) REPORTS TO THE SECRETARY.—A covered
8 State educational agency or covered local educational
9 agency that uses funds pursuant to this section shall
10 report annually to the Secretary on—

11 “(A) the amount of funds used; and

12 “(B) the purpose for which the funds were
13 used under this section.

14 “(2) SECRETARY’S REPORT CARD.—Not later
15 than July 1, 2017, and annually thereafter, the Sec-
16 retary, acting through the Director of the Institute
17 of Education Sciences, shall transmit to the Com-
18 mittee on Health, Education, Labor, and Pensions
19 of the Senate and the Committee on Education and
20 the Workforce of the House of Representatives a na-
21 tional report card that includes—

22 “(A) actions taken pursuant to subsection
23 (f), including any best practices identified under
24 such subsection; and

1 “(B) incidents of reported child sexual
2 abuse by school personnel, as reported through
3 existing Federal data collection systems, such
4 as the School Survey on Crime and Safety, the
5 National Child Abuse and Neglect Data Sys-
6 tem, and the National Crime Victimization Sur-
7 vey.

8 “(h) RULES OF CONSTRUCTION REGARDING BACK-
9 GROUND CHECKS.—

10 “(1) NO FEDERAL CONTROL.—Nothing in this
11 section shall be construed to authorize an officer or
12 employee of the Federal Government to—

13 “(A) mandate, direct, or control the back-
14 ground check policies or procedures that a
15 State or local educational agency develops or
16 implements under this section;

17 “(B) establish any criterion that specifies,
18 defines, or prescribes the background check
19 policies or procedures that a State or local edu-
20 cational agency develops or implements under
21 this section; or

22 “(C) require a State or local educational
23 agency to submit such background check poli-
24 cies or procedures for approval.

1 “(2) PROHIBITION ON REGULATION.—Nothing
2 in this section shall be construed to permit the Sec-
3 retary to establish any criterion that—

4 “(A) prescribes, or specifies requirements
5 regarding, background checks for school em-
6 ployees;

7 “(B) defines the term ‘background checks’,
8 as such term is used in this section; or

9 “(C) requires a State or local educational
10 agency to report additional data elements or in-
11 formation to the Secretary not otherwise explic-
12 itly authorized under this section or any other
13 Federal law.

14 “(i) DEFINITIONS.—In this section—

15 “(1) the term ‘covered local educational agency’
16 means a local educational agency that receives funds
17 under this Act;

18 “(2) the term ‘covered school’ means a public
19 elementary school or public secondary school, includ-
20 ing a public elementary or secondary charter school,
21 that receives funds under this Act;

22 “(3) the term ‘covered State educational agen-
23 cy’ means a State educational agency that receives
24 funds under this Act; and

1 “(4) the term ‘school employee’ includes, at a
2 minimum—

3 “(A) an employee of, or a person seeking
4 employment with, a covered school, covered
5 local educational agency, or covered State edu-
6 cational agency and who, as a result of such
7 employment, has (or, in the case of a person
8 seeking employment, will have) a job duty that
9 includes unsupervised contact or interaction
10 with elementary school or secondary school stu-
11 dents; or

12 “(B) any person, or any employee of any
13 person, who has a contract or agreement to
14 provide services with a covered school, covered
15 local educational agency, or covered State edu-
16 cational agency, and such person or employee,
17 as a result of such contract or agreement, has
18 a job duty that includes unsupervised contact or
19 unsupervised interaction with elementary school
20 or secondary school students.”.

21 (b) TABLE OF CONTENTS.—The table of contents in
22 section 2 of the Elementary and Secondary Education Act
23 of 1965 is amended by inserting after the item relating
24 to section 9536 the following:

“Sec. 9537. Criminal background checks for school employees.”.

