

HOUSE No. 841

The Commonwealth of Massachusetts

PRESENTED BY:

Paul R. Heroux

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to stop educator sexual abuse, misconduct and xxploitation S.E.S.A.M.E.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>1/18/2017</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/30/2017</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/2/2017</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>1/28/2017</i>

HOUSE No. 841

By Mr. Heroux of Attleboro, a petition (accompanied by bill, House, No. 841) of Paul R. Heroux and others relative to the hiring of applicants who would be employed by or in schools in positions involving direct contact with children. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1374 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to stop educator sexual abuse, misconduct and xxploitation S.E.S.A.M.E.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. This Act maybe cited as the Stop Educator Sexual Abuse, Misconduct
2 and Exploitation (S.E.S.A.M.E.) Act of 2015. This Act shall apply to all positions for
3 employment at public and private school entities and independent contractors of public and
4 private school entities involving direct contact with children.

5 SECTION 2. The following words and phrases shall have the meanings given to them
6 in this Act:

7 "Abuse." Conduct that falls under the purview and reporting requirements of Chapter
8 119 of the General Laws and is directed toward or against a child or a student, regardless of the
9 age of the child or student.

10 "Direct contact with children." The possibility of care, supervision, guidance or control
11 of children or routine interaction with children.

12 "School entity." Any public school, including a charter school, private school, non-
13 public school, intermediate unit or area vocational-technical school operating within this
14 Commonwealth.

15 "Sexual misconduct." Any act, including, but not limited to, any verbal, nonverbal,
16 written or electronic communication or physical activity, directed toward or with a child or a
17 student regardless of the age of the child or student that is designed to establish a romantic or
18 sexual relationship with the child or student. Such acts include, but are not limited to:

19 (i) Sexual or romantic invitation

20 (ii) Dating or soliciting dates

21 (iii) Engaging in sexualized or romantic dialogue

22 (iv) Making sexually suggestive comments

23 (v) Self-disclosure or physical exposure of a sexual, romantic or erotic nature

24 (vi) Any sexual, indecent, romantic or erotic contact with the child or student

25 SECTION 3. In addition to fulfilling the requirements of General Laws Chapter 71,
26 §38R (relating to background checks for employment in schools), before a school entity or
27 independent contractor may offer employment to an applicant who would be employed by or in a
28 school entity in a position involving direct contact with children, the school entity or independent
29 contractor shall require the applicant to provide:

30 (i) A list, including name, address, telephone number and other relevant contact
31 information of the applicant, including:

32 (A) Current employer

33 (B) All former employers that were school entities

34 (C) All former employers where the applicant was employed in positions that involved
35 contact with children.

36 (ii) A written authorization that consents to and authorizes disclosure by the applicant's
37 current and former employers in subparagraph (i) of the information requested under
38 subparagraph (iii) and the release of related records and that releases those employers from
39 liability that may arise from such disclosure or release of records pursuant to this section.

40 (iii) A written statement of whether the applicant:

41 (A) has been the subject of an abuse or sexual misconduct investigation by any
42 employer, State licensing agency, law enforcement agency or child protective services agency,
43 unless the investigation resulted in a finding that the allegations were false;

44 (B) has ever been disciplined, discharged, non-renewed, asked to resign from
45 employment, resigned from or otherwise separated from any employment while allegations of
46 abuse or sexual misconduct were pending or under investigation, or due to an adjudication or
47 findings of abuse or sexual misconduct.; or

48 (C) has ever had a license, professional license or certificate suspended, surrendered or
49 revoked while allegations of abuse or sexual misconduct were pending or under investigation, or
50 due to an adjudication or findings of abuse or sexual misconduct.

51 SECTION 4. Before a school entity or independent contractor may offer employment to
52 an applicant who would be employed by or in a school entity in a position involving contact with
53 children, the school entity or independent contractor shall conduct a review of the employment
54 history of the applicant by contacting those employers listed by the applicant and requesting the
55 following information:

56 (i) The dates of employment of the applicant.

57 (ii) A statement as to whether the applicant:

58 (A) was the subject of any abuse or sexual misconduct investigation by any employer,
59 State licensing agency, law enforcement agency or child protective services agency, unless such
60 investigation resulted in a finding that the allegations were false;

61 (B) was disciplined, discharged, non-renewed, asked to resign from employment,
62 resigned from or otherwise separated from any employment while allegations of abuse or sexual
63 misconduct were pending or under investigation, or due to an adjudication or findings of abuse
64 or sexual misconduct; or

65 (C) has ever had a license, professional license or certificate suspended, surrendered or
66 revoked while allegations of abuse or sexual misconduct were pending or under investigation, or
67 due to an adjudication or findings of abuse or sexual misconduct.

68 SECTION 5. Before a school entity or independent contractor may offer employment
69 to an applicant who would be employed by or in a school entity in a position involving direct
70 contact with children, the school entity or independent contractor shall check the eligibility for
71 employment or certification status of any applicant involving contact with children to determine

72 whether the applicant holds valid and active certification appropriate for the position and is
73 otherwise eligible for employment and whether the applicant has been the subject of public
74 professional discipline.

75 SECTION 6. An applicant who provides false information or willfully fails to disclose
76 information required shall be subject to discipline up to, and including, termination or denial of
77 employment and may be subject to professional discipline in accordance with the rules and
78 regulations of the Department of Elementary and Secondary Education.

79 SECTION 7. No later than twenty (20) days after receiving a request for information
80 required, an employer that has or had an employment relationship with the applicant shall
81 disclose the information requested.

82 (i) The employer shall disclose the information on a standardized form developed by the
83 Department of Elementary and Secondary Education.

84 (ii) After reviewing the information initially disclosed under SECTION 3. and finding
85 an affirmative response to subsection (ii) (A), (B) or (C) , where the prospective employing
86 school entity or contractor makes a determination to further consider the applicant for
87 employment, the school entity or contractor shall request that former employers provide
88 additional information about the matters disclosed and all related records.

89 (iii) Former employers shall provide the additional information requested no later than
90 sixty (60) days after the prospective employer's request under this paragraph.

91 (iv) Information received under this section shall not be deemed a public record for the
92 purposes of General Laws Chapter 66, §10.

93 (v) A school entity that receives the information under this subsection may use the
94 information for the purpose of evaluating an applicant's fitness to be hired or for continued
95 employment and may report the information as appropriate to the Department of Elementary and
96 Secondary Education, a State licensing agency, law enforcement agency, child protective
97 services agency, another school entity or prospective employer.

98 SECTION 8. An employer, school entity, school administrator or independent
99 contractor that provides information or records about a current or former employee or applicant
100 shall be immune from criminal liability and civil liability for the disclosure of the information,
101 unless the information or records provided were knowingly false. Such immunity shall be in
102 addition to and not in limitation of any other immunity provided by law or any absolute or
103 conditional privileges applicable to such disclosures by virtue of the circumstances or the
104 applicant's consent thereto.

105 (i) Except where the laws of other states prevent the release of the information or records
106 requested, or disclosure is restricted by the terms of a contract entered into prior to the effective
107 date of this section, the willful failure of a former employer, school entity, school administrator
108 or independent contractor to respond or provide the information and records as requested may
109 result in civil penalties, and professional discipline where appropriate.

110 (ii) Notwithstanding any provision of law to the contrary, an employer, school entity,
111 school administrator, independent contractor or applicant shall report and disclose in accordance
112 with this section all relevant information, records and documentation that may otherwise be
113 confidential under General Laws Chapter 66, §10.

114 (iii) A school entity or independent contractor may not hire an applicant who does not
115 provide the information required under SECTION 4. (ii) (A), (B), or (C) for a position involving
116 contact with children.

117 SECTION 9. A school entity or independent contractor may hire an applicant on a
118 provisional basis for a period not to exceed ninety (90) days pending the school entity's or
119 independent contractor's review of information and records received under this section,
120 provided that all of the following are satisfied:

121 (i) The applicant has provided all of the information and supporting documentation
122 required.

123 (ii) The school administrator has no knowledge of information pertaining to the applicant
124 that would disqualify the applicant from employment.

125 (iii) The applicant swears or affirms that the applicant is not disqualified from
126 employment.

127 (iv) The applicant is not permitted to work alone with children and works in the
128 immediate vicinity of a permanent employee.

129 SECTION 10. On or after the effective date of this section, a school entity or
130 independent contractor may not enter into a collective bargaining agreement, an employment
131 contract, an agreement for resignation or termination, a severance agreement or any other
132 contract or agreement or take any action that:

133 (i) has the effect of suppressing information relating to an investigation related to a
134 report of suspected abuse or sexual misconduct by a current or former employee;

135 (ii) affects the ability of the school entity or independent contractor to report suspected
136 abuse or sexual misconduct to the appropriate authorities; or

137 (iii) requires the school entity or independent contractor to expunge information about
138 allegations or findings of suspected abuse or sexual misconduct from any documents maintained
139 by the school entity or independent contractor, unless after investigation the allegations are found
140 to be false.

141 (iv) Any provision of an employment contract or agreement for resignation or
142 termination or a severance agreement that is executed, amended or entered into after the effective
143 date of this section and that is contrary to this section shall be void and unenforceable.

144 SECTION 11. For substitute employees, the employment history review required by
145 this section shall be required only prior to the initial hiring of a substitute or placement on the
146 school entity's approved substitute list and shall remain valid as long as the substitute continues
147 to be employed by the same school entity or remains on the school entity's approved substitute
148 list.

149 (i) A substitute seeking to be added to another school entity's substitute list shall undergo
150 a new employment history review. The appearance of a substitute on one school entity's
151 substitute list does not relieve another school entity from compliance with this section.

152 (ii) An employment history review conducted upon initial hiring of a substitute
153 employee by an independent contractor, intermediate unit or any other entity that furnishes
154 substitute staffing services to school entities shall satisfy the requirements of this section for all
155 school entities using the services of that independent contractor, intermediate unit or other entity.

156 (iii) An independent contractor, intermediate unit or any other entity furnishing
157 substitute staffing services to school entities shall comply with the provisions of this Act.

158 (iv) For purposes of this subsection, "substitute employee" shall not mean school bus
159 drivers employed by an independent contractor.

160 SECTION 12. For employees of independent contractors, the employment history
161 review required by this section shall be performed, either at the time of the initial hiring of the
162 employee or prior to the assignment of an existing employee to perform work for a school entity
163 in a position involving direct contact with children. The review shall remain valid as long as the
164 employee remains employed by that same independent contractor, even though assigned to
165 perform work for other school entities.

166 (i) An independent contractor shall maintain records documenting employment history
167 reviews for all employees as required by this section and, upon request, shall provide a school
168 entity for which an employee is assigned to perform work access to the records pertaining to that
169 employee.

170 (ii) Prior to assigning an employee to perform work for a school entity in a position
171 involving direct contact with children, the independent contractor shall inform the school entity
172 of any instance known to the independent contractor in which the employee:

173 (A) was the subject of any abuse or sexual misconduct investigation by any employer,
174 State licensing agency, law enforcement authority or child protective services agency, unless
175 such investigation resulted in a finding that allegations are false;

176 (B) has ever been disciplined, discharged, non-renewed, removed from a substitute list,
177 asked to resign from employment, resigned from or otherwise separated from any employment
178 while allegations of abuse or sexual misconduct as described in subparagraph (i) were pending or
179 under investigation, or due to an adjudication or findings of abuse or sexual misconduct;; or

180 (C) has ever had a license, professional license or certificate suspended, surrendered or
181 revoked while allegations of abuse or sexual misconduct were pending or under investigation, or
182 due to an adjudication or findings of abuse or sexual misconduct.

183 (iii) The independent contractor may not assign the employee to perform work for the
184 school entity in a position involving direct contact with children where the school entity objects
185 to the assignment after being informed of an instance of abuse or sexual misconduct.

186 (iv) An applicant who has once undergone the employment history review required and
187 seeks to transfer to or provide services to another school in the same district, diocese or religious
188 judicatory or established and supervised by the same organization shall not be required to obtain
189 additional reports before making such transfer.

190 (v) Nothing in this section shall be construed:

191 (A) To prevent a prospective employer from conducting further investigations of
192 prospective employees or from requiring applicants to provide additional background
193 information or authorizations beyond what is required under this section, nor to prevent a former
194 employer from disclosing more information than what is required under this section.

195 (B) To relieve a school entity, school administrator or independent contractor of its legal
196 responsibility to report suspected incidents of abuse in accordance with the provisions of Chapter
197 119, section 51A.

198 (C) To relieve a school entity, school administrator or independent contractor of its legal
199 responsibility to report suspected incidents of professional misconduct in accordance with
200 Chapter 119 51A.

201 (D) To prohibit the right of the exclusive representative under a collective bargaining
202 agreement to grieve and arbitrate the validity of an employee's termination or discipline for just
203 cause or for the causes set forth in this act.

204 (E) The Department of Elementary and Secondary Education shall have jurisdiction to
205 determine willful violations of this section and may, following a hearing, assess a civil penalty
206 not to exceed ten thousand dollars (\$10,000). School entities shall be barred from contracting
207 with an independent contractor who is found to have willfully violated the provisions of this
208 section.

209 (F) Notwithstanding any provision of law to the contrary, the Department of Elementary
210 and Secondary Education may initiate disciplinary action before a hearing officer pursuant its
211 regulations, against any applicant, employee, independent contractor or school administrator for
212 willful violations of this section.

213 (G) The Department of Elementary and Secondary Education may adopt rules and
214 regulations establishing procedures relating to disciplinary proceedings and the assessment of
215 penalties in connection with this section.