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# SENATE BILL No. 493

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-6-2-1.5; IC 20-26-5.5; IC 20-28.

**Synopsis:** School employee records; misconduct. Defines "qualified immunity" for certain individuals. Provides that certain employment records of licensed school employees, including substantiated reports of certain types of misconduct or offenses, must be provided to a school requesting the records as a part of the hiring process. Requires records of substantiated reports of misconduct or offenses be expunged if the subject of the report is formally exonerated. Provides that a school that enters into an agreement with a licensed school employee to suppress information concerning misconduct or ongoing disciplinary investigations or allowing the employee to resign must report the agreement to the state superintendent of public instruction. Requires the department of education to revoke the license of a licensed school employee if the employee is convicted in another state or under federal statutes of an offense that is comparable to the felonies for which the employee's license would be revoked if committed in Indiana. Allows a governing body to withhold salary and employment related benefits from a licensed school employee if there is a substantiated report of certain misconduct or offenses by the employee.

**Effective:** July 1, 2011.

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**Merritt, Kruse, Head**

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January 13, 2011, read first time and referred to Committee on Education and Career Development.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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## SENATE BILL No. 493



A BILL FOR AN ACT to amend the Indiana Code concerning education.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-6-2-1.5, AS AMENDED BY P.L.121-2009,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2011]: Sec. 1.5. (a) **As used in this section, "qualified  
4 immunity" means immunity from liability for an act that:**  
5 (1) **was taken by an employee in good faith with the scope of  
6 the employee's employment;**  
7 (2) **is consistent with a statute or an adopted rule or  
8 regulation; and**  
9 (3) **does not interfere with a public school student's right to a  
10 free and appropriate public education.**  
11 (b) Whenever any state governmental official or employee, whether  
12 elected or appointed, is made a party to a suit, and the attorney general  
13 determines that said suit has arisen out of an act which such official or  
14 employee in good faith believed to be within the scope of the official's  
15 or employee's duties as prescribed by statute or duly adopted  
16 regulation, the attorney general shall defend such person throughout  
17 such action.



1           ~~(b)~~ (c) Whenever a teacher (as defined in IC 20-18-2-22) is made a  
2 party to a civil suit, and the attorney general determines that the suit  
3 has arisen out of an act that the teacher in good faith believed was  
4 within the scope of the teacher's duties in enforcing discipline policies  
5 developed under IC 20-33-8-12, the attorney general shall defend the  
6 teacher throughout the action.

7           ~~(c)~~ (d) Not later than August 15 of each year:  
8           (1) the attorney general shall draft; and  
9           (2) the state superintendent of public instruction shall disseminate  
10 in:

- 11           (A) written;
  - 12           (B) electronic; or
  - 13           (C) other;
- 14 form;

15 a notice to each teacher concerning the teacher's qualified immunity  
16 under IC 20-33-8-8(b)(3) and rights under this section.

17           ~~(d)~~ (e) Whenever a school corporation (as defined in IC 20-26-2-4)  
18 is made a party to a civil suit and the attorney general determines that  
19 the suit has arisen out of an act authorized under IC 20-30-5-0.5 or  
20 IC 20-30-5-4.5, the attorney general shall defend the school corporation  
21 throughout the action.

22           ~~(e)~~ (f) A determination by the attorney general under subsection ~~(a)~~,  
23 (b), (c), or ~~(d)~~ (e) shall not be admitted as evidence in the trial of any  
24 such civil action for damages.

25           ~~(f)~~ (g) Nothing in this chapter shall be construed to deprive any such  
26 person of the person's right to select counsel of the person's own choice  
27 at the person's own expense.

28           SECTION 2. IC 20-26-5.5 IS ADDED TO THE INDIANA CODE  
29 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
30 JULY 1, 2011]:

31           **Chapter 5.5. Employee Records**

32           **Sec. 1. (a) As used in this chapter, "licensed school employee"**  
33 **means an individual employed by a school who is licensed for**  
34 **employment by the department.**

35           **(b) As used in this chapter, "school" means:**

- 36           (1) a school corporation;
- 37           (2) a charter school;
- 38           (3) an accredited nonpublic school; and
- 39           (4) a school or an educational program operated by:
  - 40           (A) the department of correction;
  - 41           (B) the Indiana School for the Blind and Visually  
42           Impaired; or

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- (C) the Indiana School for the Deaf.
- (c) As used in this chapter, "substantiated report" means:
  - (1) A report from the department of child services under IC 31-33-8 that substantiates abuse or neglect by a licensed school employee.
  - (2) A report from an adult protective services unit under IC 12-10-3 that determines a student to be an endangered adult based on the conduct of a licensed school employee.
  - (3) Formal findings regarding the conduct of a licensed school employee resulting from a hearing or other judicial or administrative proceeding.

Sec. 2. (a) In reviewing the employment history of an individual who is applying for a position as a licensed school employee with a school, the school may:

- (1) require the individual to provide:
  - (A) the name of the school that currently employs the individual;
  - (B) the names of all schools that have previously employed the individual; and
  - (C) written consent for the current and former school employers to disclose the information requested under subdivision (2); and
- (2) request the following information from the individual's current and former school employers:
  - (A) The dates of the individual's employment.
  - (B) Whether the individual was the subject of any substantiated reports, including:
    - (i) the date of the substantiated report; and
    - (ii) the conduct identified in the substantiated report.
  - (C) Whether, on the date the school employer receives the request for information, the individual is the subject of an investigation related to an offense set forth under IC 20-28-5-8(c) or IC 20-28-5-8(d).
- (b) A school shall disclose the information requested under subsection (a) to the requesting school in a timely manner.
- (c) A school:
  - (1) may provide the information requested under subsection (a) in a standardized form; and
  - (2) is not required to provide additional information concerning a substantiated report that is not set forth under subsection (a)(2)(B).
- (d) Unless otherwise required by law, a school may not use any

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1 information received under subsection (a)(2) for any purpose other  
2 than the limited purpose of determining whether to employ an  
3 individual.

4 (e) A school employee who discloses requested information  
5 under this section has qualified immunity with respect to providing  
6 the information.

7 Sec. 3. (a) If a school or the governing body of a school enters  
8 into an agreement with a licensed school employee that:

9 (1) suppresses or has the effect of suppressing information  
10 relating to an ongoing investigation of the employee's alleged  
11 involvement in one (1) or more offenses set forth under  
12 IC 20-28-5-8(c) or IC 20-28-5-8(d);

13 (2) suppresses or has the effect of suppressing a substantiated  
14 report concerning the employee;

15 (3) allows the employee to resign in order to avoid further  
16 investigation, disciplinary action, or termination for  
17 immorality, misconduct in office, incompetency, or willful  
18 neglect of duty; or

19 (4) requires the school to expunge a substantiated report or  
20 information about a substantiated report from records  
21 maintained by the school regarding the employee;

22 the superintendent or the equivalent authority in a charter or  
23 nonpublic school shall report the terms of the agreement and the  
24 name of the employee to the state superintendent not later than ten  
25 (10) days after the date on which the school executes the  
26 agreement.

27 (b) An agreement described in subsection (a) may not include  
28 any provision that prevents or has the effect of preventing a  
29 superintendent or the equivalent authority in a charter or  
30 nonpublic school from notifying the state superintendent of the  
31 agreement.

32 Sec. 4. (a) The department may suspend or revoke under  
33 IC 20-28-5-7(2) the license of a superintendent or the equivalent  
34 authority in a charter school or nonpublic school who fails to  
35 comply with the reporting requirements of section 3 of this  
36 chapter.

37 (b) If the superintendent or equivalent authority of a freeway  
38 school or freeway school corporation under IC 20-26-15 fails to  
39 comply with the reporting requirements of section 3 of this  
40 chapter, the state board:

41 (1) may revoke the freeway status of the school or school  
42 corporation; and

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1 (2) shall revoke the freeway status of the school or school  
2 corporation if the superintendent or equivalent authority fails  
3 to comply a second time within five (5) years after the first  
4 failure to comply.

5 (c) If the superintendent or equivalent authority of a charter  
6 school under IC 20-24 fails to comply with the reporting  
7 requirements of section 3 of this chapter, the charter organizer  
8 shall report in writing that the superintendent or authority has  
9 been:

- 10 (1) suspended from duty;
- 11 (2) removed from the administrative position; or
- 12 (3) exonerated from wrongdoing as explained in the report.

13 (d) The department shall report by July 1 of each year to the  
14 general assembly the number of licenses suspended or revoked  
15 under subsection (a), the number of actions taken against freeway  
16 schools and school corporations under subsection (b), and the  
17 number and types of actions taken by charter school organizers  
18 under subsection (c). The report under this subsection must be in  
19 an electronic format under IC 5-14-6.

20 Sec. 5. A collective bargaining agreement entered into under  
21 IC 20-29 may not include provisions that:

- 22 (1) are contrary to or preclude a school's authority or duties  
23 under this chapter; or
- 24 (2) remove an administrator's ability to notify the state  
25 superintendent of an agreement described in section 3 of this  
26 chapter.

27 Sec. 6. Upon a current or former licensed school employee's  
28 production of written proof of the employee's formal exonerated  
29 from the claims set forth in a substantiated report, a school holding  
30 a record of the substantiated report shall expunge the  
31 substantiated report and any references to the substantiated report  
32 from the school's records.

33 SECTION 3. IC 20-28-5-8, AS AMENDED BY P.L.121-2009,  
34 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
35 JULY 1, 2011]: Sec. 8. (a) This section applies when a prosecuting  
36 attorney knows that a licensed employee of a public school or a  
37 nonpublic school has been convicted of an offense listed in subsection  
38 (c). The prosecuting attorney shall immediately give written notice of  
39 the conviction to the following:

- 40 (1) The state superintendent.
- 41 (2) Except as provided in subdivision (3), the superintendent of  
42 the school corporation that employs the licensed employee or the

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1 equivalent authority if a nonpublic school employs the licensed  
 2 employee.  
 3 (3) The presiding officer of the governing body of the school  
 4 corporation that employs the licensed employee, if the convicted  
 5 licensed employee is the superintendent of the school corporation.  
 6 (b) The superintendent of a school corporation, presiding officer of  
 7 the governing body, or equivalent authority for a nonpublic school shall  
 8 immediately notify the state superintendent when the individual knows  
 9 that a current or former licensed employee of the public school or  
 10 nonpublic school has been convicted of an offense listed in subsection  
 11 (c), **(d), or (e)**, or when the governing body or equivalent authority for  
 12 a nonpublic school takes any final action in relation to an employee  
 13 who engaged in any offense listed in subsection (c), **(d), or (e)**.  
 14 (c) The department, after holding a hearing on the matter, shall  
 15 permanently revoke the license of a person who is known by the  
 16 department to have been convicted of any of the following felonies:  
 17 (1) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen  
 18 (18) years of age.  
 19 (2) Criminal confinement (IC 35-42-3-3), if the victim is less than  
 20 eighteen (18) years of age.  
 21 (3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)  
 22 years of age.  
 23 (4) Criminal deviate conduct (IC 35-42-4-2), if the victim is less  
 24 than eighteen (18) years of age.  
 25 (5) Child molesting (IC 35-42-4-3).  
 26 (6) Child exploitation (IC 35-42-4-4(b)).  
 27 (7) Vicarious sexual gratification (IC 35-42-4-5).  
 28 (8) Child solicitation (IC 35-42-4-6).  
 29 (9) Child seduction (IC 35-42-4-7).  
 30 (10) Sexual misconduct with a minor (IC 35-42-4-9).  
 31 (11) Incest (IC 35-46-1-3), if the victim is less than eighteen (18)  
 32 years of age.  
 33 (12) Dealing in or manufacturing cocaine or a narcotic drug  
 34 (IC 35-48-4-1).  
 35 (13) Dealing in methamphetamine (IC 35-48-4-1.1).  
 36 (14) Dealing in a schedule I, II, or III controlled substance  
 37 (IC 35-48-4-2).  
 38 (15) Dealing in a schedule IV controlled substance  
 39 (IC 35-48-4-3).  
 40 (16) Dealing in a schedule V controlled substance (IC 35-48-4-4).  
 41 (17) Dealing in a counterfeit substance (IC 35-48-4-5).  
 42 (18) Dealing in marijuana, hash oil, or hashish

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1 (IC 35-48-4-10(b)).

2 (19) Possession of child pornography (IC 35-42-4-4(c)).

3 **(d) The department, after holding a hearing on the matter, shall**  
 4 **permanently revoke the license of a person who is known by the**  
 5 **department to have been convicted of a federal offense or an**  
 6 **offense in another state that is comparable to a felony listed in**  
 7 **subsection (c).**

8 ~~(d)~~ **(e)** A license may be suspended by the state superintendent as  
 9 specified in IC 20-28-7-7.

10 ~~(e)~~ **(f)** The department shall develop a data base of information on  
 11 school corporation employees who have been reported to the  
 12 department under this section.

13 SECTION 4. IC 20-28-7-4, AS ADDED BY P.L.1-2005, SECTION  
 14 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
 15 2011]: Sec. 4. **(a)** If a permanent, ~~or~~ semipermanent, **or nonpermanent**  
 16 teacher is suspended under section 3(8) of this chapter, and except as  
 17 provided in **subsection (b) and** IC 20-28-9-18, the governing body may  
 18 not, while the teacher is suspended, withhold from the teacher any  
 19 salary payments or other employment related benefits that before the  
 20 suspension the teacher was entitled to receive.

21 **(b) The governing body may withhold salary payments and**  
 22 **other employment related benefits while a permanent,**  
 23 **semipermanent, or nonpermanent teacher is suspended under**  
 24 **section 3(8) of this chapter only if the superintendent has received**  
 25 **a substantiated report (as defined in IC 20-26-5.5-1(c)) concerning**  
 26 **the teacher.**

27 **(c) If the governing body returns a permanent, semipermanent,**  
 28 **or nonpermanent teacher to duty, the governing body shall**  
 29 **immediately compensate the teacher for the full amount of the**  
 30 **salary and other employment related benefits withheld during the**  
 31 **period of suspension.**

32 SECTION 5. IC 20-28-7-13, AS ADDED BY P.L.1-2005,  
 33 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2011]: Sec. 13. **(a) Except as provided in section 4 of this**  
 35 **chapter and IC 20-28-9-21,** this chapter may not be construed to limit  
 36 the provisions of a collective bargaining agreement negotiated under  
 37 IC 20-29. **The provisions of a collective bargaining agreement may**  
 38 **not alter or preclude a school's authority under section 4 of this**  
 39 **chapter and IC 20-28-9-21.**

40 **(b)** This chapter does not prohibit a school employer and an  
 41 exclusive representative from collectively bargaining contracts that  
 42 alter the requirements of sections 1 through 3, **sections 5 through 6,**

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1 and sections 8 through 12 of this chapter and ~~IC 20-28-9-21~~  
2 **IC 20-28-9-22** through IC 20-28-9-23.

3 (c) This chapter may not be construed to limit the rights of a school  
4 employer and an exclusive representative (as defined in IC 20-29-2-9)  
5 to mutually agree to binding arbitration concerning teacher dismissals.

6 (d) If the school employer and the exclusive representative mutually  
7 agree to binding arbitration of teacher dismissals:

8 (1) the arbitrator shall determine whether the hearing will be open  
9 to the public; and

10 (2) the written decision of the arbitrator must be:

11 (A) presented to the governing body in an open meeting; and

12 (B) made available to the public for inspection and copying.

13 SECTION 6. IC 20-28-9-21, AS ADDED BY P.L.1-2005,  
14 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2011]: Sec. 21. (a) This section and sections 22 through 23 of  
16 this chapter apply to the suspension of a teacher without pay when the  
17 procedure for the cancellation of the teacher's contract under  
18 IC 20-28-7-3 through IC 20-28-7-5 do not apply.

19 (b) A teacher may be suspended from duty without pay only for the  
20 following reasons:

21 (1) Immorality.

22 (2) Insubordination, which means the willful refusal to obey the  
23 state school laws or reasonable rules prescribed for the  
24 government of the school corporation.

25 (3) Neglect of duty.

26 (4) Substantial inability to perform teaching duties.

27 (5) Good and just cause.

28 **(6) Conduct covered in a substantiated report (as defined in**  
29 **IC 20-26-5.5-1(c)).**

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