



Texas Association of School Boards

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Reporting Employee Misconduct

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The Texas Legislature continues to take steps to prevent situations where a school district employee who engaged in misconduct in one school district is able to move to another school employer, without report or penalty, and potentially re-offend. School district administrators have more responsibility for reporting certain misconduct to the State Board for Educator Certification (SBEC) and the Texas Education Agency (TEA). This article addresses the reporting obligations of certain school officials, the board's role in the reporting of employee misconduct, and consequences for failure to abide by these requirements.

Reported Criminal History

A superintendent must report to SBEC if an educator has a reported criminal history other than information that was contained in the Texas Department of Public Safety's (DPS) Fingerprint-based Applicant Clearinghouse of Texas (FACT) database. Tex. Educ. Code §§ 5.001(5); 21.006(b)(1) (Educator, as used in this article, refers to a person who is an applicant for or holder of a certificate issued by SBEC). *Reported criminal history* means any formal criminal justice system charges and dispositions. The term includes arrests, detentions, indictments, convictions, deferred adjudications, and probations in any state or federal jurisdiction. 19 Tex. Admin. Code § 249.3(44). This reporting requirement applies regardless of the type of underlying criminal offense.

Superintendents are not required to report information learned from FACT. Districts receive reports from DPS when employees are first fingerprinted. A district will also receive a "rap back" if an employee's criminal history has changed (e.g., if the employee is subsequently arrested). A superintendent is not required to make a report to SBEC after receiving either the initial report or a "rap back" because SBEC also receives those reports from DPS. Tex. Educ. Code § 22.087. Nonetheless, SBEC would like a superintendent to report an arrest he or she learns of through the FACT clearinghouse if the arrest is for a felony or an offense against a child, as a method of extra precaution.

Criminal history information received from any source other than DPS must be reported to SBEC. The DPS system is dependent on timely reporting from local law enforcement agencies. If a local jurisdiction fails to report an arrest to DPS, SBEC may not be notified of the arrest. Similarly, federal arrests are not always picked up by the DPS system.

A superintendent's duty begins with the reporting of criminal history of educators seeking employment with the school district and continues even after the educator leaves the district's employment. Tex. Educ. Code § 21.006(b)(1). The legal reporting requirement does not state that the educator must be currently employed by the superintendent's district.

Reporting Certified Educators' Work-Related Misconduct

A superintendent must make a report to SBEC if an educator is terminated or resigns and the superintendent is aware of any evidence that educator engaged in one of the following acts of misconduct:

- Abuse or commission of other unlawful act with a student or minor;
- Involvement in a romantic relationship with, or solicitation of, or engaging in sexual contact with a student or minor;
- Possession, transfer, sale, or distribution of a controlled substance as defined in Texas Health and Safety Code Chapter 481 and 21 U.S.C. §§ 801 et seq.;
- Illegal transfer, appropriation, or expenditure of school district funds or other property;
- Attempt by fraudulent or unauthorized means to obtain or alter a professional certificate or permit for the purpose of promotion or additional compensation; or
- Commission of a criminal offense or any part of a criminal offense on school property or at a school-sponsored event.

Tex. Educ. Code § 21.006(b).

Regardless of whether an educator is terminated or resigned, a superintendent is required to report the educator if he or she engaged in conduct that violated statutory assessment instrument security procedures.

In the case of a termination or a resignation, the statute requires the superintendent to make a report if "there is evidence" that the educator engaged in one of the listed acts of misconduct. Tex. Educ. Code § 21.006(c)-(c-2). The *evidence* necessary to trigger a report to SBEC may be circumstantial, such as when an educator resigns upon being confronted with allegations of inappropriate conduct with students. Making a report does not mean the person is guilty, it just means that any evidence, even minimal evidence, exists and therefore the superintendent is legally obligated to make a report.

A superintendent has a duty to complete an investigation of an educator that involves evidence that the educator may have engaged in misconduct involving abuse or unlawful acts with a student or minor or was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor. Tex. Educ. Code § 21.006(b-1). For example, a superintendent must complete an investigation of an educator that involves evidence that an educator sexually

abused a child even if the educator is terminated for another reason, such as excessive absences. Similarly, if an employee resigns before a district is able to develop the evidence necessary to support a recommendation to terminate the employee's contract, the superintendent must complete an investigation of an educator if there is evidence that the educator may have engaged in misconduct. Tex. Educ. Code § 21.006(b-1). If, during an investigation, inappropriate conduct with a student or minor is indicated, the superintendent may have a duty to make a report to Child Protective Services or law enforcement. Tex. Fam. Code § 261.101. If the educator is subsequently arrested or charged, the superintendent will have an additional reason to inform SBEC because of the educator's new reported criminal history.

The legislature carved out a limited exception to the reporting requirements for certified educators. A superintendent is not required to notify SBEC if he or she completes an investigation into an educator's alleged incident of misconduct before the educator's termination of employment or resignation and determines that the educator did not engage in the alleged incident of misconduct. Tex. Educ. Code § 21.006(c-2).

Settlement Agreements and Neutral References

The provisions of a settlement agreement do not relieve the superintendent of the duty to report. An employee might offer to resign in return for the district's agreement not to make a report to SBEC or to provide a neutral reference. The reporting law is mandatory and an agreement not to report runs counter to the purpose of the law. Both the Texas Education and Administrative Codes restrict a certified employee from assisting a person who engaged in sexual misconduct with a minor or student in obtaining employment at a school district. Tex. Educ. Code § 21.0581; 19 Tex. Admin. Code § 247.2(1), (3). SBEC has not weighed in on whether providing a neutral reference is a violation of these restrictions.

Federal law requires a district that receives federal funds under the Every Students Succeeds Act (ESSA) to have a policy that prohibits its employees, contractors, or agents from assisting a school employee, contractor, or agent in obtaining a new job, of any kind, if the individual knows or has probable cause to believe that the employee engaged in sexual misconduct regarding a minor or student in violation of the law. 20 U.S.C. § 7926. TASB Policies CJ(LOCAL) and DC(LOCAL) address this requirement. This requirement does not include the routine transmission of administrative files.

Further, there is an exception to the confidentiality provisions protecting evaluations of teachers and administrators if a future potential employer requests access. Under state law, a school district is required to give another school district, open-enrollment charter school, or private school at which a teacher or administrator has applied for employment any document evaluating the performance of a teacher or administrator employed by the school. Tex. Educ. Code § 21.355(c).

Early Reporting

A superintendent may notify SBEC of any misconduct that the superintendent believes, in good faith, may be subject to sanctions by SBEC, even if the misconduct is not listed in the statute or regulations. 19 Tex. Admin. Code § 249.14(d). For example, a superintendent may opt to report to SBEC that an educator still employed by the district has been placed on administrative leave for suspected misconduct with a student that has not yet resulted in an arrest or criminal charges.

An optional report will not relieve the superintendent of the obligation to make a mandatory report if circumstances change. If the educator is subsequently arrested or terminated for the misconduct, or the educator is terminated or resigns and there is evidence of the misconduct, the superintendent will be required to make a second report to SBEC under the mandatory-report provisions.

Reporting Non-certified Employee's Work-Related Misconduct

Similar to the reporting requirements in place for certified educators, a superintendent must report a non-certified employee's misconduct. For non-certified employees, a superintendent must report if the employee is terminated or resigns and the superintendent is aware of any evidence that the employee engaged in one of the following acts of misconduct:

- Abuse or commission of other unlawful act with a student or minor; or
- Involvement in a romantic relationship with, or solicitation of, or engaging in sexual contact with a student or minor.

Tex. Educ. Code § 22.093(c)(1).

The statute requires the superintendent to make a report if "there is evidence" that the employee engaged in one of the listed acts of misconduct. Tex. Educ. Code § 22.093(c)(1)-(c)(2). Again, making a report does not mean the person is guilty, it just means that any evidence exists and therefore the superintendent is legally obligated to make a report. A superintendent has a duty to complete an investigation of an employee that involves evidence that the employee may have engaged in misconduct involving abuse or unlawful acts with a student or minor or was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor, despite the employee's resignation before completion of the investigation. Tex. Educ. Code § 22.093(d). As described above, if inappropriate conduct with a student or minor is indicated during the investigation, the superintendent may have a duty to make a report to Child Protective Services or law enforcement. Tex. Fam. Code § 261.101.

Timing and Contents of Report

A superintendent is required to submit a report to SBEC within seven business days of when the superintendent learns of the reportable conduct or circumstances of certified educators. Tex. Educ. Code § 21.006(c). For reports related to noncertified employees, a superintendent is required to report to the commissioner. Tex. Educ. Code § 22.093(b). To simplify the reporting process, TEA recommends that superintendents should send all reports to the TEA Division of Educator Investigations. This report may be filed through the Misconduct Reporting Portal, the expedient and secure way to submit a misconduct report. TEA, [Superintendent Reporting Requirements](#) (2020). A report may also be submitted in writing on official school letterhead addressed to the “Director of Educator Investigations, Texas Education Agency, 1701 N. Congress Avenue, 5th Floor, Austin, Texas 78701.” Alternatively, a written report can be faxed to 512.936.8404. A form for reporting is available to subscribers in the TASB HR Library.

The report must identify the educator by providing the following information:

- A summary of the factual circumstances underlying the report;
- The name of the individual reported and any aliases;
- The reported individual’s certificate number, if any, or social security number and date of birth;
- The reported individual’s last known mailing address and home and daytime phone numbers;
- The names and any available contact information of any alleged victims;
- The names and any available contact information of any relevant witnesses to the circumstances requiring the report;
- The employment status of the individual, including any information about termination or notice of resignation;
- The name and contact information of the law enforcement or other agency involved in the review of allegations.

TEA, [Superintendent Reporting Requirements](#) (2020).

A superintendent shall notify the board and the employee of the filing of a written report with TEA. Tex. Educ. Code §§ 21.006(d), 22.093(g). The superintendent shall notify the board before filing the report. 19 Tex. Admin. Code § 249.14(d)(3)(B). Before accepting an employee’s resignation that requires filing a report, the superintendent shall inform the educator in writing that a report will be filed and that sanctions against his or her certificate may result as a consequence. 19 Tex. Admin. Code § 249.14(d)(3)(A).

Information about reports can be obtained from TEA. TEA, [Disciplinary Actions Taken against Texas Educators](#) (2020). The Investigations Division can confirm whether a particular employee was subject to investigation. In addition, SBEC will notify a district that a sanction has been taken against an educator's certificate when SBEC is aware of the employing district. A district can also call SBEC for the status of the investigation or look up an individual's certificate online to determine whether it has been flagged or whether the educator has been subject to public discipline (although some reprimands are private).

Principal's Duty to Report

A principal must notify the superintendent if an employee's termination or resignation followed an alleged incident of misconduct, as described above. Tex. Educ. Code §§ 21.006(b-2)(1), 22.093(e). The principal must also notify the superintendent about an educator's criminal record other than information learned from the DPS FACT database. Tex. Educ. Code § 21.006(b-2)(2). The principal must make the notification within seven business days after the date of termination or resignation. Tex. Educ. Code §§ 21.006(b-2), 22.093(e). A report of a certified employee's criminal history must be made within the date the principal knew about the educator's criminal record, even if the educator does not end employment with the district. Tex. Educ. Code § 21.006(b-2)(2).

The principal's report is not required to be on any particular form. TASB Legal Services recommends that the report contain the same essential details as the superintendent's report to TEA, as the principal's report will likely be the basis for the superintendent's report to the Agency. In addition, for the principal's protection, TASB Legal Services recommends that the principal's report be dated and in writing.

Liability and Penalties

A superintendent or principal is immune from civil or criminal liability that might otherwise be incurred for a report made in good faith and while the superintendent is acting in an official capacity. Tex. Educ. Code §§ 21.006(e), 22.093(h). A superintendent or principal who fails to make a timely report will be subject to certification sanctions. Tex. Educ. Code §§ 21.006(f); 22.093(i). A superintendent or principal may lose their certificate, or may suffer other disciplinary consequences, for failing to timely report educator misconduct or criminal histories. Tex. Educ. Code § 21.006(j).

In addition to sanctions against certification, a superintendent or principal that fails to make a required report of a certified educator's misconduct or criminal history may have to pay an administrative penalty. The administrative penalty imposed under the law could range from \$500 to \$10,000. The superintendent or principal may not renew their certificate until the penalty is paid. Tex. Educ. Code § 21.006(i).

A failure to make a timely report with the intent to conceal an educator’s criminal record or alleged incident of misconduct could be considered a state jail felony. State jail felonies are punishable by jail time from six months to two years in a state jail. Tex. Educ. Code § 21.006(j); Tex. Penal Code § 12.35(a).

The FERPA Factor

The requirement in state law that districts provide the names of student victims when reporting educator misconduct has raised concerns about conflicts with the Family Educational Rights and Privacy Act (FERPA). FERPA is the federal law that requires districts to maintain the confidentiality of education records. *Education records* are the records, files, documents, and other materials maintained by a school district that contain information directly related to a student. 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Some have questioned whether a district may provide the names of students when making a report to SBEC of educator misconduct. They argue that students’ names are protected by FERPA.

TEA has asked the federal Student Privacy Policy Office (SPPO), which enforces FERPA, to weigh in on the issue. TEA argues that the names of possible student victims or witnesses are not education records because they do not “directly relate” to students—they are not made for an academic, disciplinary, or similar purpose. Rather, TEA asserts, reports of misconduct are employment records, which are not subject to FERPA. Even if the names of student victims or witnesses were education records, TEA argues that its Investigations Division is eligible to receive those records because it is an arm of the state education agency, which is itself subject to FERPA’s confidentiality provisions. Finally, TEA argues that the release of student names in the context of an educator investigation is permissible, under the health and safety exception to FERPA, to protect children who might be victimized by the educator in the future. To date, FPCO has not responded to TEA’s requests for guidance.

A district that is concerned about FERPA in the context of reports of educator misconduct should consult its attorney about the advisability of releasing the information to SBEC and the relative risks of either option (i.e., the risk of violating FERPA by releasing the information versus the risk of allowing the educator to maintain certification and possibly reoffend in another district). Another option is to seek parental permission to release the information to SBEC.

The Board’s Role

The board’s role in the reporting of employee misconduct is primarily one of oversight. Board members are not required to report suspected misconduct. Thus, the board’s role in this respect is to supervise the superintendent. The superintendent is required to inform the board if a report is made. Tex. Educ. Code § 22.093(g). Remember that the superintendent risks sanctions for failure to report, so do not be surprised if the superintendent errs on the side of caution and reports a situation that may not seem like it required reporting. Also, remember that a report does not mean the district believes the educator is guilty of the underlying conduct.

The board is also required to adopt a policy which provides for notice to the parent or guardian of a student with whom an educator is alleged to have abused or otherwise engaged in unlawful misconduct, including romantic and sexual relationships. Tex. Educ. Code § 21.0061. The notice must inform the parent or guardian of certain information, including whether the employee was terminated and if a report was submitted to the SBEC concerning the alleged misconduct. TASB Policies FFF(LEGAL) and (LOCAL) address these requirements.

Do Not Hire Registry

TEA maintains a registry of individuals ineligible to work for public schools based on misconduct or criminal history, known as the Do Not Hire Registry. School districts must terminate or refuse to hire individuals on the registry. The individuals on the registry are include: 1) persons not eligible for hire or educator certification due to a criminal record or criminal history; 2) persons whose certification has been revoked by SBEC based on certain types of misconduct; and 3) persons the commissioner determines to have engaged in certain types of misconduct. Tex. Educ. Code § 22.092. Districts have access to the registry of persons not eligible for employment through the TEAL application process. Tex. Educ. Code § 22.095. There is a also a public-facing portion of the Do Not Hire Registry on the TEA Website, the [Public Registry Search](#).

Final Thoughts

When an employee engages in unlawful misconduct, particularly in cases of romantic and sexual conduct with students, the district has several legal and ethical duties, including the duty to make the reports described here. The purpose of the mandatory reporting law is to ensure that students are taught in a safe environment, by qualified and trustworthy professionals. If the district is faced with a difficult situation regarding educator misconduct, the district should seek assistance from its school attorney.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-esource/personnel/documents/reporting-employee-misconduct.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

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