

## 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). For more information, see the resources on the [TEA website](#). Additionally, TEA offers online Abuse and Misconduct Reporting Requirements [training](#) for school district staff.

This article focuses on reports of educator misconduct to SBEC and TEA required by the Texas Education Code, the board's role in reporting, and consequences for failure to report. In addition to the requirement to make reports of educator misconduct to SBEC and TEA, employees and volunteers *must* report child abuse to law enforcement or the Texas Department of Family and Protective Services (DFPS) if they have reasonable cause to believe that a child (meaning a person under 18 who is not legally emancipated) has been or will be subjected to abuse. Tex. Fam. Code § 261.101(b); 40 Tex. Admin. Code § 707.605.

If a professional, including a teacher or nurse, has reasonable cause to believe that a child under 18 has been subjected to abuse or neglect, the professional must report to law enforcement or DFPS **not later than 24 hours** after the person has reasonable cause to believe a child has been abused or neglected. Tex. Fam. Code § 261.101(b). For purposes of reporting to law enforcement, reports to a school district police department will not meet the statutory requirement. Tex. Fam. Code § 261.101(3-a).

Note that if the person believed to have committed the abuse or neglect is an individual responsible for the care, custody, or welfare of the child (including another school employee), the employee or volunteer *must make a report to DFPS* and *may* report to law enforcement as well. Tex. Fam. Code § 261.103(a), (c).

### Reported Criminal History

A superintendent must report to SBEC if an educator has a reported criminal history other than information contained in the Texas Department of Public Safety's (DPS) Fingerprint-based Applicant Clearinghouse of Texas (FACT) database. Tex. Educ. Code §§ 5.001(5); 22A.051(a)(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 or 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.

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 § 22A.051(b)(1). The legal reporting requirement does not state that the educator must be currently employed by the superintendent's district.

### **Reporting Certified Educators' Misconduct**

A superintendent must make a report to SBEC if the superintendent becomes aware of any evidence that the educator engaged in one of the following acts of misconduct:

- Abuse or commission of an unlawful act with a student or minor, including by engaging in conduct that involves physical mistreatment or constitutes a threat of violence to a student or minor and that is not justified under Chapter 9, Penal Code, regardless of whether the conduct resulted in bodily injury;
- Involvement in, or solicitation of, a romantic relationship with, or solicitation of, or engaging in sexual contact with a student or minor;
- Engaging in inappropriate communication with a student or minor; or
- Failing to maintain appropriate boundaries with a student or minor.

Tex. Educ. Code § 22A.051(a)(2)(A)-(D).

A superintendent is required to submit a report to SBEC within 48 hours of when superintendent becomes aware of evidence that an educator engaged in reportable conduct. Tex. Educ. Code § 22A.051(d)(2). The statute does not elaborate on what constitutes becoming aware of evidence, but the safest course of action is to report if there is any evidence of misconduct.

### **Reporting Certified Educators' Misconduct after Termination or Resignation**

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

- Abuse or commission of an unlawful act with a student or minor, including by engaging in conduct that involves physical mistreatment or constitutes a threat of violence to a student or minor and that is not justified under Chapter 9, Penal Code, regardless of whether the conduct resulted in bodily injury;
- Involvement in, or solicitation of, a romantic relationship with, or solicitation of, or engaging in sexual contact with a student or minor;
- Engaging in inappropriate communication with a student or minor;
- Failing to maintain appropriate boundaries 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 § 22A.051(a)(2).

A superintendent is required to submit a report to SBEC not later than the seventh business day after the date the superintendent knew about an educator’s termination or resignation following an alleged incident of misconduct. Tex. Educ. Code § 22A.051(d)(1).

A superintendent is also required to report an educator to SBEC if he or she engaged in conduct that violated statutory assessment instrument security procedures, regardless of termination or resignation. Tex. Educ. Code § 22A.051(a)(5). The deadline for when such a report must be made not later than the seventh business day after the date of educator’s termination or resignation following such misconduct. Tex. Educ. Code § 22A.051(d)(1).

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 § 22A.051(a)(2)-(3). 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 § 22A.051(a)(2)(A)-(D). 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 § 22A.051(a)(2)(A)-(D).

Remember, if inappropriate conduct with a student or minor is indicated during an investigation, the superintendent may have a duty to make a report to DFPS. Tex. Fam. Code §§ 261.101, .103. 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. A report must be made even if the superintendent 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. The prior exception to reporting is no longer in statute. See former Texas Education Code section 21.006(c-2), repealed by Senate Bill 571 in 2025.

### **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).

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 or Service Provider's Misconduct**

Similar to the reporting requirements in place for certified educators, a superintendent must report the misconduct of a non-certified employee or a service provider. For non-certified employees, a superintendent must report to TEA if the superintendent becomes aware of evidence that the employee or service provider, that will have direct contact with students, engaged in one of the following acts of misconduct:

- Abuse or commission of an unlawful act with a student or minor, including by engaging in conduct that involves physical mistreatment or constitutes a threat of violence to a student or minor and that is not justified under Chapter 9, Penal Code, regardless of whether the conduct resulted in bodily injury;
- Involvement in, or solicitation of, a romantic relationship with, or solicitation of, or engaging in sexual contact with a student or minor;

- Engaging in inappropriate communication with a student or minor; or
- Failing to maintain appropriate boundaries with a student or minor.

Tex. Educ. Code § 22A.052(a)-(b).

In addition, a superintendent must report to TEA if a superintendent obtains criminal history record information related to an employee or service provider engaging in the above misconduct. Tex. Educ. Code § 22A.052(b)(2).

The statute defines a *service provider* as a person who provides services to an educational entity, including:

- A contractor or subcontractor for an educational entity;
- A provider of tutoring services for an educational entity;
- An entity that has entered into a contract to operate a school district campus;
- A staffing provider for an educational entity; and
- A person employed by or under the control of a person described above.

Tex. Educ. Code § 22A.001(8).

A superintendent must submit a report to the commissioner not later than 48 hours after the superintendent becomes aware of evidence that an educator engaged in reportable conduct described above. Tex. Educ. Code § 22A.052(e)(3). As mentioned above, the statute does not elaborate on what constitutes becoming aware of evidence, but the safest course of action is to report if there is any evidence of misconduct. A superintendent must also file a report not later than 48 hours after the superintendent knew about the termination of or resignation from employment or cessation of services of a noncertified employee or service provider following an alleged incident of misconduct. Tex. Educ. Code § 22A.052(e)(2). This report must be in writing, in a form prescribed by the commissioner, and filed through the internet portal developed and maintained by TEA. Tex. Educ. Code § 22A.052(f).

A superintendent has a duty to complete an investigation of an employee or service provider that involves evidence that the person may have engaged in misconduct described above, despite the employee's termination or resignation from employment, or cessation of services, before completion of the investigation. Tex. Educ. Code § 22A.052(c). 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 DFPS. Tex. Fam. Code § 261.101; .103.

### **Contents of Report**

Reports must be in writing, in a form prescribed by SBEC, and filed through the internet portal developed and maintained by TEA. Tex. Educ. Code §§ 22A.051(e)(3); .052(f)(3).

A superintendent shall notify the board of trustees and the employee of the filing of a written report with TEA. Tex. Educ. Code §§ 22A.051(f); .052(g).

Information about reports can be obtained from TEA. TEA, [Disciplinary Actions Taken against Texas](#)

[Educators](#) (2025). 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 not later than 48 hours after the principal becomes aware of evidence of misconduct described above, and not later than the seventh business day after employee's termination or resignation followed an alleged incident of such misconduct. Tex. Educ. Code §§ 22A.051(c)(2); .052(d). 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 § 22A.051(c)(1)(B).

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 §§ 22A.051(g); .052(h). 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 §§ 22A.051(g), (k), (l); .052(i),(k).

In addition to sanctions against their 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 § 22A.051(k).

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 § 22A.051(l); .052(k); Tex. Penal Code § 12.35(a).

In 2025, the Texas Legislature added a waiver of governmental immunity in Chapter 118 of the Civil Practice and Remedies Code. Under Chapter 118, a public school district found grossly negligent in hiring, supervising, or employing a professional school employee who commits sexual abuse against a student, or fails to report abuse or neglect, may be liable for damages up to \$500,000 for each claimant plus attorney fees and court costs.

### **Confidentiality Concerns**

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, SPPO 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 to SBEC or TEA. Anyone with reason to believe a child has suffered abuse or neglected has an obligation to report to DFPS under the Texas Family Code. With respect to reporting educator misconduct, the board's role is to supervise the superintendent. The superintendent is required to inform the board if a report is made. Tex. Educ. Code §§ 22A.051(f); .052(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 employee or service provider of the district is alleged to have abused or otherwise engaged in unlawful misconduct, including romantic and sexual relationships. Tex. Educ. Code § 22A.053. 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.

In Texas, school board members are required to get training every two years in identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children. Newly elected trustees must receive this training in their first 120 days in office. Tex. Educ. Code § 11.159(c)(2).

## 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 include: 1) persons not eligible for hire as an employee or service provider, 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 § 22.151. Districts have access to the registry of persons not eligible for employment through the TEAL (Texas Education Agency Login) application process. Tex. Educ. Code § 22A.155. There is 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 provided for educational purposes and contains information to facilitate a general understanding of the law. References to judicial or other official proceedings are intended to be a fair and impartial account of public records, which may contain allegations that are not true. This publication is not an exhaustive treatment of the law, nor is it intended to substitute for the advice of an attorney. Consult your own attorney to apply these legal principles to specific fact situations.*

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