



Frequently Asked Questions About Required Pre-Employment Affidavits

Published online in [TASB School Law eSource](#)

Texas Education Code section 21.009 requires applicants for certain positions to complete a pre-employment affidavit indicating whether the applicant has ever been charged with or adjudicated for having an inappropriate relationship with a minor.

The commissioner approved related forms for school district use to meet the requirements of Texas Education Code section 21.009. The downloadable forms are available on the [TASB School Law eSource](#).

- [Sample Pre-Employment Affidavit for Applicant \(No Notarization\)](#)
- [Sample Pre-Employment Affidavit for Applicant \(Notarization\)](#)
- [Sample Pre-Employment Affidavit for Applicant \(Online Notarization\)](#)

Which applicants are covered? The requirement covers “an applicant” for a position described in Texas Education Code section 21.003(a) and (b), which includes a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, school counselor, audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, licensed professional counselor, marriage and family therapist, social worker, and speech language pathologist.

Are substitute teachers covered? No. The covered applicants are applicants for a position described in Texas Education Code section 21.003(a) and (b), described above. Because a substitute is not applying for employment in a covered position, an affidavit is not required.

Which employers are covered? The requirement applies to applicants for positions at a school district, district of innovation, open-enrollment charter school, ESC, or shared services arrangement.

What is required for the affidavit? The statute requires the affidavit to be a form adopted by TEA. If disclosing an inappropriate relationship via the affidavit, the applicant must include the relevant facts pertaining to the charge, adjudication, or conviction, and whether or not the charge was determined to be true or false.

What consequences can flow from a disclosure on an affidavit? A disclosed charge does not preclude employment if the employer can determine that the charge was false based on the information in the affidavit. A failure to disclose information required on the affidavit is grounds for termination. SBEC may revoke an administrator's certificate if it is reasonable to believe that the administrator employed an applicant in a relevant position and was aware that the applicant had been adjudicated for or convicted of an inappropriate relationship with a minor.

What constitutes being *charged with an inappropriate relationship* for purposes of the affidavit? The terms are not defined further in the new statute, but the sample affidavits provide the following definitions:

Adjudication and **conviction** refer to a conviction, plea of guilty or no contest (*nolo contendere*), probation, suspension, or deferred adjudication.

Charge refers to a formal criminal charge as documented by a primary charging instrument (a complaint, information, or indictment) under the Texas Code of Criminal Procedure.

Inappropriate relationship refers to the crime of improper relationship between educator and student in Texas Penal Code section 21.12, and any other inappropriate relationship as determined by the State Board for Educator Certification.

Why are multiple affidavits available on the TASB School Law eSource Website? The commissioner approved two sample forms to comply with Texas Education Code section 21.009—one that requires notarization and one that does not. A district decides which form to use.

The *Pre-Employment Affidavit for Applicant (No Notarization)* is an unsworn declaration that can be verified by a handwritten or electronic signature in accordance with Texas Civil Practices and Remedies Code section 132.001. A notary public is not required to notarize this unsworn declaration.

The *Pre-Employment Affidavit for Applicant (Notarization)* includes a notary block for signature by a notary public and the *Pre-Employment Affidavit for Applicant (Online Notarization)* may be used with an online notary public. An online notary must be commissioned and authorized in accordance with Texas Government Code, subchapter C, chapter 406. The Texas Secretary of State offers information related to online notarization at [Online Notary Public Educational Information](#).

Why would a district use a form notarized by a notary public rather than a form with an unsworn declaration? A district may opt to require a notarized form to ensure an applicant's honest response to inquiries. However, TEA has indicated that notarizing the affidavits of applicants offered employment is a local choice. TEA interprets Texas Education Code section 21.009 to permit districts to use the declaration completed at the time the application is

submitted without signing an additional document before a notary. TEA, [Guidance on Educator Certification and Preparation](#), p.8, Question 6 (May 12, 2020). The declaration complies with the statutory requirements because Texas Civil Practices and Remedies Code section 132.001 authorizes the use of an unsworn declaration in lieu of an affidavit.

Is the form required for every applicant? The statute says “an applicant” for a listed position must complete the affidavit. The Agency has interpreted that to mean all applicants for those positions must include the *Pre-Employment Affidavit for Applicant (No Notarization)* among the documents necessary to complete an application, whether by paper or online.

As described above, the available *Pre-Employment Affidavit for Applicant (No Notarization)* allows all applicants to verify the information through an electronic signature. If a district decides to require the final hire to complete a notarized affidavit, the district can offer the applicant an affidavit requiring notarization, described above.

Can we rekey the forms into our application if we are unable to upload the sample documents posted online? The statute specifically requires applicants for covered positions to complete a form adopted by the Agency. If the district has the capability to reproduce exact copies of the affidavit, the district will comply with Texas Education Code section 21.009. Please note that the forms approved by the Texas Commissioner of Education are authenticated by either written or electronic signature or a notarized affidavit.

If we opt to a notarized form and an online notary notarizes the affidavit, must we use the form for online notarization? Yes, the notarial certificate used by an online notary public must include a notation that the notarization is an online notarization. Tex. Gov’t Code § 406.110(d). A district should also note that a remote or online notarization is different from an electronic notarization.

As always, if you have questions about this or other topics, we will do our best to assist you at TASB. You can reach TASB Legal Services at 800-580-5345 or legal@tasb.org. You can reach TASB HR Services at 800-580-7782.

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.

Updated May 19, 2020