

The Do Not Hire Registry and Reporting Requirements



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Investigations of certified educators have steadily risen over the years, with 1,626 such investigations taking place during the 2023 fiscal year, according to the Texas Education Agency (“TEA”). Over half of those investigations involved allegations of sexual misconduct, violence, sexual harassment, or an inappropriate relationship with a student or minor. As many are aware, the 86th Legislative Session in 2019 resulted in three bills that

were passed to further protect the safety and welfare of Texas students.

First, new legislation mandated that public schools report certain allegations against non-certified employees. The TEA was given the authority to both investigate non-certified employees and to develop a registry of individuals who are not eligible for rehire. Subject to a non-certified employee’s inclusion on the registry, the law requires schools to terminate or refuse to hire that employee. So, authority to investigate lies with both the TEA and the State Board for Educator Certification (“SBEC”). Both entities may place certified

educators and non-certified school employees on the “Do Not Hire” Registry. The latter may further revoke the certificate of SBEC certified educators.

The next bill passed determined that reporting was not required if a public school “determines the educator did not engage in the alleged incident of misconduct.” This bill applies specifically to certificate holders for allegations of abuse and inappropriate relationships. And the bill will certainly help to alleviate some angst amongst educators who welcome some insulation against losing their certifications to mere allegations.

Finally, a separate bill was directed toward private schools and mandated that they report certain allegations against educators. These allegations include a finding of evidence that a terminated private school educator abused or otherwise committed any unlawful act 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.

The process of reporting for public schools may be found in the Texas Education Code § 21.006 and Texas Administrative Code § 249.14. If a certified educator or non-certified employee abused or committed an unlawful act 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, then the principal must report to the superintendent within seven

business days of learning that an individual was terminated or resigned based on such findings. The superintendent must then report the same to the TEA within seven business days. The school must complete an investigation, despite the employee's resignation. However, for certified educators, there is no duty to report if the outcome of the school's investigation determines that the educator did not commit the alleged misconduct. This exception is carved out in Texas Education Code § 21.006(b), (c), and (c-2). For private school educators, the same misconduct must be reported to SBEC within seven business days. While an investigation is not required, evidence must still be submitted.

Perhaps the most interesting outcome from the original legislation is the "Do Not Hire" Registry. By definition, this is simply a list of individuals who are not eligible for employment in a Texas public school based on misconduct (or criminal history, which is not included in the scope of this article). The Registry is available not only to administrators but also to members of the public. Authority for this registry may be found in the Texas Education Code § 22.092. Educators and non-certified employees who were found to have committed the misconduct described in this article may be placed on the Registry. In addition, the Registry will list non-certified individuals who are under investigation for allegations of abuse or involvement in an inappropriate relationship with a student or minor. To obtain information about the certificate status and disciplinary action against an SBEC certificate holder, one must search the Official Record of Educator Certificate. Ignoring the Registry may result in sanction by SBEC against an educator's certificate or revocation of the school charter among other penalties, including an administrative penalty of not less than \$500 and not more than \$10,000. The failure to report, however, may result in not only sanction by SBEC, but also could result in a state jail felony for the principal or superintendent if there was

an intent to conceal the information.

Misconduct should be reported using the TEA Misconduct Reporting Portal on the TEA website. The report should include the name, identifiers, and employment status of the person being reported; contact information for victims/witnesses; and the law enforcement or other agencies involved along with their contact information.

There are some common behavioral themes for the most investigated form of misconduct: improper communication or solicitation of a romantic relationship with a student. Misconduct may involve inappropriate comments about a student's body or appearance, a request for photographs of the student, or asking about the student's sexual history or preferences. Misconduct may also involve inappropriate hugging or touching or even just staring. Contacting students via social media and attempting to hide such non-school-sanctioned communications are certainly telltale signs as well. Observing, documenting, and reporting these behaviors are instrumental in ensuring the efficacy of the registry.

The bite behind the bark of this relatively new reporting landscape for misconduct is arguably made much more substantial due to the possible outcomes available, including of the criminal variety. And thankfully so. Protecting our students should be paramount. SBEC may place a warning on the educator's certificate, deny certification outright, or it could reprimand, suspend, or revoke the certificate. SBEC even has the authority to impose any additional restrictions or conditions as needed, in what is a more catchall provision. The law mandates what should be effective tools for limiting bad actors from our pool of educators and employees. Further questions about reporting and the function of the "Do Not Hire" Registry should be directed toward your school law attorney.



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