



517 SOLEDAD STREET
SAN ANTONIO, TEXAS 78205-1508
TELEPHONE: (210) 538-5385 FAX: (210) 538-5384
WWW.SLH-LAW.COM & WWW.K12LAW.COM

ATTORNEYS AND COUNSELORS FOR TEXAS PUBLIC SCHOOLS AND LOCAL GOVERNMENT

SENATE BILL 7: IMPROPER RELATIONSHIPS BETWEEN EDUCATORS AND STUDENTS AND REPORTING EDUCATOR MISCONDUCT

As part of the 2017 Legislative Session, the Legislature passed Senate Bill 7 and updated legal requirements relating to improper relationships between educators and students and the manner in which public schools must investigate and report educator misconduct. Senate Bill 7 was signed by the Governor on May 26, 2017, and takes effect on September 1, 2017.

This document reviews updated legal requirements under Senate Bill 7, including the statutory obligation for the charter school superintendents and principals to file a written report of specific categories of educator misconduct to the State Board for Educator Certification (“SBEC”) and to conduct appropriate investigations of potential educator misconduct.

A. Duty to Report Educator Misconduct

i. What to Report

Senate Bill 7, in part, amends Education Code § 21.006, which sets requirements for reporting educator misconduct. The duty to report educator misconduct applies to charter school superintendents, along with principals in certain instances. The duty to report applies to the following misconduct:¹

1. An educator employed by or seeking employment with a charter school has a criminal record and the charter school obtained information about the educator’s criminal record by a means other than the DPS criminal history clearinghouse;
2. An educator’s employment at the charter school was terminated and there is evidence that the educator:
 - a. Abused or otherwise committed an unlawful act with a student or minor;
 - b. Was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor;
 - c. Possessed, transferred, sold, or distributed a controlled substance;
 - d. Illegally transferred, appropriated, or expended funds or other property of the charter school;
 - e. Attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; or
 - f. Committed a criminal offense or any part of a criminal offense on school property or at a school-sponsored event;

¹ Tex. Educ. Code § 21.006(b).

3. The educator resigned and there is evidence that the educator engaged in misconduct described in Items 2-a through 2-f above; or
4. The educator engaged in conduct that violated assessment security procedures set by Education Code § 39.0301.

ii. When to Report

Principals must notify the superintendent not later than seven business days after:²

1. An educator is terminated or resigns following an alleged incident of misconduct discussed in Items 2-a through 2-f in Section A-i above; or
2. Learning of an educator's criminal record by means other than the DPS clearinghouse.

The *superintendent* must notify the SBEC not later than seven business days after:³

1. Receiving a report from a principal of educator misconduct or an educator's criminal record;
2. Knowing of an educator's termination or resignation following an alleged incident of misconduct discussed in Items 2-a through 2-f in Section A-i above; or
3. Knowing of an employee's criminal record by means other than the DPS clearinghouse.

The superintendent also has a professional obligation to ensure that any resignation, termination, or investigation involving misconduct is promptly communicated to the superintendent so that it may be properly reported to the SBEC.

New: Senate Bill 7 has increased the superintendent's duty to report to include situations where a principal reports misconduct or an educator's criminal record. Prior to the enactment of Senate Bill 7, there was no legal duty under Education Code § 21.006 for principals to make a report to the Superintendent.

iii. Contents of Report

A report by the superintendent to the SBEC must include:⁴

1. The name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator. The student's name *is not* public information under the Public Information Act.⁵ Additionally, the written report to SBEC *is not* a student educational record under FERPA.⁶
2. A summary of the factual circumstances requiring the report.
3. The following information concerning the reported educator:
 - a. Name and any aliases;
 - b. Certificate number, if any, or social security number;
 - c. Last known mailing address and home and daytime phone numbers;
 - d. All available contact information for any alleged victim or victims;
 - e. Name or names and any available contact information of relevant witnesses to the circumstances requiring the report.

² Tex. Educ. Code § 26.001(b-1).

³ Tex. Educ. Code § 26.001(c).

⁴ 19 Tex. Admin. Code § 249.14(e).

⁵ Tex. Educ. Code § 21.006(h).

⁶ 19 Tex. Admin. Code § 249.14(e).

Reports should be directed to the attention of the Director of Educator Investigations via fax (512-936-8404) or mail (1701 N. Congress Ave., 5th Floor, Austin, Texas 78701).

iv. Failure to Report

If the superintendent or a principal fails to timely file a report, he or she is subject to sanctions. These may include an administrative penalty of not less than \$500 and not more than \$10,000. Additionally, the SBEC may not renew the certification of an educator against whom an administrative penalty is imposed until the penalty is paid.⁷

If the superintendent or a principal fails to make a required report with intent to conceal an educator's criminal record or alleged incident of misconduct, he or she is also subject to criminal proceedings, and the failure to report is a state jail felony!⁸

v. Immunity for Good Faith Reports

The superintendent and principals are immune from civil or criminal liability for filing a report of educator misconduct if the report to the SBEC is made in good faith and while the reporter is acting in an official capacity, or if the superintendent or principal communicates with another superintendent, director, or principal concerning an educator's criminal record or alleged incident of misconduct.⁹

Because the Education Code provides immunity for good faith reports, if you have any doubt, the most prudent course of action is to report the allegations to the SBEC.

NEW: Senate Bill 7 now provides immunity to superintendents, directors, and principals of charter schools who, in good faith, "communicate with another superintendent, director, or principal concerning an educator's criminal record or alleged incident of misconduct." This is intended to *STOP* the "pass the trash" mentality in some schools that allows perpetrators to go from school to school under the radar.

vi. Duty to Investigate Educator Misconduct

The superintendent must complete an investigation of an educator that involves evidence that the educator may have abused or otherwise 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. An investigation into the misconduct must be completed, even if the educator resigns from employment before completion of the investigation.¹⁰ If the educator is arrested and law enforcement requests that the charter school cease its investigation and the superintendent is unable to complete the school's investigation, the superintendent is still required to timely report to SBEC and inform SBEC that the investigation was interrupted at the request of law enforcement.

B. NEW: Notice to Parents or Guardians

Senate Bill 7 added a requirement for charter schools to adopt a policy under which notice is provided to the parent or guardian of a student with whom an educator is alleged to have engaged in misconduct. Specifically, a report must be made if an educator is alleged to have abused or otherwise committed an unlawful act with a student or minor, or was involved in a romantic relationship with or

⁷ Tex. Educ. Code § 21.006(i).

⁸ Tex. Educ. Code § 21.006(j).

⁹ Tex. Educ. Code § 21.006(e).

¹⁰ Tex. Educ. Code § 21.006(b-1).

solicited or engaged in sexual contact with a student or minor. The notice must inform the parent or guardian:

1. That the alleged misconduct occurred;
2. Whether the educator was terminated following an investigation of the alleged misconduct or resigned before completion of the investigation; and
3. Whether a report was submitted to the SBEC.

The notice must be provided “as soon as feasible” after the school becomes aware that alleged misconduct may have occurred.¹¹

C. NEW: Pre-Employment Affidavit

Senate Bill 7 also requires certain applicants for employment with a charter school to submit a pre-employment affidavit disclosing a charge, adjudication, or conviction based on an inappropriate relationship with a minor¹².

The pre-employment affidavit must be completed by applicants for positions of 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.

An applicant who discloses an inappropriate relationship through the affidavit must include the relevant facts pertaining to the charge, adjudication, or conviction, and whether the charge was determined to be true or false.

An applicant is not precluded from being employed based on a disclosed charge if the charter school determines, based on the information disclosed in the affidavit, that the charge was false.

Failure to disclose information required on the affidavit is grounds for termination. Additionally, the SBEC may revoke the certificate of an administrator if the SBEC determines it is reasonable to believe that the administrator employed an applicant in a covered position despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor.¹³

D. NEW: Revocation for Assisting with Obtaining Employment

Senate Bill 7 also allows the SBEC to suspend or revoke the certificate, impose other sanctions, or refuse to issue a certificate to a person who helps another person get a job in a school district or charter school and the person knew that the other person had violated the law by engaging in sexual misconduct with a student or a minor.¹⁴ Fortunately, the routine transmission of administrative files will not lead to sanctions by the SBEC.

¹¹ Tex. Educ. Code § 21.0061.

¹² The Texas Education Agency is required to develop a required form for the pre-employment affidavit; the affidavit should be published prior to September 1, 2017.

¹³ Tex. Educ. Code § 21.009.

¹⁴ Tex. Educ. Code § 21.0581.

E. NEW: Electronic Communications Policy

Senate Bill 7 also requires charter schools to adopt a written policy regarding electronic communications between students and school employees. The term “electronic communication” includes any communication facilitated by the use of an electronic device, such as a telephone, computer network, personal data assistant, or pager. The term also includes e-mails, text messages, instant messages, and communications made through Internet websites such as social media or social networking sites.

The policy must include provisions designed to prevent improper electronic communications between school employees and students, and must allow a school employee to elect not to disclose his or her personal telephone number or e-mail address to students. Finally, the policy must also discuss how an employee should notify appropriate administrators when a student engages in improper communications with the employee.¹⁵

F. NEW: Improper Relationship between Educator and Student

Senate Bill 7 also amends a portion of the Texas Penal Code that creates criminal penalties for improper relationships between educators and students. In addition to a blanket prohibition of sexual contact, sexual intercourse, or deviate sexual intercourse between any employee of a public or private school and a student enrolled in the school at which the employee works, Senate Bill 7 also creates a criminal offense for certain school employees who engage in sexual relationships with a student enrolled in *any public or private school*, and not just the school at which the employee works.

The positions covered by the Senate Bill 7 updates are 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. The prohibition against sexual relations between these employees and a student enrolled in any public or private school also applies *if the employee does not hold a certificate, permit, license, or credential* for the position.¹⁶

¹⁵ Tex. Educ. Code § 38.027.

¹⁶ Tex. Penal Code § 21.12(a).