



Texas Association of School Boards

Legal Services

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Serving Texas Schools Since 1949

Guidelines for Responding to Allegations of Employee Misconduct

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NOTE: These guidelines are intended to assist school officials in addressing allegations that an employee 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 misconduct with a student or minor. These guidelines are not intended to address other allegations of abuse or neglect where the alleged perpetrator is not a school employee. TASB Legal Services collaborated with representatives of multiple agencies with experience in addressing these issues in order to create these guidelines. We recommend that you use this document as a blueprint for developing your own local plan, recognizing that each situation is unique and may require a different approach. Please work with your local school district attorney in establishing your own plan.

Where to Begin: Consider Your Stakeholders

1. Identify local entities with relevant roles and duties

When an allegation or suspicion arises about possible inappropriate contact between a student and school employee, the school district's actions must be responsive to a host of key stakeholders, all of whom have important rights or responsibilities at stake in the process.

Essential stakeholders include:

- The alleged student-victim, whose safety must be protected, even if the young person does not perceive the relationship to have been improper or abusive.
- The student's parents, who have the right to be informed about all matters affecting their child.
- The alleged employee-perpetrator, who has constitutional protections associated with criminal prosecution and public employment, including the presumption of innocence.
- Law enforcement, including the local police and school district police as applicable, whose duties are to investigate alleged criminal action and possibly to arrest the alleged employee-perpetrator.

- Local prosecutors (county and district attorneys), who may charge the employee with a crime, negotiate a plea bargain, or attempt to prove the employee's guilt in court.
- Department of Family and Protective Services (DFPS), which is statutorily mandated to investigate allegations of child abuse or neglect committed by individuals responsible for the care, custody, and welfare of a child.
- The TEA Division of Educator Investigations, whose duty is to investigate employee misconduct and take appropriate action regarding the employee's certificate.
- The school district itself, which is both the employer of the accused and responsible for the well-being of students in the district.

When creating a plan for responding to allegations or suspicions of employee misconduct, school district officials should consider all of these varied interests and create a procedure tailored to the needs of the community. Ideally, your plan will address the concerns raised here and add additional local detail, such as the names and contact information for key individuals at each stage of the process. Every situation is different; your plan should not lock the district into an inflexible approach. Nonetheless, certain issues are likely to arise every time there is an allegation of employee misconduct involving a student. Identifying the issues and stakeholders in advance will help your district respond effectively.

Create a plan to address stakeholder concerns and facilitate communication.

Why is it important to have a plan? Because having a plan in place will allow the district to address the significant concerns of all stakeholders without compromising the effectiveness of the various investigations that may take place as a result of the alleged misconduct. Multiple agencies may seek to question the alleged victim and perpetrator pursuant to their statutory duties and responsibilities to investigate the allegations of misconduct. As such, it is important to understand that multiple, overlapping inquiries and interviews can actually undermine the effectiveness of a criminal or child abuse investigation. When witnesses are interviewed multiple times, their stories may begin to vary or change. Contradictory testimony makes prosecution more difficult. Moreover, requiring a victim to tell his or her story multiple times is likely to further traumatize the victim.

In order to reduce the risks associated with overlapping investigations of child abuse, including multiple interviews of the child, Texas has over 70 children's advocacy centers (CAC) throughout the state serving nearly 210 counties. CACs employ specially trained forensic interviewers who provide forensic interviews for child victims at the request of law enforcement, DFPS, or prosecution in a neutral, child-friendly facility. These forensic interviews are conducted in a non-leading, age-appropriate manner and are video recorded for use by law enforcement, DFPS, and prosecution in the investigation of child abuse, including employee misconduct.

While there are strict statutory protections around the viewing and release of these forensic interview recordings, if a case involves a certified educator, SBEC may also be able to utilize the recorded forensic interview in its investigation, as well as some local school district police departments that officially partner with their local CAC via a memorandum of understanding.

In addition to forensic interviews and joint investigation coordination, local CACs provide other critical recovery and healing services to child victims including trauma-focused therapy, medical evaluations, and family advocacy and victim support. CACs are also a valuable source of training for school staff on recognizing and reporting abuse in schools as well as identifying and reporting suspected abuse and neglect in a child's home. Finally, even in areas of the state without a CAC, it is important for school officials to avoid interfering with criminal and DFPS investigations, including showing restraint in questioning students and employees concerning allegations or concerns about employee misconduct when there is also a pending criminal and/or DFPS investigation.

We understand that school officials may find it hard to refer a matter to law enforcement and DFPS and to trust those investigators to be swift, discrete, and accurate in their response and investigation. School administrators may personally know the student and employee and may be influenced by that personal relationship. Often administrators and other employees are hesitant to make a report because the report may cause disruption for the accused employee at school and at home, even if the allegations are ultimately determined to not have merit. Administrators may fear blame and even legal liability for reporting a colleague; they may also fear the community's response when an accusation is revealed.

Despite these possible barriers, the law is clear that school personnel must report suspected misconduct. Tex. Fam. Code § 261. 101(b). A good-faith report of child abuse or neglect is confidential and immune from civil or criminal liability. Tex. Fam. Code § 261.106. Failure to report suspected abuse or neglect is a crime. Tex. Fam. Code § 261.109. The goal of these guidelines is to offer step-by-step guidance to reduce the anxiety around reporting while also protecting the validity of criminal and DFPS investigations. Our ultimate goal is to make schools safer for students by increasing the successful prosecution of perpetrators.

Before an Incident or Allegation

2. Prepare before a situation arises:

Establish relevant policies and administrative guidelines.

All school board policies and administrative guidance should reflect current law and best practices. TASB Policy Service has related policies at the following codes, as well as the model student and employee handbooks.

Employment Policies	Student Policies	Community and Governmental Relations Policies
<ul style="list-style-type: none"> • CJ – Contracted Services • DC – Employment Practices • DH – Employee Standards of Conduct • DHB – Reports to SBEC 	<ul style="list-style-type: none"> • FFF – Student Safety • FFG – Child Abuse and Neglect • FFH – Freedom from Discrimination, Harassment, and Retaliation 	<ul style="list-style-type: none"> • GRA – State and Local Governmental Authorities • GRAA – Law Enforcement Agencies

The prevalence of electronic media—smart phones, social media, email and text messaging—has led to an unprecedented risk of inappropriate communications between school district staff and students. Therefore, addressing electronic communications with students in your district’s policies is a crucial step to preventing misconduct.

Electronic communications policy: State law requires a school district to adopt a written policy concerning electronic communications between school employees and students enrolled in the district. The law defines electronic communications to include any communications facilitated by the use of any electronic device, such as a telephone, computer, computer network, personal data assistant, or pager. Such communications include emails, text messages, instant messages, and messages through websites. 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 to students a personal telephone number or email address. The policy must also include information about how an employee should notify appropriate local administrators when a student engages in improper communications with the school employee. Tex. Educ. Code § 38.027.

TASB Model Policy DH(LOCAL) and the TASB Model Employee Handbook address employee use of electronic communications with students. The TASB Model Student Handbook also includes a section that parallels the restrictions and processes described in the TASB Model Employee Handbook.

Have a pre-employment screening process.

Under state law, any applicant for certain positions at a school district (including a district of innovation, open-enrollment charter school, education service center, or shared services arrangement) is required to submit a pre-employment affidavit disclosing any charges, adjudications, or convictions based on inappropriate relationships with minors. This requirement applies to: teachers, teacher interns or teacher trainees, librarians, educational aides, administrators, educational diagnosticians, school counselors, audiologists, occupational therapists, physical therapists, physicians, nurses, school psychologists, licensed professional counselors, marriage and family therapists, social workers, and speech language pathologists. Tex. Educ. Code §§ 21.003, .009. Downloadable forms, approved by TEA for this purpose, are available on the TASB Legal Services eSource Website.

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. A disclosed charge does not preclude employment if the employer can determine that the charge was false based on the information in the affidavit. Failure to disclose required information in the affidavit is grounds for termination. In addition, SBEC may revoke an administrator's certificate if it is reasonable to believe that the administrator was aware that an applicant had been adjudicated for or convicted of an inappropriate relationship with a minor and employed the applicant in a relevant position. Tex. Educ. Code § 21.009.

For more information about the pre-employment affidavits, see TASB Legal Services' [*Frequently Asked Questions About Required Pre-Employment Affidavits.*](#)

Hiring practices are even more important when official documentation of a potential employee's past misconduct is not readily available. For example, depending on when and where an applicant last worked, a prior employer may not have been required to report an allegation to the TEA Division of Educator Investigations. There is no substitute for calling an applicant's previous employers and asking the right questions. Human resources personnel should be trained to conduct thorough, routine background checks and to identify any red flags.

Provide training to all employees, key administrators, and counselors.

By law, all school district employees must receive training on sexual abuse, sex trafficking, and other maltreatment of children, with new employees being trained annually. Tex. Educ. Code § 38.0041; 19 Tex. Admin. Code § 61.1051(c)-(d); TASB Policy DMA(LEGAL). Training for all employees should include identifying and reporting potential sexual harassment under Title IX of the Education Amendments

of 1972, the federal law that prohibits sexual harassment in education programs that receive federal funds. See 34 C.F.R. 106.30, .44 (requiring recipients to respond in a manner that is not deliberately indifferent upon actual knowledge of sexual harassment, defined as notice of sexual harassment or allegations of sexual harassment by any employee of a K-12 school). School board trustees must also complete training on identifying and reporting sexual abuse, human trafficking, and other maltreatment of children. Tex. Educ. Code § 11.159(c)(2). In addition to reports required by law, all school district employees should be trained to report concerns (including rumors, innuendo, observations, or other information) to an appropriate administrator. For more information on the requirement to provide training on reporting suspected child abuse and neglect, see [TEA's Child Abuse Prevention an Overview Website](#).

An administrator who is identified as a person to whom reports can be made should receive additional, specialized training. Typically, these administrators will include campus principals, superintendents, and Title IX coordinators. These individuals should be trained to support school staff in making required reports, but also to avoid conducting investigatory interviews before law enforcement or DFPS investigators have launched an official investigation. Finally, an employee (ideally a counselor) on each campus should be trained to talk with students, including potential witnesses or victims of abuse, without conducting an investigatory interview. These employees can receive training on how to have open-ended conversations that may indicate signs or symptoms of abuse, without the type of formal questioning that would take place in a law enforcement or DFPS investigation. They should also know how to respond in the event of an outcry or accusation. (See below regarding “addressing unclear information or allegations.”) Local police departments or CACs can provide school counselors or other appropriate staff with training on signs and symptoms of abuse.

Establish an MOU or other coordinated effort with local stakeholders.

School officials should facilitate conversation with local authorities and legal counsel to coordinate a response plan if possible. We hope you will use these guidelines as a starting place for discussion, adding local details as appropriate.

3. Understand when reports are necessary:

Be aware of the required reports to other agencies.

One of the most common legal questions in this area is how much information is enough to support a report to an outside authority, including law enforcement, DFPS, and SBEC.

As discussed below, school employees and volunteers *must* report child abuse if they have 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. Even if a student victim of an improper relationship is not a minor, there may be cause to report to DFPS if the employee also had contact with minors.

In contrast, if the district uncovers *any* evidence of abuse or improper relationship, employees must submit a report to the TEA Division of Educator Investigations when required, regardless of the age of the student. Tex. Educ. Code §§ 21.006, 22.093. Circumstances necessitating required reporting are outlined in more detail below.

These laws establish intentionally low standards for reporting. There is no legal penalty for over-reporting, but there are severe penalties for failing to report suspected abuse.

School employees and volunteers are unlikely to uncover direct evidence of abuse prior to an investigation. Instead, school employees and volunteers should pay attention to allegations of behavior outside the boundaries of normal employee-student interaction. For example, such behaviors might include after-hours texting about non-school related topics, seeing each other outside of school, reports of flirting or excessive physical contact, or other activities associated with an adult grooming a young person for an improper relationship.

What are examples of signs or evidence of potential abuse?

- Statements of witnesses (like a friend or coworker), victims, or perpetrators
- Allegations by a family member (like a student's parent or an alleged perpetrator's spouse)
- Rumors in the school or community
- Anonymous reports
- Text messages, notes, or other communications between the parties that are unusually frequent or personal in nature
- Photographs of a suggestive or sexual nature exchanged between the parties

While some of these signs and evidence may be more reliable than others, any of these items alone might constitute some evidence of potential abuse. In light of the need to avoid interfering with a criminal or DFPS investigation, school officials should not wait until they are convinced that misconduct has in fact occurred. Nor

should they attempt to question the parties and decide for themselves if abuse took place. Instead, school officials should report to law enforcement and DFPS whenever there is cause to believe abuse, neglect, or potential unlawful conduct has occurred that would benefit from an official investigation.

Required reports to law enforcement: By law, school principals *must* report to law enforcement if they have reasonable grounds to believe certain criminal activity has occurred on school property or at a school-related event. Texas Educ. Code § 37.015.

These offenses include:

- Continuous sexual abuse of a child. Tex. Penal Code § 21.02.
- Indecency with a child. Tex. Penal Code § 21.11.
- Sexual assault. Tex. Penal Code § 22.011.
- Aggravated sexual assault. Tex. Penal Code § 22.021.
- Sexual performance by a child. Tex. Penal Code § 43.25.
- Possession or promotion of child pornography. Tex. Penal Code § 43.26.

In addition, school officials may choose to report any suspected criminal activity. For example, an inappropriate relationship between a student and a school district employee could meet the Texas Penal Code definitions of improper relationship between an educator and student and/or online solicitation of a minor.

Improper relationship between educator and student: An employee commits a felony offense if he or she engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a student at the public or private elementary or secondary school where the employee works. An employee holding a position listed in Texas Education Code section 21.003, regardless of whether the employee holds the appropriate certificate, license, or permit for the position, commits a felony by engaging in such sexual conduct with an individual the employee knows is a student in any public or private elementary or secondary school or in any school-sponsored activity in which elementary or secondary students are the primary participants. Tex. Penal Code §§ 21.01, .12. The positions listed in Texas Education Code section 21.003 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 offense of improper relationship between an educator and a student applies regardless of the student's age.**

Online solicitation of a minor: Any employee at a public or private primary or secondary school may also commit a felony offense by intentionally communicating in a sexually explicit manner or distributing sexually explicit material over the internet, by email or text message or other electronic message service or system, or through a commercial online service, to the following students: (1) a person enrolled in the public or private school where the employee worked, regardless of the employee's knowledge that the person is a student; (2) a student enrolled at a public or private school, other than a school at which the employee works, if the employee knows that person is a student; or (3) a participant in a school-sponsored or district-sponsored educational activity in which primary and secondary school students are the primary participants, if the employee knows that the person is a student. **In the school context, the crime of online solicitation of a minor applies regardless of the student's age.** Tex. Penal Code §§ 21.12(a), 33.021.

Required reports to DFPS: If a school employee or volunteer has cause to believe that a child under 18 has been subjected to abuse or neglect, the employee or volunteer must report to law enforcement or DFPS. 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). (See "Responding to an Incident or Allegation—Immediate Action," below.)

The lengthy statutory definition of *abuse* includes mental or emotional injury, physical injury, sexual conduct, trafficking, and drug use that harms a child by a person responsible for the child's care. Tex. Fam. Code § 261.001(1); 40 Tex. Admin. Code §§ 707.453 (emotional abuse), .455 (physical abuse), .457 (sexual abuse), .459 (labor trafficking), .461 (sex trafficking). In addition, school district professionals must report when they have cause to believe that a child is a victim of the offense of indecency with a child. Tex. Penal Code § 21.11; Tex. Fam. Code § 261.101.

The definition of *neglect* includes placing a child in a situation requiring judgment beyond the child's capacity, failing to provide medical care, failing to provide for a child's basic needs, exposing a child to a substantial risk of abuse, placing a child in or failing to remove a child from a situation in which the child would be exposed to a substantial risk of harmful sexual conduct, and failing to arrange for the necessary care of a child in certain circumstances. Tex. Fam. Code § 261.001(4).

Report to TEA Division of Investigations: A superintendent must notify the TEA Division of Investigations in writing not later than the seventh business day after the date the superintendent knew about an employee's termination or resignation of employment if there is evidence that the employee sexually or physically 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. Tex. Educ. Code §§ 21.006; 22.093.

In addition, principals are required to notify the superintendent or director no later than seven business days after the date of an employee's termination or resignation following an alleged incident of misconduct described above. Tex. Educ. Code §§ 21.006(b-2), 22.093(f).

A superintendent shall notify the board and the employee educator of the filing of a written report with SBEC. 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).

Sanctions for failure to provide notice to SBEC: SBEC may impose sanctions against a superintendent or director who fails to file a report or a principal who fails to provide notice to a superintendent or director as required by law. Tex. Educ. Code § 21.006(f). These sanctions are set out in SBEC rules. 19 Tex. Admin. Code § 249.15.

In addition to sanctions against certification, superintendents, directors, and principals who fail to file reports may be subject to an administrative penalty of between \$500 and \$10,000. SBEC may not renew an educator's certificate until such penalty is paid. Tex. Educ. Code § 21.006(i). A failure to provide timely notice with an intent to conceal an educator's criminal record or alleged incident of misconduct could be considered a state jail felony. Tex. Educ. Code §§ 21.006(j), 22.093(k).

For more information about SBEC-required reporting, see TASB Legal Services' article [Reporting Employee Misconduct](#).

Have a process for addressing unclear information or allegations.

School officials are generally aware of their legal obligations to report; nevertheless, they may struggle with how to respond when no clear allegation is made or when information is presented that, on its face, does not require a report to law enforcement or DFPS. Examples could include rumors, innuendo, or the observation of behavior that raises a concern or question but is not itself illegal or abusive. Supervisors should be trained to discuss these concerns directly with employees and

to identify when a pattern of behavior may require further inquiry. When information is unclear or does not rise to the DFPS standard of cause to believe abuse or neglect have occurred, but involves a specific student, the best practice is often to send the student to meet with a counselor.

If a student is referred to a counselor due to a concern about information that could possibly indicate a relationship with a school employee, the referring administrator should document the fact of the referral. School administrators have a legal responsibility to pursue concerns about possible abuse in a way that is calculated to stop the abuse and avoid deliberate indifference toward the deprivation of a student's rights. If the referral does not uncover a concern that triggers a mandated report to law enforcement or DFPS, the school administrator should continue to monitor the situation; however, a report to law enforcement or DFPS is unnecessary if there is no cause to believe that abuse occurred or may occur. If, on the other hand, the counselor receives information that gives the counselor cause to believe that a student was or is being abused, the counselor should end the conversation with the student on the matter and should immediately make a report to law enforcement and DFPS.

The counselor referral process may be a useful preliminary step if a concern has been raised but evidence is unclear and, at the time, not reportable. The instant a school official has cause to believe abuse occurred, however, the clock for reporting starts ticking. A report to law enforcement and DFPS must be made immediately, but after no more than 48 hours. The school official may consult a school attorney as needed, but should not delay in reporting the suspected abuse to law enforcement and DFPS. **Remember, DFPS and law enforcement strongly discourage taking any action that would alert an alleged perpetrator before lawful authorities can commence an investigation due to the substantial risk that valuable evidence (such as text messages, emails, calendar entries, etc.) will be destroyed before the investigation begins.** See Tex. Fam. Code §§ 261.303, .406; 40 Tex. Admin. Code §§ 707.615, .619 (establishing standards for DFPS investigations in schools and prohibiting interference by school officials). Furthermore, in some cases of alleged sexual abuse, the first adult with whom a student shares detailed information may be called to act as an "outcry witness" in a subsequent criminal proceeding. See Tex. Code Crim. Proc. § 38.07 (making outcry witness testimony admissible in certain prosecutions involving sex crimes against a child). It is not typically in the best interests of a student victim, the school district, or efficient criminal prosecution for a district employee to act in the role of outcry witness in criminal litigation. As such, school counselors and other district personnel should act within the bounds of their training and report criminal concerns to the appropriate authorities immediately.

Responding to an Incident or Allegation—Immediate Action (No Later than the First 48 Hours)

Note that it is never too early to call the district’s attorney. Consider contacting the district’s in-house or external counsel, and/or a trained administrator, such as the Title IX coordinator, to guide campus employees through the first critical hours after an allegation.

4. Report to DFPS:

If you have cause to believe a child has been or may be abused or neglected, immediately report to DFPS for priority investigation.

A DFPS report is required when an individual has cause to believe that a child has been or may be abused or neglected or when the individual has cause to believe that the child is a victim of indecency with a child and has been abused by an adult with responsibility for the care, custody or welfare of the child, which includes a school employee or volunteer. **The DFPS report is required even if a report is also made to law enforcement.**

A professional school employee is an individual who is licensed or certified by the state who, in the normal course of duties for which the individual is licensed, has direct contact with students. This includes teachers and nurses. A professional having cause to believe a child has been or may be abused, neglected, or may have been a victim of indecency with a child must report to DFPS immediately, but in any event no later than 48 hours after the professional first began to suspect. Tex. Fam. Code § 261.101(a)-(b); TASB Policy FFG(LEGAL). The professional cannot delegate the duty of reporting to DFPS; each person with cause to believe must make his or her own report. Tex. Fam. Code § 261.101(b). When more than one district employee or volunteer has cause to report possible abuse or neglect to DFPS, best practice is for everyone call the DFPS hotline together. If this is not feasible, the individuals may agree to file a report online with each person’s name.

Reports may be made by phone, at 800.252.5400, or online at txabusehotline.org.

After a report is made, DFPS will assign an investigator and will categorize the matter as either a priority one or priority two. DFPS is required to respond immediately or within 24 hours to priority one reports (defined as reports involving an immediate risk of death or serious harm) and within 72 hours to priority two reports (all other reports). DFPS and law enforcement have mutual obligations to inform each other immediately about reports of abuse. Tex. Fam. Code § 261.105(a)-(b); 40 Tex. Admin. Code § 707.485.

Law enforcement and DFPS investigators may each prefer to arrive first to interview the alleged perpetrator. School districts should make the required reports and encourage local authorities to coordinate with each other. Ideally, either law enforcement or DFPS will refer the student to the local CAC for a forensic interview.

DFPS investigations: DFPS investigations of potential child abuse in a school must be conducted in accordance with DFPS rules. See 40 Tex. Admin. Code, ch. 707, subch. B, School Investigations. For example, the DFPS investigator must request that school personnel not alert the alleged perpetrator or others regarding the report of suspected child abuse until the investigator has had an opportunity to interview the alleged perpetrator. 40 Tex. Admin. Code § 707.615. In addition, state law prohibits interfering with a DFPS investigation of a report of child abuse or neglect. Tex. Fam. Code § 261.303; 40 Tex. Admin. Code § 707.619.

In order to clarify procedures for reporting and investigations, including coordination with local law enforcement, your district may want to contact the DFPS Special Investigations Director for your region through the DFPS website's [Special Investigations](#) webpage. Districts can determine which region their county is assigned to on the [DFPS](#) Website

Initial interview: Trained investigators acting on behalf of law enforcement and DFPS will conduct initial interviews with the victim and alleged perpetrator. The investigator may determine the circumstances of the interview, including whether the interview is announced in advance and who else (including a school employee) may attend. Tex. Fam. Code §§ 261.302, .303, .409; 40 Tex. Admin. Code § 707.617; Tex. Att'y Gen. Op. No. DM-0476 (1998); TASB Policy GRA(LEGAL). The interviews can occur at school. However, students interviewed in a school setting may be less comfortable with being fully transparent as the student may perceive that he or she is in trouble. As such, best practice is for the interview of the victim to occur at a local CAC where the setting is neutral and child-friendly.

At the time of the initial interviews, evidence may be confiscated, including the parties' cell phones and possibly school district property (computers, files, security footage, etc.). Law enforcement can search all items with the consent of the owner. Without consent, the police can confiscate, but not search items, until a warrant is obtained.

Avoid alerting the alleged perpetrator and victim prior to the initial law enforcement and DFPS investigatory interviews.

As discussed, school officials should avoid alerting the potential perpetrator and victim prior to the initial law enforcement and DFPS investigatory interviews. If it takes several hours for the law enforcement or DFPS investigator to arrive, school officials will have to act with caution and good judgment about how to communicate

with the student's parents, the alleged victim, and the alleged perpetrator during this time. As soon as possible, the district will need to inform parents, take appropriate employment action (likely suspending the employee), and coordinate any internal investigation with law enforcement and DFPS.

5. Report to law enforcement:

If you have cause to believe that potentially illegal conduct with a child has occurred, stop any questioning by school employees and immediately report to law enforcement for investigation.

In districts with their own police departments or school resource officers (SRO), should reports be made to the school district police? Yes, reports to these entities are appropriate, but district police are likely to immediately refer such matters to outside law enforcement. As such, reporting via calling 911 is most appropriate. Investigations into crimes against children are typically conducted by an experienced investigator, and school district police departments rarely employ an investigator full time. Moreover, the district police do not want to be seen as biased in an investigation involving school district staff, nor would they want to begin an investigation that would eventually need to be handed off to another local law enforcement jurisdiction.

Should reports be made to an appropriate school administrator in addition to law enforcement and DFPS? Yes, but be cautious. Local school district policy can require internal reporting to appropriate administrators, but internal reports may not be required before or in place of a report to law enforcement, nor should internal reporting delay a report to law enforcement. See 19 Tex. Admin. Code § 61.1051(a) (requiring school districts to adopt a policy regarding reporting child abuse and neglect).

After Initial Investigatory Interviews, Respond to the Incident or Allegation

6. Notify parents as soon as feasible.

School districts, districts of innovation, open-enrollment charter schools, education service centers, and shared services arrangements must have a board-adopted policy providing for notification to the parent or guardian of a student with whom an educator allegedly engaged in abuse or otherwise committed an unlawful act or was involved in a romantic relationship with or solicited or engaged in sexual contact. The notice to the parent must include: (1) that the alleged misconduct occurred; (2) whether the educator resigned or was terminated in light of an investigation; and (3) whether a report was submitted to SBEC concerning the alleged misconduct. The notice of alleged misconduct must be provided as soon as feasible after the employer becomes aware that the alleged misconduct may have occurred. Tex. Educ. Code § 21.0061.

For a sample policy that satisfies these requirements, see our model language at TASB Policy FFF(LOCAL).

Inform an alleged victim's parents as soon as possible upon making reports to law enforcement and DFPS. If parents are informed before an investigator arrives, explain the importance of the first interviews conducted by investigators with law enforcement and DFPS. Law enforcement and DFPS investigators are authorized to set the parameters of their initial interviews, which may include instructing school officials not to contact the parents before the interview and excluding parents from sitting in on an interview. 40 Tex. Admin. Code §§ 707.615, .619.

7. Respond within the school district.

Take appropriate employment action.

Removing employee: Understandably, school officials may feel an urgent need to remove the accused employee from campus. However, taking any action that may alert the alleged perpetrator of a pending investigation by law enforcement or DFPS could hinder those investigations and potentially result in an unwanted outcome. Before the law enforcement and DFPS investigators arrive, only remove an employee from a risky situation if it is possible to do so without undermining the investigation. Explain the degree of urgency when reporting to law enforcement and DFPS. The district has a responsibility to protect the alleged victim and all other students. It is not unreasonable for the district to ask that the initial interview take place promptly because the district needs to remove the employee from the job in a timely manner. Doing so will likely facilitate a good working relationship with the investigator. As previously discussed, DFPS maintains priority time frames for responding. This means that in most cases, DFPS will respond immediately or within 24 hours of a report.

After the initial investigatory interviews with law enforcement and DFPS, the need for secrecy toward the parties is eliminated. Of course, the fact of and the details concerning the report and investigation remain highly confidential under the Family Education Rights and Privacy Act (FERPA) and other law with respect to any individual who is not essential to the investigation.

If the employee under investigation is an at-will employee, he or she can be suspended without pay pending the investigation. If the school district has enough information (beyond the mere fact of an arrest or accusation) to form a reasonable belief that the employee committed misconduct, the district may fire an at-will employee immediately.

More typically, the alleged perpetrator is a contract employee. The employee may be suspended either with or without pay. However, because suspension without pay of a contract employee is permitted only after a hearing by a TEA-appointed hearing examiner (which is a lengthy and costly process), most school districts suspend an employee who is under investigation with pay in the hopes that the investigation will reach a conclusion quickly. *See* Tex. Educ. Code § 21.211(b) (allowing suspension without pay for good cause, as determined by the board of trustees, pending discharge or in lieu of termination). To place an employee on paid administrative leave, most school districts work with a school attorney to present the employee with an appropriate letter directing the employee to be available for the investigation, but otherwise to stay away from school property and school events.

Note that, unlike in the situation of a nonrenewal or termination, the district does not have to give a specific reason for placing an employee on paid administrative leave.

Confidentiality: School officials may have questions about what information can be shared with parents, employees, or the media after an incident of employee misconduct. During an investigation, districts should proceed with caution and seek legal advice. The privacy interests of the student(s) involved in the allegations are protected by FERPA and state law. In addition, the name of a student involved in an improper relationship with an educator may not be released to the public and is not public information under the Texas Public Information Act. Tex. Penal Code § 21.12(d).

When the alleged perpetrator is a district employee, parents often will allow the district to share information about their child with the investigating agency. Nonetheless, three exceptions to FERPA may permit a school district to share confidential records with a law enforcement or DFPS investigator even without parental consent:

- Health and safety, if there is an “articulable and significant threat” to the health or safety of the student or of another individual. 34 C.F.R. §§ 99.31, .36.

- CAPTA, the Child Abuse Prevention and Treatment Act, which requires school officials to report child abuse and release records related to suspected abuse or neglect. 42 U.S.C. § 5106a.
- A subpoena, and while normally the district must notify parents before complying with a subpoena, notice is not required if the issuing agency requires the content of the subpoena to remain confidential. 34 C.F.R. § 99.31.

After an investigation is completed, DFPS is required to provide a copy of the completed investigation report, upon request, to the school board and the superintendent, as well as the parent of the student who was the subject of the investigation and the alleged wrongdoer. Tex. Fam. Code § 261.406(b). Other than release of the investigation report to the individuals authorized by Texas Family Code section 261.406, the investigation report and the name of the person who reported suspected abuse are confidential. Tex. Educ. Code §§ 261.201, .406.

Information about the investigation should only be shared with district employees on a need-to-know basis. Administrators may wish to document instructions from law enforcement or DFPS regarding confidentiality in case a question arises later about what information the district was authorized to share. **The district's local protocol for responding to employee misconduct should include the designation of a specific individual, preferably a central office administrator, to handle requests for information from the media and others.**

Report sexual harassment to district Title IX Coordinator and follow local policies to address impact on student.

Employee misconduct with a student not only violates state law and, in the case of certified educators, the Educator's Code of Ethics, it also meets the definition of prohibited sexual harassment under the district's nondiscrimination policies. See TASB Policies FFH(LEGAL) and (LOCAL). Depending on the circumstances, school personnel's failure to respond appropriately to the misconduct could expose the district to liability in a civil lawsuit under Title IX, the federal law that prohibits sex-based discrimination and harassment in educational institutions. The U.S. Supreme Court has held that a school district may be liable for monetary damages under Title IX based on sexual abuse of a student by a teacher when a school official "who at a minimum has authority to institute corrective measures . . . has actual notice of, and is deliberately indifferent to, the teacher's misconduct." *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 277 (1998). The Office for Civil Rights of the U.S. Department of Education enforces Title IX through administrative methods and has adopted detailed regulations regarding how a district must respond to reports of sexual harassment. 34 C.F.R. Part 106. See TASB Legal Services' FAQ, [Title IX Sexual Harassment](#) for more information.

In order to comply with Title IX, school personnel should take care to follow the district's policy FFH(LOCAL) and administrative procedures for reporting, investigating, and taking corrective action in the case of employee-student sexual harassment, including provisions for the formal complaint process under Title IX and cooperation with law enforcement or regulatory agencies. Note that if a formal complaint is filed, Title IX prohibits taking disciplinary action against a perpetrator of sexual harassment until the district follows its formal complaint process. 34 C.F.R. § 106.44(a). This does not preclude placing an employee on administrative leave in accordance with state law. 34 C.F.R. § 106.44(d). A district should work closely with local counsel in implementing the Title IX formal complaint process.

Coordinate any internal investigation with local authorities.

The district may pursue its own investigation—perhaps looking for the truth about the accusations, to identify other victims, to satisfy obligations under Title IX or other law, or simply to bring the individual's employment to an end more quickly. Both state and federal law suggest that a school district should not rely solely on the investigations of other entities but should conduct its own investigation if a school employee is accused of abusing a student. For the reasons discussed here, however, the district must carefully avoid interfering with a law enforcement or DFPS investigation. Before conducting internal investigatory activities, such as searching electronic data or talking to witnesses, school officials should coordinate with the law enforcement and DFPS investigators. School officials should also work closely with legal counsel regarding this matter.

After an Incident or Allegation

8. Take final employment action:

Determine whether nonrenewal or termination is appropriate.

If a contract employee is still on leave as the law enforcement and DFPS investigations conclude, determine if it is more likely than not that the employee committed conduct that would constitute good cause for termination or a reason to nonrenew the employee's contract. If so, work with a school attorney to pursue the appropriate employment action. If the employee's teaching certificate is revoked for an offense requiring registration on the sex offender registry or a conviction of a Title V felony with a minor victim, the district is required to suspend the employee without pay, provide written notice that the employment contract is void, and terminate the individual as soon as possible. Tex. Educ. Code § 21.058.

Information sharing: Under the Texas Family Code, DFPS is required to send a copy of the completed investigation report to the Texas Education Agency. On request, DFPS shall also provide a copy of the report to SBEC, the local school board, the superintendent, and the principal or director (unless the principal or director is the alleged wrongdoer) for appropriate action. DFPS must also provide a copy of the report, upon request, to the parent of the child who was the subject of the investigation and the person alleged to have committed abuse. The report shall be edited to protect the identity of the individuals who made the report of abuse. Tex. Fam. Code § 261.406(b). Other than release of the investigation report to the individuals authorized by Texas Family Code section 261.406, the investigation report and the name of the person who reported suspected abuse are confidential. Tex. Fam. Code §§ 261.201, .406.

Seven Days after Separation from Employment

9. Principal reports to superintendent:

By law, a principal must notify the superintendent if an employee resigns or is terminated followed an alleged act of misconduct. Tex. Educ. Code §§ 21.006(b-2), 22.093(e). Additionally, a principal must notify the superintendent if he or she learns about an educator's criminal record other than information learned from the Department of Public Safety database. The principal must make the notification seven business days after the date of termination or resignation or from 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).

10. Superintendent reports to SBEC:

If an employee leaves your employment at any point (even before or during an investigation) and there is evidence of misconduct, report to SBEC. A superintendent must notify SBEC in writing not later than the seventh day after the date the superintendent knew about an employee's termination or resignation if there is evidence that the educator (among other offenses):

- Sexually or physically 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.

Tex. Educ. Code § 21.006; 19 Tex. Admin. Code chapter 249; TASB Policy DHB.

The superintendent must report to SBEC if the accused employee leaves the employment of the school district either due to resignation or being terminated. The statute requires a report after termination, but superintendents should report after contract nonrenewal as well, if there was any evidence of misconduct. The only exception to this reporting requirement applies to a certified educator who resigns or is terminated and, prior to leaving the district, the completed investigation did not find evidence of misconduct. Tex. Educ. Code § 21.006(c-2).

Although school districts may be eager for SBEC to act on an educator's certificate so that the district can take final employment action, SBEC generally waits for the LE/DFPS investigation to conclude. SBEC is not tied to the result of the other investigations, including DFPS's findings and the local prosecutor's decision whether to prosecute the case, but the findings in these official investigations are helpful to SBEC.

For more information about SBEC reporting, see TASB Legal Services' article [Reporting Employee Misconduct](#).

After an Investigation

11. Address community issues related to the investigation, as necessary.

In addition to addressing the immediate harm of employee misconduct, districts must be prepared to respond to the ripple effect that an incident, or a publicized allegation, will inevitably have on the district community. Staff and students may need time and resources to heal from the perceived breach of trust. Parents will want to know what steps the district is taking to prevent employee misconduct from occurring again. While these issues are challenging, the aftermath of an investigation also provides an opportunity to highlight what public schools do best: educating students and bringing people together.

For example, district leaders may want to consider offering additional resources, such as counseling for students and staff who witnessed the abuse. If any weaknesses in the district's policies or procedures came to light during the investigation, district leaders, including the Title IX coordinator, should determine how to resolve these concerns. Further, the district may provide appropriate training regarding the district's policies on sexual harassment to both staff and students in order to ensure that issues are reported promptly in the future.

During this sensitive time, district leaders should consult with the district's attorney regarding what information related to the investigation can be shared with the community. But keep in mind, it never violates the law to promote the district's policies and commitment to protecting students.

12. Do all you can do to be certain perpetrators are not reemployed at other schools.

Share Employment Information with Subsequent Employers. The Texas Education Code requires school districts to share documents evaluating the performance of a teacher or administrator with certain subsequent employers upon request. The law specifies that school districts, open enrollment charter schools, and private schools at which an educator or administrator has applied is entitled to such information. A similar provision requires districts to give evaluative documents to TEA for the purposes of investigating the teacher or administrator. Tex. Educ. Code § 21.355

Avoid aiding and abetting employees who have engaged in misconduct. Federal and state laws contain provisions designed to prevent districts from enabling a former employee who has engaged in misconduct with a student to continue to work with students in other schools. SBEC may suspend or revoke a certificate, impose other sanctions, or refuse to

issue a certificate if a person helps another person to get a job at a school district or open-enrollment charter school and the person knew that the other person had violated the law by engaging in sexual misconduct with a minor or student. The routine transmission of administrative files does not violate this provision. The commissioner is authorized to require a district to revoke or decline to issue a school district teaching permit requested by a person subject to suspension or revocation of certification. Tex. Educ. Code § 21.0581. In addition, SBEC is authorized to take disciplinary action with respect to an individual who assisted an educator with getting a new job when the educator had an inappropriate relationship with a student or minor. 19 Tex. Admin. Code § 249.15(b)(13).

The Every Student Succeeds Act (ESSA) requires states and local school districts to prohibit any individual who is a school employee, contractor, or agent from assisting a school employee, contractor, or agent in obtaining a new job if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law. Assisting in obtaining a new job does not include the routine transmission of administrative and personnel files. The requirements of this section do not apply when the information giving rise to the probable cause has been properly reported as described in this section and the employee, contractor, or agent has been acquitted or otherwise exonerated of the alleged misconduct or the investigation remains open and no charges have been filed within four years of the date on which the information was reported to a law enforcement agency. 20 U.S.C. § 7926.

The prohibitions required by ESSA can be found in TASB Model Policies CJ(LOCAL) and DC(LOCAL). TASB Model Policy DC(LOCAL) and the Educator's Code of Ethics found in TASB Model DH(EXHIBIT) also prohibit employees from assisting certain individuals in obtaining employment if the employee knows, or has probable cause to believe, that the individual engaged in sexual misconduct regarding a minor or student in violation of the law.

13. Revisit your plan regularly:

After each use of your local response plan, debrief and refine your school practices with local authorities. Work with your human resources department to do all that you can to be certain perpetrators are not reemployed at other schools. Specifically, make sure that your staff is not afraid to share accurate, factual information with potential employers when someone leaves your district after an investigation.

Keep in mind that each situation is unique and plans are rarely perfect. Even school officials with the most detailed protocols for responding to misconduct may be required to exercise discretion under pressure. By thinking through these issues in advance with the stakeholders in your community and seeking legal advice when necessary, you can ensure that even split-second decisions are designed to keep students safe.

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This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-esource/personnel/documents/guidelines-for-responding-to-allegations-of-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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