



Frequently Asked Questions About Required Pre-Employment Affidavits

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Texas Education Code section 21.009, added by Section 7 of [Senate Bill 7](#) from the Regular Session of the 85th Legislature, 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. This provision became effective September 1, 2017.

The commissioner approved two 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](#) and Internet Explorer is the recommended browser for online use.

- [Sample Pre-Employment Affidavit for Applicant](#)
- [Sample Pre-Employment Affidavit for Applicant Offered Employment](#)

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 there two separate affidavits available on the TASB School Law eSource website?

The commissioner approved two separate sample forms to comply with Texas Education Code section 21.009. The *Pre-Employment Affidavit for Applicants* should be completed by all applicants for covered positions in accordance with the statutory requirement. This form 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 the declaration completed by all persons applying for covered positions.

The *Pre-Employment Affidavit for Applicant Offered Employment* should be completed by the person offered the position and must be signed before a notary public. In order for the requirement of notarization not to become a barrier to employment, districts may offer applicants the opportunity to have the affidavit notarized for free at the school district office.

Will the form be 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 Applicants* among the documents necessary to complete an application, whether by paper or online.

As described above, the available sample forms allow all applicants to verify the information through an electronic signature and only require the final hire to have an affidavit notarized. If your district adopts a process that would require or confirm completion by only the final applicant, please consult with a school attorney.

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 *Pre-Employment Affidavit for Applicants* and the *Pre-Employment Affidavit for Applicant Offered Employment* that likely complies 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 (*Pre-Employment Affidavit for Applicants*) or a notarized affidavit (*Pre-Employment Affidavit for Applicant Offered Employment*).

What if we hired someone for a listed position after the effective date of the bill, but before the affidavits were available? The statute specifically says the affidavit will be a form “adopted by” TEA. Therefore, a locally adopted form would not have sufficed. Consequently, a district’s decision to not change hiring practices prior to the availability of the affidavit is defensible. Additionally, the consequences of failing to complete the affidavit do not apply to anyone but the hired applicant.

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 continually updated, and references to online resources are hyperlinked, at https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Personnel/documents/required_pre_employment_affidavits_faq.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.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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