
Employment Policy The executive director is the chief executive officer of the ESC and may employ personnel as necessary to carry out the functions of the ESC. *Education Code 8.004*

School District Superintendent Any financial benefit received by a school district superintendent for performing personal services for a regional education service center must be approved by the school district board of trustees on a case-by-case basis in an open meeting. For purposes of this provision, the receipt of reimbursement for a reasonable expense is not considered a financial benefit. *Education Code 11.201(e)*

Pre-employment Affidavit An applicant with an ESC for a certified or licensed position described by Texas Education Code section 21.003(a) or (b) must submit, using a form adopted by TEA, a pre-employment affidavit disclosing whether the applicant has ever been charged with, adjudicated for, or convicted of having an inappropriate relationship with a minor.

An applicant who answers affirmatively concerning an inappropriate relationship with a minor must disclose in the affidavit all relevant facts pertaining to the charge, adjudication, or conviction, including, for a charge, 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 ESC determines based on the information disclosed in the affidavit that the charge was false.

A determination that an employee failed to disclose required information is grounds for termination of employment.

The State Board for Educator Certification (SBEC) may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant for a position described by Education Code 21.003(a) or (b) despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor.

Education Code 21.009

Employee Information The ESC shall ensure that an employee properly completes section 1—"Employee Information and Verification"—on Form I-9 at the time of hire.

Verification of Employment Eligibility An ESC must verify employment eligibility, pursuant to the Immigration Reform and Control Act, and complete Form I-9 by the following dates:

1. Within three business days of initial hiring. If the ESC hires an individual for employment for a duration of less than three

business days, the ESC must verify employment at the time of hire.

2. An ESC shall not be deemed to have hired an individual if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times.
3. When the ESC rehires an individual, the ESC may, in lieu of completing a new I-9, inspect a previously completed I-9 executed within three years of the date of rehire, to determine whether the individual is still eligible to work.
4. For an individual whose employment authorization expires, not later than the date of expiration.

8 C.F.R. 274a.2(b)(1)(ii), (iii), (vii), (viii)

Social Security Numbers

It shall be unlawful for an ESC to deny to any individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her social security number.

Exceptions

The above provision does not apply to:

1. Any disclosure that is required by federal statute. The United States Internal Revenue Code provides that the social security number issued to an individual for purposes of federal income tax laws shall be used as the identifying number for taxpayers;
2. Any disclosure to an ESC maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted before such date to verify the identity of an individual; or
3. Any use for the purposes of establishing the identity of individuals affected by any tax, general public assistance, driver's license, or motor vehicle registration law within the ESC's jurisdiction.

Statement of Uses

An ESC that requests disclosure of a social security number shall inform that individual whether the disclosure is mandatory or voluntary, by what statutory authority such number is solicited, and what uses will be made of it.

Privacy Act of 1974, Pub. L. No. 93-579, sec. 7(b), 88 Stat. 1896, 1897 (1974)

New Hire Reporting

An ESC shall furnish to the Directory of New Hires (Texas Attorney General's Office) a report that contains the name, address, and social security number of each newly hired employee. The report

shall also contain the ESC's name, address, and employer identification number.

The ESC may also provide, at its option, the employee's date of hire, date of birth, expected salary or wages, and the ESC's payroll address for mailing of notice to withhold child support.

The ESC shall report new hire information on a Form W-4 or an equivalent form, by first class mail, telephonically, electronically, or magnetic media, as determined by the ESC and in a format acceptable to the attorney general.

Deadline

New hire reports are due:

1. Not later than 20 calendar days after the date the ESC hires the employee; or
2. In the case of an ESC transmitting reports magnetically or electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

New hire reports shall be considered timely if postmarked by the due date or, if filed electronically, upon receipt by the agency.

Penalties

An ESC that knowingly violates the new hire provisions may be liable for a civil penalty, as set forth at Family Code 234.105.

42 U.S.C. 653a(b), (c); Family Code 234.101–.105; 1 TAC 55, Subch. I

At-Will Employment

The employment-at-will doctrine is the law of Texas; it is presumed unless shown otherwise. The employment-at-will doctrine places no duties on an employer regarding an employee's continued employment and thus bars contract and tort claims based on the decision to discharge an employee. *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W. 2d 733 (Tex. 1985); *Jones v. Legal Copy, Inc.*, 846 S.W. 2d 922 [Tex. App.—Houston [1st Dist.] 1993, no writ]; *Gonzales v. Galveston Ind. Sch. Dist.*, 865 F.Supp. 1241 (S.D. Tex. 1994)

Exception

An at-will employee cannot be discharged if the sole reason for the discharge was that the employee refused to perform an illegal act. *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W. 2d 733 (Tex. 1985)
[See also DAA]

Dismissal of At-Will Employees

Employment for an indefinite term may be terminated at-will and without cause, except as otherwise provided by law. An at-will employment relationship, standing alone without benefit of recognized exception, triggers no due process requirement nor right. *Garcia v. Reeves County, Texas*, 32 F. 3d 200 (5th Cir. 1994); *Mott v. Montgomery County*, 882 S.W. 2d 635, 638 (Tex. App.—Beaumont 1994, writ denied)

Termination of employment is a condition of work that is a proper subject for the grievance process. *Fibreboard Paper Products Corp. v. National Labor Relations Board*, 379 U.S. 203 (1984); *Sayre v. Mullins*, 681 S.W. 2d 25 (Tex. 1984). [See DGBA]

Permissive Reports

The executive director may notify the SBEC of any educator misconduct that he or she believes in good faith may be subject to sanctions under 19 Administrative Code, Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, and/or Chapter 247, Educators' Code of Ethics. *19 TAC 249.14(d)*

**Required Reports—
Criminal History,
Termination,
Resignation, and
Assessment
Instrument**

In addition to the reporting requirement under Family Code 261.101 [see ED], the executive director shall notify SBEC if:

1. An educator employed by or seeking employment with the ESC, or an applicant or holder of an SBEC certificate, has a criminal record and the ESC obtained information about the educator's criminal record by a means other than the criminal history clearinghouse established by the Texas Department of Public Safety under Government Code 411.0845;
2. An educator's employment at the ESC was terminated and there is evidence that the educator engaged in misconduct listed below [see Reportable Misconduct, below];
3. The educator submitted a notice of resignation and there is evidence that the educator engaged in misconduct listed below [see Reportable Misconduct, below]; or
4. The educator engaged in conduct that violated the assessment instrument security procedures established under Education Code 39.0301.

**Reportable
Misconduct**

The executive director shall make a report to SBEC under items 2 and 3, above, if an educator was terminated or resigned and there is evidence that the educator:

1. Sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;
2. Possessed, transferred, sold, or distributed a controlled substance, as defined by Health and Safety Code Chapter 481 or by 21 U.S.C. 801 et seq.;
3. Illegally transferred, appropriated, or expended funds or other ESC property;
4. Attempted by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle the individual

to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;

5. Committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or
6. Solicited or engaged in sexual conduct or a romantic relationship with a student or minor.

Education Code 21.006(b), 22.087; 19 TAC 249.14(d)

Completion of Investigation

An executive director shall complete an investigation of an educator that involves evidence that the educator may have engaged in misconduct described above at Reportable Misconduct, items 1 and 2, despite the educator's resignation from employment before completion of the investigation. *Education Code 21.006(b-1); 19 TAC 249.14(d)(3)(C)*

Deadline to Report

The executive director shall promptly notify SBEC in writing by filing a report within seven business days after the date the executive director knew about an employee's criminal record under Education Code 21.006(b)(1) or a termination of employment or resignation following an alleged incident of misconduct described by Education Code 21.006(b)(2). [See Required Reports, above] *Education Code 21.006(c); 19 TAC 249.14(d)*

Contents of Report

The report must be in writing and in a form prescribed by SBEC. The report shall include the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator. The report shall, at a minimum, describe in detail the factual circumstances requiring the report and identify the subject of the report by providing the following available information:

1. Name and any aliases;
2. Certificate number, if any, or social security number;
3. Last known mailing address and home and daytime phone numbers;
4. All available contact information for any alleged victim or victims;
5. Name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;
6. Current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and
7. Involvement by a law enforcement or other agency, including the name of the agency.

	<p><i>Education Code 21.006(c-1); 19 TAC 249.14(f)</i></p> <p>The name of the student or minor is not public information under the Public Information Act. [See EABB] <i>Education Code 21.006(h)</i></p>
<p>Notice</p> <p>To the Board and Educator</p> <p>Before Accepting Resignation</p>	<p>An executive director shall notify the board and the educator of the filing of a written report with SBEC. The executive director shall notify the board before filing the report. <i>Education Code 21.006(d); 19 TAC 249.14(d)(3)(B)</i></p> <p>Before accepting an employee's resignation that requires filing a report, the executive director 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. <i>19 TAC 249.14(d)(3)(A)</i></p>
<p>Notice to Parent of Educator Misconduct</p>	<p>The board shall adopt a policy under which notice is provided to the parent or guardian of a student with whom 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 solicited or engaged in sexual contact with a student or minor. [See DC(LOCAL)]</p> <p>The notice must inform the parent or guardian:</p> <ol style="list-style-type: none">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; and3. Whether a report was submitted to the State Board for Educator Certification concerning the alleged misconduct. <p>The policy must require that information specified in item 1 above be provided as soon as feasible after the ESC becomes aware that alleged misconduct may have occurred.</p> <p><i>Education Code 21.0061</i></p>
<p>Sanctions for Failure to Report</p> <p><i>Administrative Penalty</i></p>	<p>SBEC shall determine whether to impose sanctions, including an administrative penalty against an executive director who fails to file a report. <i>Education Code 21.006(f); 19 TAC 249.14(d), (h), .15(b)(4)</i></p> <p>If an executive director is required to file a report and fails to file the report by the required date, SBEC may impose an administrative penalty of not less than \$500 and not more than \$10,000. SBEC may not renew the certification of an educator against whom an administrative penalty is imposed until the penalty is paid. <i>Education Code 21.006 (i)</i></p>

Criminal Offense	An executive director who is required to file a report commits a state jail felony if the executive director fails to file the report by the required date with intent to conceal an educator's criminal record or alleged incident of misconduct. <i>Education Code 21.006 (j)</i>
Immunity	An executive director who in good faith and while acting in an official capacity files a report with SBEC or communicates with another superintendent, director, or principal concerning an educator's criminal record or alleged incident of misconduct is immune from civil or criminal liability that might otherwise be incurred or imposed. <i>Education Code 21.006(e)</i>
Definitions	"Abuse" includes the following acts or omissions:
"Abuse"	<ol style="list-style-type: none">1. Mental or emotional injury to a student or minor that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;2. Causing or permitting a student or minor to be in a situation in which the student or minor sustains a mental or emotional injury that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;3. Physical injury that results in substantial harm to a student or minor, or the genuine threat of substantial harm from physical injury to the student or minor, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline; or4. Sexual conduct harmful to a student's or minor's mental, emotional, or physical welfare. <p><i>19 TAC 249.3(1)</i></p>
"Reported Criminal History"	"Reported criminal history" means information concerning any formal criminal justice system charges and dispositions. The term includes arrests, detentions, indictments, criminal informations, convictions, deferred adjudications, and probations in any state or federal jurisdiction. <i>19 TAC 249.3(44)</i>
"Solicitation of a Romantic Relationship"	"Solicitation of a romantic relationship" means deliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature. A romantic relationship is often characterized by a strong emotional or sexual attachment and/or patterns of exclusivity, but does not include appropriate educator-student relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context,

may constitute prima facie evidence of the solicitation by an educator of a romantic relationship with a student:

1. Behavior, gestures, expressions, or communications with a student that are unrelated to the educator's job duties and evidence a romantic intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the romantic intent of such communications or behavior include:
 - a. The nature of the communications;
 - b. The timing of the communications;
 - c. The extent of the communications;
 - d. Whether the communications were made openly or secretly;
 - e. The extent that the educator attempts to conceal the communications;
 - f. If the educator claims to be counseling a student, SBEC may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate authorities; and
 - g. Any other evidence tending to show the context of the communications between educator and student.
2. Making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images.
3. Making sexually demeaning comments to a student.
4. Making comments about a student's potential sexual performance.
5. Requesting details of a student's sexual history.
6. Requesting a date, sexual contact, or any activity intended for the sexual gratification of the educator.
7. Engaging in conversations regarding the sexual problems, preferences, or fantasies of either party.
8. Inappropriate hugging, kissing, or excessive touching.

9. Providing the student with drugs or alcohol.
10. Violating written directives from school administrators regarding the educator's behavior toward a student.
11. Suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage.
12. Any other acts tending to show that the educator solicited a romantic relationship with the student.

19 TAC 249.3(51)

**Retirement
Discrimination**

The board shall not require the retirement of any employee on the basis of age. *29 U.S.C. 631*

Retirement System

All personnel employed on a full-time, regular salary basis, including regularly employed bus drivers, shall be members of the Teacher Retirement System of Texas (TRS). *Gov't Code 821.001, 822.001; 34 TAC 25.1, 25.2, 25.4; Atty. Gen. Op. C-749 (1966)*

Notice to TRS

An ESC shall furnish TRS a monthly certified statement of all employment of all TRS service or disability retirees. The certified statement must include information regarding employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003, and are performing duties or providing services on behalf of or for the benefit of the ESC. The statement shall contain information necessary for the executive director of TRS to classify employment under Government Code 824.602. *34 TAC 31.2*

**Employment
Assistance
Prohibited**

An ESC that receives Title I funds shall have regulations or policies that prohibit any individual who is an ESC employee, contractor, or agent, or an ESC, from assisting a school employee in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or ESC knows, or has probable cause to believe, that such ESC employee engaged in sexual misconduct regarding a minor or student in violation of the law.

This requirement shall not apply if the information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and has been properly reported to any other authorities as required by federal, state, or local law, including Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the implementing regulations under Part 106 of Title 34, Code of Federal Regulations, or any succeeding regulations; and:

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1. The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee engaged in sexual misconduct regarding a minor or student in violation of the law;
 2. The ESC employee has been charged with and acquitted or otherwise exonerated of the alleged misconduct; or
 3. The case or investigation remains open and there have been no charges filed against, or indictment of, the school employee within four years of the date on which the information was reported to a law enforcement agency.

20 U.S.C 7926 [See also CHF]

**State Law on
Sanctions**

SBEC may suspend or revoke a certificate, impose other sanctions against the person, or refuse to issue a certificate to the person if:

1. The person assists another person in obtaining employment at a school district or open-enrollment charter school, other than by the routine transmission of administrative and personnel files; and
2. The person knew that the other person has previously engaged in sexual misconduct with a minor or student in violation of the law.

The commissioner may require a school district to revoke or decline to issue a school district teaching permit under Education Code 21.055 issued to or requested by a person subject to SBEC action above.

Education Code 21.0581; 19 TAC 249.15(b)(13)