



# Texas Takes The Lead Protecting Private And Independent School Students

Insights

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In its most recent legislative session, Texas lawmakers took a number of steps designed to protect students from potential harm due to sexual misconduct. The new rules extend to certain obligations and protections to private schools that were previously applicable only to public schools. These new requirements not only establish new mandatory obligations in hiring and reporting, but they also create new “best practices” that schools should consider implementing beyond the four corners of the new laws. Other states are sure to follow Texas’ lead and create similar protections for students.

## **New Private School Reporting Requirements**

Individuals associated with private schools in Texas have been (and still are) obligated to report to Texas Family and Protective Services (TFPS) or law enforcement when they become aware of facts suggesting that a minor has been subjected to physical or sexual abuse. The new provisions added this year require that the top administrative official in private schools report to the Texas State Board of Educator Certification (SBEC):

- information about an educator’s sexual misconduct criminal record;
- evidence that the educator abused or committed an unlawful act with a student or minor; or
- evidence that the educator was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor.

The latter point is the one that broadens the reporting obligation the most. This would include many forms of “grooming” behavior that pedophiles often engage in with students prior to committing an illegal act. The obligation to report “creepy but not criminal” conduct will require school officials to carefully assess the educator’s conduct to determine whether it should be reported. Clearly, evidence of an attempt to engage in intimate relations should be reported, but excessive texting on subjects unrelated to academic or school-related matters might also cross the line, especially if the context of the communications suggests a “friend” or “confidant” relationship as opposed to a teacher-student one.

The new rules mandate reporting of teachers, interns, librarians, administrators, educational diagnosticians, counselors, and any substitutes for these positions who are involved in reportable conduct. Not included are nurses, social workers, psychologists, janitors, bus drivers, cafeteria

workers or other staff (though the longstanding obligation to report known physical and sexual abuse to law enforcement or protective services still applies).

The report to SBEC should be made to the Texas Education Agency (TEA) Division of Educator Investigations no later than seven business days after the school learns of reportable information, and it can do so by mail, fax, or online reporting through SBEC's web portal. Email is not an acceptable form of reporting under the new provisions. TEA has advised that the portal for making online reports will be up-and-running in early 2020.

Information to include in the reports includes:

- A summary of the factual circumstances underlying the report;
- The name of the educator (and any aliases);
- The educator's certificate number (if applicable) and social security number;
- The subject's last-known mailing address and home and daytime telephone numbers;
- Names and contact information of any alleged victims and any relevant witnesses;
- The current employment status of the individual; and
- The name of the law enforcement agency involved in any criminal review of the incident.

### **Pre-Hire Obligations**

Most schools already engage in extensive background checks of candidates who will be called upon to regularly interact with students during the pre-hire screening process. Texas has added a new wrinkle: private schools must require certain new hires to complete a state-approved affidavit before commencing work. The requirement applies to new teachers, interns/trainees, educational aides, administrators, diagnosticians, counselors, and substitutes for any of these roles. The mandatory affidavits essentially require new hires to disclose under oath whether they have been charged with or convicted of an inappropriate relationship with a minor.

Many Texas private schools have taken the prudent step of having any employee who has access to students to complete the affidavit even when the employee is not working in one of the designated roles. Also, it is worth considering whether to have existing faculty execute the affidavit periodically to demonstrate the steps the school is taking to ensure that no predators are associated with the school.

### **Do-Not-Hire Registry**

Pursuant to the recent legislation, the TEA is now required to maintain a "do-not-hire" registry of individuals who have been reported to TEA for sexual misconduct. Private schools are not prohibited from employing individuals on the list, but it would in virtually all cases be prudent not to hire or terminate an educator who appears on the list. Of course, ignoring the presence of an employee on the list would create the potential for significant liability if that employee engages in further misconduct while employed at the private school.

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The following individuals will be listed on the registry:

- Non-certified employees found to have abused or committed an unlawful act with a student or minor OR involved in a romantic relationship or solicited such a relationship with a student or minor;
- Educators who have had an SBEC certificate revoked for abusing/soliciting an inappropriate relationship with a student or minor; and
- Individuals determined ineligible due to conviction or deferred adjudication status for certain criminal histories.

In essence, the registry will contain information gathered both through the new reporting procedures and SBEC's own internal database. The registry will have both a public-facing webpage with limited information and a more complete set of data available to public and private schools.

### **Immunity**

In a significant development, Texas private schools will now enjoy civil and criminal immunity for making good faith reports to the SBEC of criminal or other reportable conduct. Even more helpful for private schools, the chief administrative office of a Texas private school can report such information to her counterpart at another school and still enjoy immunity. Of course, any such communication should be limited to known facts and not conclusions or opinions reached about the educator, but the opportunity for immunity makes it much less likely that schools will fear defamation actions for communicating about these important matters with other schools or the state.

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