

By: Dale

H.B. No. 218

A BILL TO BE ENTITLED

AN ACT

1
2 relating to improper relationships between educators and students;
3 creating a criminal offense and expanding the applicability of an
4 existing offense.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 21.12, Penal Code, is amended by
7 amending Subsection (a) and adding Subsection (e) to read as
8 follows:

9 (a) An employee of a public or private primary or secondary
10 school commits an offense if the employee:

11 (1) engages in sexual contact, sexual intercourse, or
12 deviate sexual intercourse with a person who is enrolled in a public
13 or private primary or secondary school at which the employee works;

14 (2) holds a position described by Section 21.003(a) or
15 (b), Education Code, regardless of whether the employee holds the
16 appropriate certificate, permit, license, or credential for the
17 position, [a certificate or permit issued as provided by Subchapter
18 B, Chapter 21, Education Code, or is a person who is required to be
19 licensed by a state agency as provided by Section 21.003(b),
20 Education Code,] and engages in sexual contact, sexual intercourse,

21 or deviate sexual intercourse with a person the employee knows is[+

22 [(A)] enrolled in a public or private primary or
23 secondary school other than a school described by Subdivision (1)

24 [~~in the same school district as the school at which the employee~~

1 ~~works; or~~

2 ~~[(B) a student participant in an educational~~
3 ~~activity that is sponsored by a school district or a public or~~
4 ~~private primary or secondary school, if:~~

5 ~~[(i) students enrolled in a public or~~
6 ~~private primary or secondary school are the primary participants in~~
7 ~~the activity; and~~

8 ~~[(ii) the employee provides education~~
9 ~~services to those participants]; or~~

10 (3) engages in conduct described by Section 33.021,
11 with a person described by Subdivision (1), or a person the employee
12 knows is a person described by Subdivision (2) ~~[(2)(A) or (B)]~~,
13 regardless of the age of that person.

14 (e) With the consent of the appropriate local county or
15 district attorney, the attorney general has concurrent
16 jurisdiction with that consenting local prosecutor to prosecute an
17 offense under this section.

18 SECTION 2. Article 42.018(a), Code of Criminal Procedure,
19 is amended to read as follows:

20 (a) This article applies only:

21 (1) to conviction or deferred adjudication granted on
22 the basis of ~~[+~~

23 ~~[(A)] an offense under Title 5, Penal Code, ~~[+ or~~~~

24 ~~[(B) an offense on conviction of which a defendant~~
25 ~~is required to register as a sex offender under Chapter 62; and~~

26 ~~[(2)] if the victim of the offense is under 18 years of~~
27 age; or

1 (2) to an offense for which a conviction or grant of
2 deferred adjudication requires the defendant to register as a sex
3 offender under Chapter 62.

4 SECTION 3. Section 21.006, Education Code, is amended by
5 amending Subsections (b), (b-1), (c), (e), and (f) and adding
6 Subsections (c-1) and (i) to read as follows:

7 (b) In addition to the reporting requirement under Section
8 261.101, Family Code, the superintendent or director of a school
9 district, open-enrollment charter school, regional education
10 service center, or shared services arrangement or the principal of
11 a school district or open-enrollment charter school campus shall
12 notify the State Board for Educator Certification if:

13 (1) an educator employed by or seeking employment by
14 the district, school, service center, or shared services
15 arrangement has a criminal record and the district, school, service
16 center, or shared services arrangement obtained information about
17 the educator's criminal record by a means other than the criminal
18 history clearinghouse established under Section 411.0845,
19 Government Code;

20 (2) an educator's employment at the district, school,
21 service center, or shared services arrangement was terminated and
22 there is [based on] evidence that the educator:

23 (A) abused or otherwise committed an unlawful act
24 with a student or minor;

25 (A-1) was involved in a romantic relationship
26 with or solicited or engaged in sexual contact with a student or
27 minor;

1 (B) possessed, transferred, sold, or distributed
2 a controlled substance, as defined by Chapter 481, Health and
3 Safety Code, or by 21 U.S.C. Section 801 et seq.;

4 (C) illegally transferred, appropriated, or
5 expended funds or other property of the district, school, service
6 center, or shared services arrangement;

7 (D) attempted by fraudulent or unauthorized
8 means to obtain or alter a professional certificate or license for
9 the purpose of promotion or additional compensation; or

10 (E) committed a criminal offense or any part of a
11 criminal offense on school property or at a school-sponsored event;

12 (3) the educator resigned and there is evidence that
13 the educator engaged in misconduct described by Subdivision (2); or

14 (4) the educator engaged in conduct that violated the
15 assessment instrument security procedures established under
16 Section 39.0301.

17 (b-1) A superintendent or director of a school district or
18 open-enrollment charter school or a principal of a school district
19 or open-enrollment charter school campus shall complete an
20 investigation of an educator that involves [~~is based on~~] evidence
21 that the educator may have engaged in misconduct described by
22 Subsection (b)(2)(A) or (A-1), despite the educator's resignation
23 from district or school employment before completion of the
24 investigation.

25 (c) The superintendent or director, except as otherwise
26 provided by Subsection (c-1), or the principal must notify the
27 State Board for Educator Certification by filing a report with the

1 board not later than the seventh day after the date the
2 superintendent, ~~[or]~~ director, or principal knew or should have
3 known about an educator's ~~[employee's]~~ criminal record under
4 Subsection (b)(1) or a termination of employment or resignation
5 following an alleged incident of misconduct described by Subsection
6 (b). The report must be:

- 7 (1) in writing; and
- 8 (2) in a form prescribed by the board.

9 (c-1) A principal of a school district or open-enrollment
10 charter school campus who files a report under Subsection (c) must
11 notify the superintendent of the district or the director of the
12 school, as applicable, about the filing of the report. A
13 superintendent or director who is notified that a principal
14 employed by the district or school has filed a report under
15 Subsection (c) is not required to file a report concerning the
16 criminal record or alleged incident of misconduct addressed in the
17 principal's report.

18 (e) A superintendent, ~~[or]~~ director, or principal who in
19 good faith and while acting in an official capacity files a report
20 with the State Board for Educator Certification under this section
21 is immune from civil or criminal liability that might otherwise be
22 incurred or imposed.

23 (f) The State Board for Educator Certification shall
24 determine whether to impose sanctions against a superintendent,
25 ~~[or]~~ director, or principal who fails to file a report in violation
26 of Subsection (c).

27 (i) A superintendent, director, or principal required to

1 file a report under Subsection (c) commits an offense if the
2 superintendent, director, or principal knowingly fails to file the
3 report by the date required by that subsection. An offense under
4 this subsection is a Class A misdemeanor, except that the offense is
5 a state jail felony if it is shown on the trial of the offense that
6 the superintendent, director, or principal intended to conceal an
7 educator's criminal record or alleged incident of misconduct.

8 SECTION 4. Subchapter A, Chapter 21, Education Code, is
9 amended by adding Section 21.0061 to read as follows:

10 Sec. 21.0061. NOTICE TO PARENT OR GUARDIAN ABOUT EDUCATOR
11 MISCONDUCT. (a) The board of trustees or governing body of a
12 school district, open-enrollment charter school, regional
13 education service center, or shared services arrangement shall
14 adopt a policy under which notice is provided to the parent or
15 guardian of a student with whom an educator is alleged to have
16 engaged in misconduct described by Section 21.006(b)(2)(A) or (A-1)
17 informing the parent or guardian:

18 (1) that the alleged misconduct occurred;

19 (2) whether the educator was terminated following an
20 investigation of the alleged misconduct or resigned before
21 completion of the investigation; and

22 (3) whether a report was submitted to the State Board
23 for Educator Certification concerning the alleged misconduct.

24 (b) The policy required by this section must require that
25 information specified by Subsection (a)(1) be provided as soon as
26 feasible after the employing entity becomes aware that alleged
27 misconduct may have occurred.

1 SECTION 5. Subchapter A, Chapter 21, Education Code, is
2 amended by adding Section 21.009 to read as follows:

3 Sec. 21.009. PRE-EMPLOYMENT AFFIDAVIT. (a) An applicant for
4 a position described by Section 21.003(a) or (b) with a school
5 district, open-enrollment charter school, regional education
6 service center, or shared services arrangement must submit, using a
7 form adopted by the agency, a pre-employment affidavit disclosing
8 whether the applicant has ever been charged with, accused of,
9 adjudicated for, or convicted of having an inappropriate
10 relationship with a minor.

11 (b) An applicant who answers affirmatively concerning an
12 inappropriate relationship with a minor must disclose in the
13 affidavit all relevant facts pertaining to the charge, accusation,
14 adjudication, or conviction, including, for a charge or accusation,
15 whether the charge or accusation was determined to be true or false.

16 (c) An applicant is not precluded from being employed based
17 on a disclosed charge or accusation if the employing entity
18 determines based on the information disclosed in the affidavit that
19 the charge or accusation was false.

20 (d) A determination that an employee failed to disclose
21 information required to be disclosed by an applicant under this
22 section is grounds for termination of employment.

23 (e) The State Board for Educator Certification may revoke
24 the certificate of an administrator if the board determines it is
25 reasonable to believe that the administrator employed an applicant
26 for a position described by Section 21.003(a) or (b) despite being
27 aware that the applicant had been adjudicated for or convicted of

1 having an inappropriate relationship with a minor.

2 SECTION 6. Sections 21.054(d) and (e), Education Code, are
3 amended to read as follows:

4 (d) Continuing education requirements for a classroom
5 teacher must provide that not more than 25 percent of the training
6 required every five years include instruction regarding:

7 (1) collecting and analyzing information that will
8 improve effectiveness in the classroom;

9 (2) recognizing early warning indicators that a
10 student may be at risk of dropping out of school;

11 (3) integrating technology into classroom
12 instruction; ~~and~~

13 (4) educating diverse student populations, including:

14 (A) students with disabilities, including mental
15 health disorders;

16 (B) students who are educationally
17 disadvantaged;

18 (C) students of limited English proficiency; and

19 (D) students at risk of dropping out of school;

20 and

21 (5) understanding appropriate relationships,
22 boundaries, and communications between educators and students.

23 (e) Continuing education requirements for a principal must
24 provide that not more than 25 percent of the training required every
25 five years include instruction regarding:

26 (1) effective and efficient management, including:

27 (A) collecting and analyzing information;

1 (B) making decisions and managing time; and
2 (C) supervising student discipline and managing
3 behavior;

4 (2) recognizing early warning indicators that a
5 student may be at risk of dropping out of school;

6 (3) integrating technology into campus curriculum and
7 instruction; ~~and~~

8 (4) educating diverse student populations, including:

9 (A) students with disabilities, including mental
10 health disorders;

11 (B) students who are educationally
12 disadvantaged;

13 (C) students of limited English proficiency; and

14 (D) students at risk of dropping out of school;
15 and

16 (5) preventing, recognizing, and reporting any sexual
17 conduct between an educator and student that is prohibited under
18 Section 21.12, Penal Code, or for which reporting is required under
19 Section 21.006.

20 SECTION 7. The heading to Section 21.058, Education Code,
21 is amended to read as follows:

22 Sec. 21.058. REVOCATION OF CERTIFICATE AND TERMINATION OF
23 EMPLOYMENT BASED ON CONVICTION OF OR DEFERRED ADJUDICATION FOR
24 CERTAIN OFFENSES.

25 SECTION 8. Sections 21.058(a) and (b), Education Code, are
26 amended to read as follows:

27 (a) The procedures described by Subsections (b) and (c)

1 apply only~~[-~~

2 [~~(1)~~] to conviction or deferred adjudication granted
3 on the basis of:

4 (1) a felony offense under Title 5, Penal Code, [~~or an~~
5 ~~offense on conviction of which a defendant is required to register~~
6 ~~as a sex offender under Chapter 62, Code of Criminal Procedure, and~~

7 [~~(2)~~] if the victim of the offense is under 18 years of
8 age; or

9 (2) an offense for which a defendant is required to
10 register as a sex offender under Chapter 62, Code of Criminal
11 Procedure.

12 (b) Notwithstanding Section 21.041(b)(7), not later than
13 the fifth day after the date the board receives notice under Article
14 42.018, Code of Criminal Procedure, of the conviction of or grant of
15 deferred adjudication to a person who holds a certificate under
16 this subchapter, the board shall:

17 (1) revoke the certificate held by the person; and

18 (2) provide to the person and to any school district or
19 open-enrollment charter school employing the person at the time of
20 revocation written notice of:

21 (A) the revocation; and

22 (B) the basis for the revocation.

23 SECTION 9. Subchapter B, Chapter 21, Education Code, is
24 amended by adding Section 21.0581 to read as follows:

25 Sec. 21.0581. REVOCATION FOR ASSISTING PERSON WHO ENGAGED
26 IN SEXUAL MISCONDUCT OBTAIN EMPLOYMENT. (a) The board may suspend
27 or revoke a certificate held by a person under this subchapter,

1 impose other sanctions against the person, or refuse to issue a
2 certificate to the person under this subchapter if:

3 (1) the person assists another person in obtaining
4 employment at a school district or open-enrollment charter school,
5 other than by the routine transmission of administrative and
6 personnel files; and

7 (2) the person knew or should have known that the other
8 person has previously engaged in sexual misconduct with a minor or
9 student in violation of the law.

10 (b) The board may require a school district to revoke or
11 decline to issue a school district teaching permit under Section
12 21.055 issued to or requested by a person subject to board action
13 under Subsection (a).

14 SECTION 10. Section 21.062(a), Education Code, is amended
15 to read as follows:

16 (a) During an investigation by the commissioner of an
17 educator for an alleged incident of misconduct, the commissioner
18 may issue a subpoena to compel:

19 (1) the attendance of a relevant witness; or

20 (2) the production, for inspection or copying, of
21 relevant evidence that is located in this state.

22 SECTION 11. Section 21.355, Education Code, is amended by
23 amending Subsection (a) and adding Subsections (d) and (e) to read
24 as follows:

25 (a) A document evaluating the performance of a teacher or
26 administrator is confidential and is not subject to disclosure
27 under Chapter 552, Government Code.

1 (d) A school district or open-enrollment charter school may
2 give the agency a document evaluating the performance of a teacher
3 or administrator employed by the district or school.

4 (e) Notwithstanding Subsection (a) and except as otherwise
5 provided by a court order prohibiting disclosure, a document
6 provided to the agency under Subsection (d) may be used in a
7 disciplinary proceeding against a teacher or administrator based on
8 a report submitted under Section 21.006 concerning an alleged
9 incident of misconduct.

10 SECTION 12. Subchapter A, Chapter 38, Education Code, is
11 amended by adding Section 38.027 to read as follows:

12 Sec. 38.027. ELECTRONIC COMMUNICATION POLICY. (a) In this
13 section, "electronic communication" means any communication
14 facilitated by the use of any electronic device, including a
15 telephone, cellular telephone, computer, computer network,
16 personal data assistant, or pager. The term includes e-mails, text
17 messages, instant messages, and any communications made through an
18 Internet website, including a social media website or a social
19 networking website.

20 (b) A school district shall adopt a written policy
21 concerning electronic communications between a school employee and
22 a student enrolled in the district.

23 (c) The policy adopted under this section must include
24 provisions designed to prevent improper electronic communications
25 between a school employee and a student.

26 SECTION 13. Section 39.057(a), Education Code, is amended
27 to read as follows:

1 (a) The commissioner may authorize special accreditation
2 investigations to be conducted:

3 (1) when excessive numbers of absences of students
4 eligible to be tested on state assessment instruments are
5 determined;

6 (2) when excessive numbers of allowable exemptions
7 from the required state assessment instruments are determined;

8 (3) in response to complaints submitted to the agency
9 with respect to alleged violations of civil rights or other
10 requirements imposed on the state by federal law or court order;

11 (4) in response to established compliance reviews of
12 the district's financial accounting practices and state and federal
13 program requirements;

14 (5) when extraordinary numbers of student placements
15 in disciplinary alternative education programs, other than
16 placements under Sections 37.006 and 37.007, are determined;

17 (6) in response to an allegation involving a conflict
18 between members of the board of trustees or between the board and
19 the district administration if it appears that the conflict
20 involves a violation of a role or duty of the board members or the
21 administration clearly defined by this code;

22 (7) when excessive numbers of students in special
23 education programs under Subchapter A, Chapter 29, are assessed
24 through assessment instruments developed or adopted under Section
25 39.023(b);

26 (8) in response to an allegation regarding or an
27 analysis using a statistical method result indicating a possible

1 violation of an assessment instrument security procedure
2 established under Section 39.0301, including for the purpose of
3 investigating or auditing a school district under that section;

4 (9) when a significant pattern of decreased academic
5 performance has developed as a result of the promotion in the
6 preceding two school years of students who did not perform
7 satisfactorily as determined by the commissioner under Section
8 39.0241(a) on assessment instruments administered under Section
9 39.023(a), (c), or (1);

10 (10) when excessive numbers of students eligible to
11 enroll fail to complete an Algebra II course or any other advanced
12 course as determined by the commissioner;

13 (11) when resource allocation practices as evaluated
14 under Section 39.0821 indicate a potential for significant
15 improvement in resource allocation;

16 (12) when a disproportionate number of students of a
17 particular demographic group is graduating with a particular
18 endorsement under Section 28.025(c-1);

19 (13) when an excessive number of students is
20 graduating with a particular endorsement under Section
21 28.025(c-1);

22 (14) in response to a complaint submitted to the
23 agency with respect to alleged inaccurate data that is reported
24 through the Public Education Information Management System (PEIMS)
25 or through other reports required by state or federal law or rule or
26 court order and that is used by the agency to make a determination
27 relating to public school accountability, including accreditation,

1 under this chapter; [~~or~~]

2 (15) when a school district for any reason fails to
3 produce, at the request of the agency, evidence or an investigation
4 report relating to an educator who is under investigation by the
5 State Board for Educator Certification; or

6 (16) as the commissioner otherwise determines
7 necessary.

8 SECTION 14. The change in law made by this Act to Section
9 21.12, Penal Code, applies only to an offense committed on or after
10 the effective date of this Act. An offense committed before the
11 effective date of this Act is governed by the law in effect on the
12 date the offense was committed, and the former law is continued in
13 effect for that purpose. For purposes of this section, an offense
14 was committed before the effective date of this Act if any element
15 of the offense was committed before that date.

16 SECTION 15. This Act takes effect September 1, 2017.