



Elementary and Secondary Education Act Provisions Prohibiting Aiding and Abetting of Sexual Misconduct in Schools

The Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized in 2015, includes a provision to help protect students from sexual abuse and misconduct. ESEA Section 8546 requires states to adopt laws or policies that prohibit K–12 employers from assisting or aiding and abetting school employees, contractors, or agents in obtaining a new job if they are known or believed, with probable cause, to have engaged in sexual misconduct with a student or minor. Section 8546 applies to every state, state education agency (SEA), and local school district that receives ESEA funds, but it does not define “assisting” or “aiding and abetting.”

The provision is intended, for example, to prevent school staff from providing letters of recommendation for school employees, contractors, or agents to assist them in obtaining new employment if they are known or believed with probable cause to have engaged in sexual misconduct with a student or minor. This fact sheet provides an overview of the laws and policies that the 50 states and the District of Columbia (“states”) have enacted to prohibit aiding and abetting sexual misconduct in schools.

State Laws and Policies to Prohibit Aiding and Abetting Sexual Misconduct in Schools

As of October 2020, all 51 states required criminal background checks, and 35 states had adopted at least one other provision that could help to prevent school staff who are known or believed with probable cause to have engaged in sexual misconduct with a student or minor from obtaining new employment in education. Most of these employment provisions predated the enactment of Section 8546. Enacted or implemented state laws and policies to prohibit aiding and abetting include requirements in the following four categories: prospective employers, job applicants, current and former employers, and prohibitions on the suppression of information about employee misconduct.



Prospective employer requirements

- Conduct criminal background checks with fingerprinting for all job applicants
- Request information about an applicant and the applicant’s records from current and former employers
- Check certification status or applicants’ eligibility for employment in the prospective employer’s state and/or in other states where the applicant has worked
- Require that applicants provide a statement disclosing any investigations, disciplinary actions, and/or suspensions



Job applicant requirements

- Provide written authorization for current and former employers to disclose employment information and records
- Provide a written statement disclosing any allegations, investigations, resignations, or terminations for sexual abuse or misconduct with a student or minor
- Provide contact information for all current and former employers



Current/former employer requirements

- Disclose any allegations, investigations, resignations, or terminations related to sexual abuse/misconduct with a student or minor
- Respond to prospective employer requests within a specified period of time
- Respond to any follow-up request from prospective employers



Prohibitions on information suppression

- Prohibitions on termination, resignation, and severance agreements requiring employers to suppress information
- Provisions preventing employers from expunging information from an employee’s permanent personnel record
- Provisions barring letters of recommendation that omit information about incidents or allegations of sexual misconduct with a student or minor
- Bans on private settlements following a lawsuit that prevent employers from disclosing information about allegations of sexual misconduct with a student or minor



Examples of State legislation to prohibit aiding and abetting sexual abuse and misconduct

The following are examples of laws from four different states in each of the four categories of provisions that could help to implement prohibitions on aiding and abetting sexual abuse and misconduct in schools. The examples are illustrative and not intended to reflect the Department's endorsement of states' responses to Section 8546.



Requirements for prospective employers

(1) Requiring of such applicant: (A) To list the name, address, and telephone number of each current or former employer of the applicant (B) A written authorization that (i) consents to and authorizes disclosure by the employers ... and the release of related records by such employers, (ii) disclosure by the Department of Education and the release of related records by the department (C) A written statement of whether the applicant (i) has been the subject of an abuse or neglect or sexual misconduct investigation (ii) has ever been disciplined or asked to resign from employment or resigned from or otherwise separated from any employment while an allegation of abuse or neglect was pending or under investigation or (iii) has ever had a professional or occupational license or certificate suspended or revoked or has ever surrendered such a license or certificate while an allegation of abuse or neglect was pending or under investigation.



Requirements for job applicants

A county board, nonpublic school, or contracting agency shall require an applicant for a position involving direct contact with minors to submit: (1) The contact information of ... (i) The current employer; (ii) All former school employers; and (iii) All former employers A written consent form, signed by the applicant, authorizing an employer to release all records relating to child sexual abuse or sexual misconduct; and A written statement of whether the applicant: (i) Has been the subject of a child sexual abuse or sexual misconduct investigation (ii) Has ever been disciplined, discharged, nonrenewed, or asked to resign from employment, or has ever resigned from or otherwise separated from any employment while allegations of child sexual abuse or sexual misconduct were pending or were under investigation or (iii) Has ever had a license, professional license, or certificate suspended, surrendered, or revoked while allegations of child sexual abuse or sexual misconduct were pending or under investigation.



Requirements for current or former employers

Prior to hiring any applicant, the applicant's current or previous employer must make available to the hiring school board copies of any documents as contained in the applicant's personnel file maintained by such employer relative to such instances of sexual misconduct, if any. Such request for information must include a copy of the aforementioned statement signed by the applicant. 3. If such information exists, it must be made available to the requesting school board no later than 20 business days from the receipt of the request.



Prohibitions on information suppression

An education provider may not enter into a collective bargaining agreement, an employment contract, an agreement for resignation or termination, a severance agreement or any other contract or agreement that: (a) Has the effect of suppressing information relating to an ongoing investigation related to a report of suspected abuse or sexual conduct or relating to a substantiated report of abuse or sexual conduct by a current or former employee; (b) Affects the duties of the education provider to report suspected abuse or sexual conduct or to discipline a current or former employee for a substantiated report of abuse or sexual conduct; (c) Impairs the ability of the education provider to discipline an employee for a substantiated report of abuse or sexual conduct; or (d) Requires the education provider to expunge substantiated information about abuse or sexual conduct from any documents maintained by an education provider.



ESEA Section 8546. Prohibition on Aiding and Abetting Sexual Abuse

(a) In general

A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this Act shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, 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.

(b) Exception

The requirements of subsection (a) shall not apply if the information giving rise to probable cause-

(1)(A) has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and

(B) 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 regulations implementing such title under Part 106 of Title 34, Code of Federal Regulations, or any succeeding regulations; and

(2)(A) 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, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law;

(B) the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or

(C) the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

(c) Prohibition

The Secretary shall not have the authority to mandate, direct, or control the specific measures adopted by a State, State educational agency, or local educational agency under this section.

(d) Construction

Nothing in this section shall be construed to prevent a State from adopting, or to override a State law, regulation, or policy that provides, greater or additional protections to prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee who engaged in sexual misconduct regarding a minor or student in violation of the law in obtaining a new job.