

**Study of State Policies to Prohibit
Aiding and Abetting Sexual Misconduct
in Schools**

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Prepared for:

U.S. Department of Education
Office of Elementary and Secondary Education

Prepared by:

Policy Studies Associates

Leslie M. Anderson

Jason Spector

Derek Riley

Sophie Kidd

Magnolia Consulting

Stephanie B. Wilkerson

Anne C. Cosby

SRI International

Katrina Laguarda

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U.S. Department of Education

Miguel Cardona

Secretary

Office of Elementary and Secondary Education

Ruth Ryder

Deputy Assistant Secretary for Policy and Programs

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Content Contact:

Victoria Hammer

Phone: 217-840-8164

Email: Victoria.Hammer@ed.gov

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Executive Summary

In 2015, Congress added a provision in the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) to help protect students from sexual abuse and misconduct in schools. ESEA Section 8546¹ requires states to have in place laws or policies that prohibit schools, local school districts, or state education agencies (SEAs) from assisting or “aiding and abetting”^{2,3} school staff 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 in violation of the law. The provision requires laws and policies that prohibit aiding and abetting school employees *and* other school staff with access to children, including contractors and agents (e.g., volunteers). Section 8546 does not define what constitutes “assisting” or “aiding and abetting” and prohibits the Department from mandating or prescribing how states and districts respond to the requirements of Section 8546.⁴ The law applies to every state, SEA, or local school district that receives ESEA funds.

This study examined states’ development and implementation of laws and policies to prohibit aiding and abetting educator sexual misconduct in schools. The study also sought to describe the challenges states have encountered in implementing the requirements of Section 8546 and how they have addressed these challenges. The Department did not undertake this study to determine the extent to which each state is complying with Section 8546. Rather, the Department sought to understand how states are addressing implementation of the provisions in Section 8546 in order to inform the Department’s technical assistance efforts to help SEAs with this section of the law. The study addressed four main questions:

1. To what extent do states have laws, regulations, codes of ethics, and/or policies that prohibit assisting or aiding and abetting the employment of school staff, contractors, or agents who have engaged, or where there is probable cause to believe they have engaged, in sexual misconduct with a student or minor?
2. How did states develop laws, regulations, codes of ethics, and/or policies to address Section 8546?
3. How are SEAs implementing laws, regulations, codes of ethics, and/or policies that prohibit aiding and abetting?
4. What challenges have SEAs faced in implementing state laws or policies required under Section 8546?

Key findings from the study include the following:

¹ See appendix A for the full text of Section 8546 of the ESEA, Prohibition on Aiding and Abetting Sexual Abuse.

² Although the statute refers to “assisting” employment of those engaged in sexual misconduct, this report also frequently uses the term “aiding and abetting” as that is how the research literature describes this conduct, which has broader applications beyond education. In addition, the heading of section 8546 of the ESEA is: “Prohibition on Aiding and Abetting Sexual Abuse.”

³ When this report uses the term “aiding and abetting,” it is referring to the requirements of Section 8546.

⁴ Section 8546(c) states that 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.”

- As of October 2020, all 51 states⁵ required criminal background checks, and 35 states had adopted at least one other provision that could help prevent school personnel 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.
- Nineteen SEAs reported developing new or revising existing laws and policies in response to Section 8546, and 15 worked with other agencies and organizations to do so. These agencies and organizations include the state board of education and the state legislature.
- Nearly half of SEAs reported providing guidance and support to help districts implement state laws and policies related to aiding and abetting.

Methods

The study team conducted a systematic document review of the publicly available laws, regulations, and codes of ethics that prohibit aiding and abetting in the 50 states and the District of Columbia. Because SEA staff are responsible for overseeing implementation of ESEA provisions, the study team also interviewed SEA representatives⁶ to document how states had developed and implemented the laws and policies that prohibit aiding and abetting and how they had communicated the requirements of those laws and policies to districts and schools and supported their implementation. Forty-eight of the 51 states (94 percent) participated in interviews. In addition, these 48 states also verified the results of the document review by reviewing the text of state laws and policies compiled by the study team and confirming in writing that the provisions identified were complete, with no relevant laws or policies omitted, and also accurately categorized.⁷ This report describes the results of the analysis of data collected from the document reviews in all 51 states and interviews in 48 states.⁸ This report on state laws and policies to prohibit aiding and abetting is limited to those provisions governing employers and prospective employers. Although some states have laws and policies requiring mandatory reporting, as well as laws and policies governing investigations of sexual misconduct and requirements for training, these laws and policies are not described here.

⁵ “States” is used throughout this report to refer to the 50 states and the District of Columbia.

⁶ A total of 122 individuals participated in 48 interviews: 23 interviews included at least one attorney, with 16 including personnel from the state Office of General or Legal Counsel; 21 interviews had at least one respondent from the office of educator professional practice, licensure, and/or certification; 9 included a representative from the Title IV, Part A, Student Support and Academic Enrichment grants program; and 4 included a representative from the office of legislative affairs. Other SEA offices represented included the office of school health and safety, the office of the state superintendent, the office of standards and instructional support, the federal programs office, or the office of student, community, and academic supports.

⁷ After each state interview, the study team updated the results of the document review to include any additional laws, regulations, codes of ethics, or policies respondents identified during the interview. States then reviewed and verified data in two tables for both completeness and accuracy. The first table listed state statutes, regulations, codes of ethics, and policies that addressed specific hiring or information-disclosure policies or practices. The second table excerpted specific statutory, regulatory, ethics, or policy language reflecting the requirements of Section 8546. Additional information about the verification process and sample verification tables are presented in appendix B.

⁸ SEA staff in three states did not participate in interviews or verify the results of the document review for their state. Nevertheless, data collected from a review of public documents in these three states is presented in chapter 2. The findings presented in chapters 3, 4, and 5 are based on the data collected from the 48 states participating in the interviews; the three states that did not participate in the interviews are not referenced in these chapters.

Summary of Findings

State Laws and Policies Prohibiting Aiding and Abetting

States vary in the number and types of provisions included in their laws and policies prohibiting aiding and abetting sexual misconduct. For example, some but not all states require prospective employers to contact prior employers for information about an applicant's certification status. Similarly, some but not all states prohibit employers from engaging in practices that suppress information about incidents or allegations of sexual misconduct. Across the 51 states in the study, the number of provisions included in state hiring and disclosure laws and policies ranged from one in one state to as many as 13 in another.

Hiring practices

All 51 states require prospective employers to conduct criminal background checks, and almost all (46 states) fingerprint all job applicants.

Nearly all states require prospective employers to both check the criminal backgrounds (51 states) as well as fingerprint job applicants (46 states).

Twenty-seven states have laws and policies requiring prospective employers to check an applicant's employment history, certification status, employment eligibility, and/or disciplinary status.

Of these 27 states, 19 have laws or policies requiring employers to request information (e.g., personnel files, employment history) from an applicant's current and former employers; 14 require employers to check an applicant's eligibility for employment or certification in and across states; and 11 require applicants to disclose information regarding investigations or disciplinary actions related to sexual abuse or misconduct.

Eighteen states have at least one provision requiring job applicants to provide authorizations or written statements to prospective employers regarding their eligibility for employment in schools.

Of the 18 states, 14 require job applicants to provide written authorization for current and former employers to disclose information about the applicant and the applicant's employment records. In addition, some states require job applicants to provide written statements indicating whether they have (1) been the subject of a sexual abuse or misconduct investigation (10 states); (2) been disciplined, discharged, non-renewed, asked to resign, resigned, or separated from employment (9 states); or (3) had a license, professional license, or certification suspended, surrendered, or revoked while allegations of sexual abuse and misconduct were pending or due to a finding of sexual abuse and misconduct (9 states).

SEA respondents indicated that the lack of cross-state record-sharing could create problems for employers

Several SEA respondents, even in states requiring applicants to disclose information about past investigations or allegations of sexual misconduct, reported struggling to obtain information about job applicants from employers outside their state borders.

Disclosures

Twenty states have enacted laws or policies that require current or former employers to share personnel information with prospective employers.

Of these 20 states, 18 require current or former employers to disclose information to prospective employers about an allegation, investigation, resignation, or termination related to sexual abuse and misconduct. Should a prospective employer make a follow-up request for information, four states require the current or former employer to respond to that request and disclose information.

SEA respondents noted that statewide databases are a resource for sharing information with prospective employers about disciplinary actions taken against school employees engaged in sexual misconduct.

Various statewide databases include a job application data system, a database of disciplinary actions maintained by a professional practices office, a teacher certification database, and an online public-safety and criminal justice network. State respondents noted that prospective employers can also access information on teachers through the National Association of State Directors of Teacher Education and Certification (NASDTEC) database (NASCTEC, 2021). The NASDTEC, a paid membership association to which 23 SEAs belong, allows states to track disciplinary actions on teacher licenses. Although many SEAs use the NASDTEC database, it lacks some critical information. First, it references only certified employees. In addition, it does not record why employers have taken disciplinary actions against teachers and thus would not disclose a history of sexual abuse or misconduct.

Twenty states have enacted laws or policies that explicitly prohibit suppressing information regarding school employee sexual misconduct.

These 20 states vary in how they prohibit information suppression. For example, 11 states prohibit current or former employers from expunging information regarding allegations or other findings of sexual misconduct from employee records. In addition, several states prohibit the suppression of this type of information through termination/resignation agreements (12 states), severance agreements (9 states), collective bargaining agreements (9 states), or confidentiality or nondisclosure agreements (6 states).

Scope of Employment Activities Regulated by State Law and Policy

Nine states have laws and policies that regulate multiple aspects of district and school hiring practices and disclosure policies.

Nine states⁹ have put in place provisions requiring prospective employers to request information from current or former employers regarding an applicant's eligibility for employment as well as to require written authorization from an applicant for current or former employers to disclose applicant information and records. In addition, these states have enacted multiple provisions requiring current or former employers to share personnel information with prospective employers and prohibiting

⁹ SEA staff in one of these nine states did not participate in interviews or verify the results of the document review for their state. Nevertheless, we include the publicly available data we collected through the document reviews for this state in our analyses and summary of state laws and policies prohibiting aiding and abetting sexual misconduct in schools, presented in chapter 2.

employers from entering into agreements or private settlements that suppress information about an employee’s background, employment history, and disciplinary status.

Sixteen states require only criminal background checks.

Conducting criminal background checks is the most widely adopted hiring practice (51 states require these) across all states and is the only anti-aiding and abetting practice required by 16 states.

States’ Role in Developing Laws and Policies Responding to Section 8546

The number of states that passed relevant laws or policies responding to Section 8546 has significantly increased since the last systematic review of state laws and regulations, in 2017, when only four of 50 states¹⁰ had enacted laws and policies [other than criminal background checks] that reflected the ESEA mandate (Grant, Wilkerson, & Henschel, 2018).

Nineteen SEAs—or state legislatures—concluded that existing state laws and policies sufficiently responded to the requirements of Section 8546 and that no revisions were necessary.

Interview respondents in 19 SEAs reported that the SEA or the state legislature had reviewed existing laws or policies related to hiring practices or disclosures but made no updates in response to Section 8546. Interview respondents reported that their state already had laws and policies in place that were considered sufficient to prohibit hiring practices and disclosure agreements that aid and abet new employment of individuals that had engaged in sexual misconduct.

Nineteen SEAs responded to the requirements of Section 8546 by revising existing laws and policies, developing new ones, or responding in other ways.

Interview respondents in seven SEAs reported their agencies revised existing laws and policies in response to Section 8546; six developed new laws or policies; and two both revised existing laws as well as developed new ones. Four of these 19 SEAs reported other ways of responding to Section 8546. For example, one state had legislation pending that adopted the language of Section 8546, and another had plans to review existing laws and policies to determine whether they sufficiently responded to the requirements of Section 8546.

Fifteen of the 19 SEAs that developed or revised laws and policies in response to Section 8546 worked with other agencies and organizations to do so.

Among the 19 SEAs that developed or revised their laws and policies in response to Section 8546, 15 reported that the process they used involved working with other agencies and organizations. These included the state board of education (10 states), the state legislature (8 states), the state teacher-licensing agency (external to the SEA) (4 states), the state school boards association (3 states), the state department of health and human services or child and family services (2 states), and other state agencies or organizations (7 states) such as teacher unions, advocacy organizations, and local school districts.

¹⁰ The analytic sample for the study referenced here included the 50 states only and not the District of Columbia.

Respondents who had helped develop new or revise existing laws or policies in response to Section 8546, or to prohibit aiding and abetting, described a “painstaking,” “intensive” process requiring the involvement of multiple stakeholder groups.

Respondents described struggling to write statutory language that would not conflict with other laws and policies or with the needs and requirements of other stakeholder groups. As one respondent explained, crafting legislative language that solves rather than creates problems is a difficult, delicate process. In one state that had successfully developed new legislation prohibiting aiding and abetting, respondents explained that engaging with multiple stakeholder groups early and often in the legislative process ultimately smoothed the way for passage.

Challenges to state efforts to develop, revise, or adopt laws and policies addressing Section 8546 included stakeholder or legislator pushback and existing privacy laws.

Respondents described stakeholder pushback against their efforts to develop laws and policies prohibiting aiding and abetting. For example, respondents in one state reported that some stakeholders argued that “probable cause” is not a criminal offense and therefore should not require revocation of an educator license and prevent future employment in schools. Other reported challenges included privacy laws that prevent districts from disclosing personnel records.

SEA Implementation of Laws and Policies That Prohibit Aiding and Abetting

Respondents in 32 SEAs indicated their SEA communicates with local districts about the requirements of Section 8546 and/or state laws and policies prohibiting aiding and abetting.

According to SEA respondents, 32 SEAs communicate the requirements of Section 8546 and/or state laws and policies prohibiting aiding and abetting to their districts. Of these 32 SEAs, 22 also communicate with charter schools, and 18 communicate with private/non-public schools about these requirements. The district and school personnel with whom SEAs communicate include district superintendents, district or school attorneys, human resources (HR) directors, and school principals. State respondents indicated that communications outreach involves conveying state or federal legislation in plain language, explaining what is required for compliance, and describing what policies should be in place in the district or school.

Respondents in some SEAs indicated that state agencies or organizations other than the SEA, such as school boards associations and professional standards boards, communicate the requirements of state laws and policies, including those related to Section 8546, to districts. Although many local districts subscribe to state school boards associations, some respondents reported that smaller districts in their states might not pay for membership and therefore would have no access to information from these associations about Section 8546 requirements.

The frequency of reported communications related to the requirements of Section 8546 and/or aiding and abetting laws ranged from only once following the passage of Section 8546 legislation to twice a year. Vehicles for communicating requirements of Section 8546 include conference presentations, state association meetings, administrator memoranda, newsletters, automated broadcasting systems, and email, according to SEA respondents.

Twenty-one states provide guidance and support to help districts implement state laws and policies related to aiding and abetting.

Respondents in 21 SEAs reported that their agency provides written guidance, model policies, and trainings to help districts implement state laws and policies pertaining to aiding and abetting sexual misconduct. Respondents in 14 SEAs reported that their SEA does not provide implementation assistance to districts, and respondents in another 12 SEAs did not know. Finally, a respondent in one SEA indicated that a regional educational service unit, not the SEA, supports local implementation of laws and policies related to aiding and abetting.

Other agencies or associations also support districts in implementing laws and policies related to Section 8546, according to SEA respondents. These include school boards associations, principals and superintendents associations, local district consortia, departments of human resources, child and family services, and law enforcement. According to SEA respondents, support provided by these agencies or associations consists primarily of trainings concerning hiring practices, mandatory reporting, and investigations.

Eighteen SEAs monitor district compliance with state laws or policies prohibiting aiding and abetting sexual misconduct.

Monitoring in these 18 states usually comprises either assurances or policy audits, which SEAs use to confirm the presence of policies that address Section 8546 requirements and/or state laws and policies prohibiting aiding and abetting. In addition to assurance documents, SEA respondents noted that their agencies also monitor districts through accreditation audits, which typically are examinations of district policies and would include anything pertaining to aiding and abetting. As one state respondent explained, SEA compliance monitoring includes ensuring that districts conduct background checks, confirm job applicants' licensure and certification status, and properly report and investigate incidents of sexual misconduct.

Thirty-three SEAs document district complaints and/or incidents of sexual misconduct.

According to interview respondents, two-thirds of the SEAs (33 states) document district complaints and/or incidents of sexual misconduct and eight SEAs do not. Respondents in seven SEAs did not know whether their SEA documents district complaints and/or incidents of sexual misconduct.

SEAs use licensure and certification databases as well as databases documenting investigations to collect information about complaints and/or incidents of sexual misconduct. SEA respondents primarily described documenting formal complaints or incident notifications received through mandatory reporting requirements in the state. Most states reported documenting complaints for certified, but not non-certified staff.¹¹ Some respondents reported that although their SEA does not track complaints and/or incidents of sexual misconduct, other state agencies do. For example, in some states, the professional standards board or agency overseeing educator licensing is responsible for documenting complaints and/or incidents of sexual misconduct.

¹¹ Certified staff are licensed by state education agencies or state boards to work in K–12 schools, and/or they complete a certification process to establish that they have met the state's education, clinical training, and other requirements for their position. Non-certified staff work in positions that do not require such state-issued licenses or certifications.

Summary and Implications

This study examined the status of state laws and policies related to the requirements of Section 8546 as of October 2020 and how SEAs are supporting districts to implement the requirements of state laws and policies prohibiting aiding and abetting. Respondents suggested a few ways in which the U.S. Department of Education could help them respond to the requirements of Section 8546.

Respondents in 19 SEAs would welcome efforts by the Department to vet and share examples of policies and practices other states are using to address the requirements of Section 8546.

Respondents were interested in model state and local education agency (LEA) policies, promising practices, and guidance documents. SEA respondents said they value learning from peers, while also valuing Department perspectives on what is worth replicating. Many of these 19 respondents were also interested in examples of practices and guidance that other states use to ensure Section 8546 requirements are being met. Some respondents pointed to the range of capacity among SEAs, noting that it is challenging and inefficient for every state to respond to Section 8546 in isolation. For example, SEA respondents expressed interest in knowing how different states obtain employment information from other states, use subpoena power for investigations, use a state licensure database, or collect employment and misconduct information from LEAs.

Respondents in 11 SEAs expressed a need for clearer definitions and guidance from the Department regarding Section 8546.

Respondents in all 11 SEAs would welcome a formal guidance document, such as a “Dear Colleague” letter or a Frequently Asked Questions (FAQ) page, clarifying what specifically the law requires, such as how to define “assisting” and “probable cause.” Respondents in two SEAs requested guidance that could be disseminated to other audiences, such as licensing bodies external to the SEA, other SEA divisions, superintendents associations, school boards, district human resources staff, and general counsels. Respondents in five SEAs were interested in trainings or training materials, particularly any that could be shared with LEAs, school boards, and superintendents associations. A respondent in one SEA said the SEA needs clarity about the “probable cause” language in Section 8546, which is not common in civil legal contexts in the state.

SEAs need help with cross-state information-sharing; respondents in six SEAs proposed a national database of school employees managed by the federal government.

When asked about needed supports, respondents in six states explicitly indicated a desire for a national federal database that generates free, accessible information about the employment histories of all school staff; their eligibility for employment based on their certification status; any disciplinary actions or findings related to abuse, neglect, or sexual misconduct; and their criminal background. Indeed, SEA respondents reported that cross-state communication related to Section 8546 can be challenging and time-consuming. While many SEAs use the NASDTEC database, it references only certified employees, is a voluntary, paid membership organization, and does not reveal why disciplinary actions were taken against teachers, and therefore, would not disclose an applicant’s history of sexual abuse or misconduct involving a student or minor.

I. Introduction

In the 2015 reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA), Congress included a provision to help protect students from sexual abuse and misconduct in schools. ESEA Section 8546 requires states to adopt laws or policies that prohibit schools, local school districts, or SEAs from assisting or “aiding and abetting” school staff 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 in violation of the law (see appendix A for the full text of the statute).^{12, 13, 14} The provision requires laws and policies that prohibit assisting or aiding and abetting of school employees and other school staff, including contractors or agents (e.g., volunteers).¹⁵ Section 8546 does not define what constitutes “assisting” and prohibits the Department from mandating or prescribing how states and districts respond to the requirements of Section 8546.¹⁶ The provision applies to those with the ability to assist staff in obtaining employment, such as district administrators, school leaders, and others in every state, SEA, or LEA that receives ESEA funds.

This study examined states’ development and implementation of laws and policies to prohibit aiding and abetting sexual misconduct in schools. The study also sought to describe the challenges states have encountered implementing the requirements of Section 8546 and how they have addressed these challenges. The study is not intended to determine the extent to which each state is complying with Section 8546. Rather, the Department seeks to understand how states are addressing implementation of the provisions in Section 8546 in order to inform the Department’s technical assistance efforts to help SEAs with this section of the law. The study includes the 50 states and the District of Columbia, and the data are current as of October 2020. Although the report categorizes state laws and policies relevant to Section 8546, these categories are used to organize information for purposes of this report and are not intended to interpret requirements of Section 8546.

Study Purpose and Study Questions

This study examined whether states have statutes, regulations, codes of ethics, and/or policies¹⁷ in place designed to prohibit school employees, schools, school districts, and SEAs from assisting school personnel in obtaining a new job if they have engaged in, or there is probable cause to believe they have

¹² Although the statute refers to “assisting” employment of those engaged in sexual misconduct, this report also frequently uses the term “aiding and abetting” as that is how the research literature describes this conduct, which has broader applications beyond education. In addition, the heading of section 8546 of the ESEA is: “Prohibition on Aiding and Abetting Sexual Abuse.”

¹³ Although Section 8546 references “probable cause” as the standard to be met, this report also refers to “allegations” of sexual misconduct because this is the language states used in the laws and policies reviewed for this study.

¹⁴ An exception to the provision is allowed if: the information giving rise to probable cause has been properly reported to law enforcement agencies and other authorities as required by law; and if the case has been closed or law enforcement finds no probable cause to pursue it, or no charges or indictments have been filed within four years after the initial report, or the employee has been acquitted or exonerated.

¹⁵ Further, Section 8546 prohibits the Secretary of the U.S. Department of Education from mandating, directing, or controlling the specific measures adopted by states, state education agencies, or local school districts to address this issue.

¹⁶ Section 8546(c) states that 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.”

¹⁷ We refer to state laws, regulations, codes of ethics, and policies as “laws and policies” throughout this report.

engaged in, sexual misconduct with a student or minor.

The study addressed four questions:

5. To what extent do states have statutes, regulations, codes of ethics, and/or policies that prohibit assisting or aiding and abetting the employment of school staff, contractors, or agents who have engaged, or where there is probable cause to believe they have engaged, in sexual misconduct with a student or minor?
6. How did states develop laws, regulations, codes of ethics, and/or policies to address Section 8546?
7. How are SEAs implementing laws, regulations, codes of ethics, and/or policies that prohibit assisting or aiding and abetting?
8. What challenges have SEAs faced in implementing state laws, regulations, and/or policies required under Section 8546?

Methods in Brief

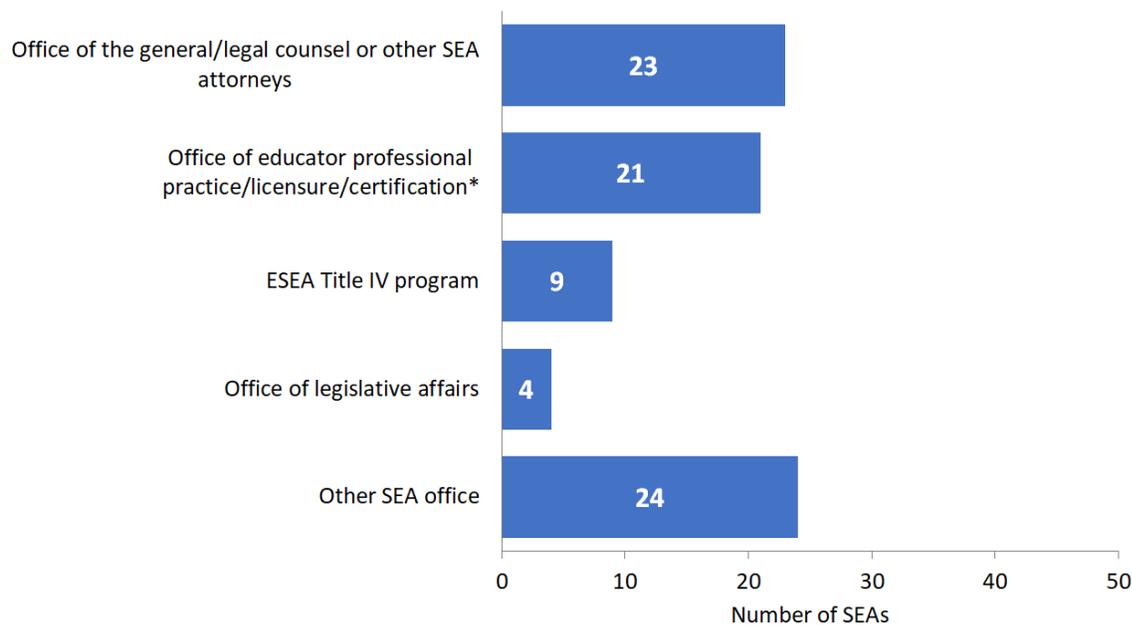
The study team conducted a systematic document review of the publicly available laws, regulations, and codes of ethics that prohibit aiding and abetting in the 50 states and the District of Columbia. Because SEA staff are responsible for overseeing implementation of ESEA provisions, the study team also interviewed SEA representatives. The document review focused on identifying provisions states have adopted to prohibit aiding and abetting and the prevalence of these provisions nationwide. The interviews examined how states developed and implemented laws and policies that prohibit aiding and abetting as well as how states communicate the requirements of those laws and policies to districts and schools and support their implementation.

Forty-eight of 51 states (94 percent) participated in one-hour interviews via Zoom or telephone and verified the results of the document review.¹⁸ A total of 122 individuals, representing a variety of SEA offices and programs, participated, with more than half the states (31 states) including multiple respondents in the interview. The size of the respondent groups ranged from one to nine, with an average of two to three respondents per interview. Twenty-three SEAs included at least one attorney in their interviews for this study, including attorneys from 16 SEA offices of the general/legal counsel. Twenty-one SEAs had at least one respondent from their office of educator professional practice, licensure, and/or certification (in some states, this office operates independently of the SEA). Nine SEAs included a representative from their Title IV, Part A, Student Support and Academic Enrichment grants program, and four SEAs included a representative from the office of legislative affairs. Twenty-four SEAs included respondents from other SEA offices, including the office of school health and safety, the office of the state superintendent, the office of standards and instructional support, the federal programs office, or the office of student, community, and academic supports (see exhibit 1). Other than offices of

¹⁸ After each state interview, the study team updated the results of the initial document review to include any additional laws, regulations, codes of ethics, or policies respondents identified during the interview. States then reviewed and verified data presented in two tables for both completeness and accuracy. The first table listed the statutes, regulations, codes of ethics, and policies identified during the initial document review or in the interviews that addressed specific types of hiring or information-disclosure policies or practices. The second table excerpted specific statutory, regulatory, ethics, or policy language reflecting the requirements of Section 8546. Additional information about the verification process and sample verification tables are presented in appendix B.

professional practice that operate independently of their SEA, no state agencies other than SEAs were represented in the interviews.

Exhibit 1. Summary of offices or programs represented in SEA interviews



n = 48

Exhibit reads: Twenty-six states included representatives from the office of the general counsel/legal services in the SEA interviews.

Note: The bars add up to more than 48 because, in many states, respondents representing multiple offices or programs participated in the SEA interviews.

* In a few states, these agencies operate outside the SEA.

Source: SEA interviews.

Limitations

The following study limitations affect the generalizability of results and should be considered when reviewing findings:

- The interview sample included representatives designated by 48 SEAs. The sample did not systematically include representatives from other state agencies that may be affected by Section 8546, such as state licensing boards or school boards associations. Some SEA interviews were with respondents who had limited knowledge of Section 8546 or of SEA interactions with local school districts; the study team did not mandate the selection of specific respondents and did not know whether others within the SEA might have offered contrasting or additional information.
- The interview data were self-reported and represent the knowledge, recollections, experiences, and perceptions of the individuals who participated in the study. The study team did not corroborate interview data with additional sources of evidence beyond the document review.

- Because state education agencies have primary responsibility for implementing ESEA provisions, the research team designed the study sample to include SEA staff from the office of federal programs in each state. At their discretion, these SEA staff also invited representatives from other state agencies, including legal counsel from the office of the attorney general or other state offices, to participate in interviews and to contribute to confirming the results of the study's document review. However, neither state attorneys general nor other legal counsel certified the data presented in this report in a process designed specifically for that purpose.

Provisions Prohibiting Aiding and Abetting: An Overview

To organize and inform the study design, data collection, and analysis, the study team identified seven broad categories of legislative or policy provisions related to prohibiting aiding and abetting employment. These categories were informed by prior research (Grant, Wilkerson, & Henschel, 2018) and legislation in early adopter states such as Pennsylvania,¹⁹ and then refined based on the results of the document review. The first four categories—prospective employer requirements, job applicant requirements, current or former employer requirements, and prohibitions on information suppression—regulate the information that prospective employers collect during the hiring process and that current and prior employers disclose in order to prevent school personnel who have engaged in sexual misconduct from obtaining new employment in education (exhibit 2). The provisions regulate the vetting process for new school employees by requiring prospective employers to contact current and prior employers as well as requiring current and prior employers to disclose relevant information about an applicant regarding involvement in incidents of sexual misconduct.

Three other categories of provisions depicted in exhibit 2—mandatory reporting, investigations and enforcement, and education and training—can influence the hiring process by generating data and raising awareness about incidents of sexual misconduct, but do not directly address the hiring practices of districts and schools. This distinction between provisions that apply specifically to employers and other kinds of provisions relevant to aiding and abetting is not an interpretation of the requirements of Section 8546 but rather provides an organizing framework for the study. This report does not evaluate the effectiveness of these categories. This report is limited to provisions that govern employers and prospective employers. Although many states have mandatory reporting laws, and some have laws governing investigations of sexual misconduct and requirements for training, these laws and policies are not described here.

Technical Appendixes

This report contains the following technical appendixes:

- Appendix A: Section 8546 Statutory Language
- Appendix B: Methods
- Appendix C: Document Review Protocol
- Appendix D: Interview Protocol
- Appendix E: Legislative Language from Illustrative States' Laws Prohibiting Aiding and Abetting

¹⁹ See Pennsylvania General Assembly 2014 Act 168 [here](#).

Exhibit 2. Types of legislative or policy provisions prohibiting aiding and abetting employment of those who have engaged or are believed to have engaged in sexual misconduct

Hiring	
 Prospective employer requirements	<ul style="list-style-type: none"> • Conduct criminal background checks with fingerprinting for all job applicants • Request applicant’s records from current and former employers • Check certification status or applicants’ eligibility for employment in prospective employer’s state and/or in other states where the applicant has worked • Require applicants to provide a statement disclosing any investigations, disciplinary actions, and/or suspensions
 Job applicant requirements	<ul style="list-style-type: none"> • 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
Disclosures	
 Current/former employer requirements	<ul style="list-style-type: none"> • 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 time period • Respond to any follow-up request from prospective employers
 Prohibitions on information suppression	<ul style="list-style-type: none"> • Prohibitions on termination, resignation, and severance agreements that require employers to suppress information • Provisions preventing employers from expunging information from an employee’s permanent 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
Other provisions not directly related to employment	
Mandatory reporting	Require school, district, and state employees to report sexual misconduct to: local law enforcement agency; child protective services; state education agency; district leaders; school resource officer; district Title IX coordinator; state teacher-licensing administrator
Investigations of sexual misconduct and enforcement	Require SEAs to investigate allegations of sexual misconduct; take disciplinary actions against applicants, former employers, and current employers for not complying with the statute; and monitor statewide criminal justice, public safety, and teacher-licensing databases
Training and education	Require staff training on sexual misconduct, grooming, mandatory reporting of sexual misconduct, and other topics

II. State Laws and Policies Prohibiting Aiding and Abetting Sexual Misconduct in Schools

All 50 states and the District of Columbia have laws requiring school districts to conduct criminal background checks as part of the hiring process. Beyond this universal requirement, 35 states have enacted at least one additional provision to prohibit aiding and abetting employment of those who have engaged or are alleged to have engaged in sexual misconduct with a student or minor.²⁰ These provisions seek to strengthen local hiring practices and to regulate information-sharing among employers to ensure that, even in the absence of a criminal conviction, those who have engaged in sexual misconduct with a student or minor cannot be hired by districts or schools.

This chapter describes the laws and policies states have enacted to prohibit aiding and abetting by regulating local hiring practices and information-sharing.²¹ It also describes reported gaps and loopholes in the laws and policies that existed as of October 2020 and that allowed individuals who have engaged in sexual misconduct to quietly leave their school jobs, obtain new jobs, and potentially move on to other victims. The chapter concludes with a discussion of the variation across states with respect to the number and type of provisions in state laws and policies prohibiting aiding and abetting.

Hiring Practices

States have required a variety of hiring practices designed to prevent the employment of individuals who have engaged in or allegedly engaged in sexual misconduct with a student or minor. These requirements include, but are not limited to:

- Conducting criminal background checks
- Fingerprinting all applicants and employees
- Contacting current and former employers
- Checking applicants' eligibility for employment or certification status in the current or other states.
- Requiring written and verbal disclosure about investigations, disciplinary actions, and suspensions

Although requirements for criminal background checks and fingerprinting are nearly universal, unless an individual has been convicted of sexual misconduct by the time of hiring, a state record of investigation of sexual misconduct is unlikely to exist (Grant, Wilkerson, & Henschel, 2018). Additionally, prospective employers might inadvertently hire a suspected or convicted individual if they check criminal records or certification status only in their own state but not states where the applicant has previously worked.

²⁰ Section 8546 requires laws and policies that prohibit aiding and abetting when an individual or agency “knows, or has probable cause to believe,” that a school employee, contractor, or agent has engaged in sexual misconduct. The state laws and policies reviewed for this study, however, refer to “allegations” of sexual misconduct, not “probable cause.” Accordingly, although Section 8546 references “probable cause” as the standard to be met in each individual allegation of sexual misconduct, this report refers to “allegations” of sexual misconduct because this is the language that many states have adopted.

²¹ Appendix E includes examples of legislative language states have used to regulate district and school hiring practices and information-disclosure policies.

Furthermore, applicants with a record of sexual misconduct in other states might omit or falsify their prior employment history on a job application.

The following describes laws and policies governing hiring practices specific to prospective employers and then specific to job applicants, and gaps or loopholes in those laws and policies that existed as of October 2020.

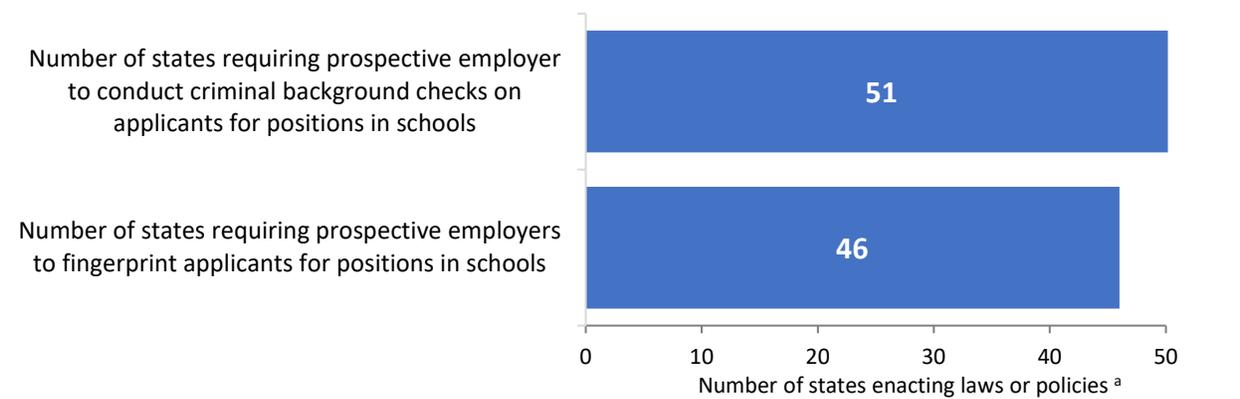
Laws and policies specific to prospective employers

State laws and policies governing hiring practices specific to prospective employers are a common strategy for prohibiting aiding and abetting. These employer-focused strategies are sometimes tied to state and national data systems—including those related to criminal backgrounds, teacher certification and employment eligibility, and prior employment—that are critical elements of a comprehensive approach to preventing aiding and abetting sexual misconduct.

All 50 states and the District of Columbia require prospective employers to conduct criminal background checks (51 states) and most require fingerprinting all job applicants (46 states).

Almost universally, states require prospective employers to check the criminal backgrounds (51 states) as well as fingerprint job applicants (46 states) for positions in schools (exhibit 3).

Exhibit 3. Number of states with laws or policies requiring prospective employers to conduct criminal background checks or fingerprint applicants for positions in schools



n = 51

Exhibit reads: All 50 states and the District of Columbia have laws or policies requiring prospective employers to conduct criminal background checks on applicants.

^a Refers to states enacting laws, regulations, codes of ethics, and policies. For the sake of readability, however, we shortened the label in this and other exhibits that reference data collected through document reviews.

Note: Bars do not sum to 51 because states can require prospective employers to both conduct criminal background checks as well as fingerprint applicants for positions in schools.

Source: Document review, verified by 94 percent of the SEAs (48 of 51) included in the study.

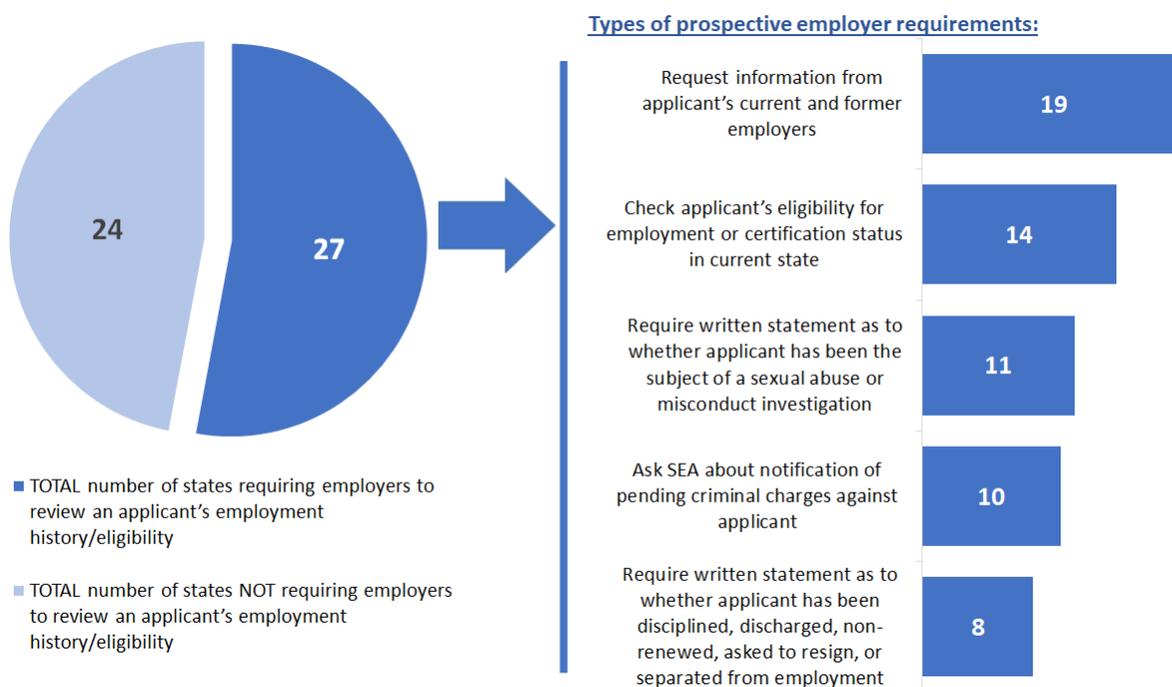
Twenty-seven states have laws and policies requiring prospective employers to check an applicant's employment history, certification status, employment eligibility, and/or his or her disciplinary status.

These 27 states have enacted additional laws that require prospective employers not only to conduct criminal background checks, but also to examine an applicant's employment history, certification status, employment eligibility, and/or disciplinary status, thereby potentially capturing additional information that might raise doubts about an applicant's suitability for continued employment in schools. Of these states, 19 have laws or policies requiring employers to request information (e.g., personnel files, employment history) from an applicant's current and former employers; 14 require employers to check an applicant's eligibility for employment or certification in and across states; and 11 require applicants to disclose information regarding investigations or discipline associated with sexual abuse and misconduct (see exhibit 4). These strategies are designed to work in tandem with criminal background checks to provide comprehensive information to prospective employers regarding an applicant's eligibility for employment. Each strategy can influence a hiring decision when employers are made aware of prior misconduct, even if it did not result in criminal charges.

Twenty-four states have no requirement to check an applicant's employment history (exhibit 4). In interviews with these states, some SEA respondents described the need to strike a balance between protecting the rights of the accused and the safety of the students. One respondent explained that because everything "hinges on actual charges, not probable cause," their state laws do not allow them to investigate and document individuals whom Section 8546 defines as those "believed with probable cause to have engaged in sexual misconduct." In another state, however, SEA staff reported seeking to plug the apparent information gap between suspected versus criminal behavior. For example, one respondent described working with legislators and stakeholders to create strategies that would systematically flag past sexual misconduct, even in the absence of criminal charges being filed:

What we did identify were the gaps that [Section 8546] was able to fill; the gaps [where] there is conduct that is questionable, but does not lead to charges being filed, or during the course of an investigation, it does not trigger any of our formal accountability systems, but there's still questionable or suspect conduct. [In those cases, the law requires] districts to ask prior employers about any conduct that did not rise to the level of [criminal] charges on file or before an investigation is completed. That was one instance of identifying gaps and the legislature obviously writing the bill to fill the gaps and the governor signing the bill and DOE [the department of education] implementing.

Exhibit 4. Number of states with and without laws or policies requiring prospective employers to review an applicant’s employment history and eligibility for positions in schools



n = 51

Exhibit reads: Twenty-seven states have laws or policies requiring prospective employers to check an applicant’s employment history/eligibility. Of these 27 states, 19 have laws requiring employers to request information from applicant’s current and former employers.

Note: Bars on the right do not sum to the total in the pie chart (27 states) because states can require employers to check more than one aspect of an applicant’s employment history/eligibility.

Source: Document review, verified by 94 percent of the SEAs (48 of 51) included in the study.

Laws and policies specific to job applicants

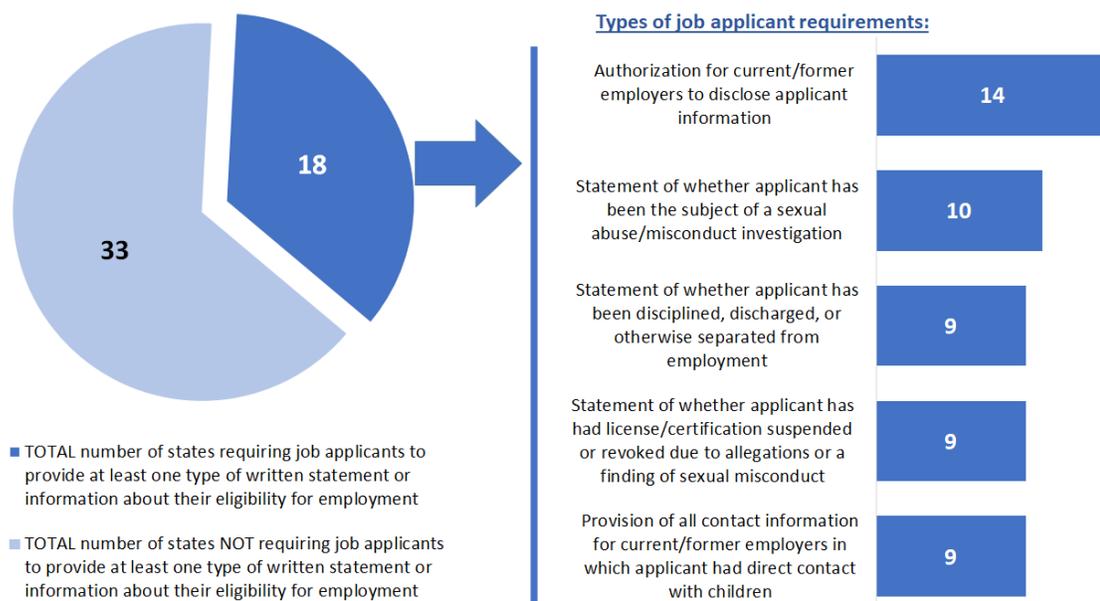
Some states mandate specific requirements for applicants for regular full-time employment in schools or other positions with access to children (for example, school contractors, substitute teachers and other temporary positions, and school agents such as volunteers). These requirements, which primarily ask for written statements regarding an applicant’s eligibility for employment, are designed to prevent applicants who have engaged or allegedly engaged in sexual misconduct from obtaining employment. Laws and policies specific to job applicants—particularly when enacted in conjunction with hiring laws requiring employers to request information from current or former employers—create deliberate reporting redundancies that could reveal discrepancies that warrant investigating an applicant’s background.

Eighteen states have at least one provision requiring job applicants to provide authorizations or written statements to prospective employers regarding their eligibility for employment in schools.

Of these 18 states, 14 require job applicants to provide written authorization for current and former

employers to disclose information about the applicant and the applicant’s records (exhibit 5). In addition, some of the 18 states require job applicants to provide written statements indicating whether they have (1) been the subject of a sexual abuse or misconduct investigation (10 states); (2) been disciplined, discharged, non-renewed, asked to resign, resigned, or separated from employment (9 states); or (3) had a license, professional license, or certification suspended, surrendered, or revoked while allegations of sexual abuse and misconduct were pending or due to a finding of sexual abuse and misconduct (9 states). Finally, nine states require applicants to provide all contact information for current and former employers in which the applicant had direct contact with children.

Exhibit 5. Number of states with and without laws and policies requiring school job applicants to provide authorizations or written statements to prospective employers



n = 51

Exhibit reads: Eighteen states have enacted laws or policies requiring job applicants to provide at least one type of written statement or information about their eligibility for employment. Of these 18 states, 14 have laws that require job applicants to provide authorization for current/former employers to disclose applicant information.

Note: Bars on the right do not sum to the total in the pie chart (18 states) because states can have more than one type of requirement for job applicants.

Source: Document review, verified by 94 percent of the SEAs (48 of 51) included in the study.

Respondents in some SEAs were confident that the laws and policies they had put in place to regulate job applicant disclosures were likely to be effective to prevent aiding and abetting.

The information employers obtain from job applicant disclosures can provide otherwise unavailable insight into an applicant’s background and job history, including information that might not have otherwise emerged but instead fallen into a gap based on relative timing and completion status of prior investigations. As one respondent explained:

The teacher certification application includes questions about whether [an applicant] had ever been the subject of an investigation in another state or been sanctioned. And

the reason [we added the questions] was we found that some states have such a backlog of investigations that it might be true that someone would not yet have been sanctioned when they applied for our state certification. Prior to this change, [applicants did not] have to disclose that they were the subject of an investigation.... Word[ing] the question this way will catch more people who have questionable backgrounds.

Another respondent stated:

And falsifying an application for employment is also a Board of Ed Examiners sanctionable offense. So, if I (as a prospective employee) don't disclose something on my application, if I don't disclose a no-contact order or pending charges, even if they wind up being dismissed, the duty of candor and this ongoing duty to supplement my application, even if it would never have been a problem had I disclosed it, the fact that I didn't is its own separate violation.

In addition, comparing information provided by the applicant to information provided by former employers can be a means to identify data discrepancies. According to respondents in one state, these discrepancies can be a warning sign to prospective employers and provide an additional means of prevention.

Thirty-three states do not have laws or policies requiring job applicants to disclose information about their job history, such as whether they have been investigated, disciplined, discharged, or had their license revoked for any reason.

As shown in exhibit 5, 33 states have no laws or policies requiring job applicants to provide information about their eligibility for employment, including providing written statements regarding whether the applicant has been the subject of a sexual abuse/misconduct investigation and whether the applicant has had his or her license/certification suspended or revoked due to allegations or a finding of sexual misconduct.

Reported gaps in state laws and policies governing hiring practices

About half of state laws and policies require all types of schools, regardless of whether they receive ESEA funding, to adopt hiring practices that prohibit aiding and abetting sexual misconduct.

Although Section 8546 applies to states, SEAs, and LEAs that receive ESEA funds, the laws and policies in about half the states (27) explicitly require public, private, parochial, and non-public schools and/or charter schools to adopt hiring practices that prohibit aiding and abetting sexual misconduct. All 27 states explicitly identify public schools as subject to state laws and policies prohibiting aiding and abetting. Of these, eight states also identify private, parochial, and non-public schools as subject to these same laws and policies; five states explicitly identify charter schools; and 14 states identify both private/non-public and charter schools as subject to state laws and policies on aiding and abetting. A respondent in one SEA noted the implications of this legislative gap in oversight:

*[We] don't have any authority over private schools [without a licensure agreement...]
There are instances where [the SEA] has some agreements with [some private schools]
to offer teacher licensure. In those cases, as part of that agreement, private schools have
an obligation to report [teacher sexual misconduct] to the SEA. But for those [private*

school] teachers not licensed through [state licensure] system, it is possible they could have committed an act of sexual misconduct and we'd not know about it.

Although states can revoke licenses or certification for school employees who have engaged in sexual misconduct, effectively preventing them from moving to a new job in education, these safeguards are not available for non-certified or non-licensed school employees.

While some states have introduced or amended laws and regulations to provide SEAs with greater oversight authority of non-certified employees (e.g., paraprofessionals), other states have not done so. Some SEA respondents reported struggling with the lack of oversight over non-certified staff. As one respondent explained: “That's a big gap. Educators in charter schools do not need to be certified, [which] the state board as well as the [SEA] have recognized is a loophole.” Acknowledging the gap, an SEA respondent in another state reported working to close it:

Not all paraeducators in [state] are required to be certified, so we are working to close that gap. I have similar concerns about substitute teachers, because if there is no credential, there's no connection to the department of education. We are aware of that gap and we, every year, try to take some legislative steps to close various gaps. I don't have anything [pending legislation] before me, but it is an area that we are actively aware of and always discussing.

Some SEA respondents indicated that the lack of cross-state record-sharing could limit the information employers can collect on job candidates.

Even in states that require applicants to disclose information about past investigations or allegations of sexual misconduct, SEA respondents in several states reported struggling to obtain information about job applicants from employers outside their state borders. As one SEA respondent explained:

The biggest challenge that I see, and have seen since this became law, is just with compliance in instances where you have somebody possibly coming from another state. It's great for [our state] law to say that ... the prior employer has to respond to this request for information. But if a prior employer in [another state] says, “I'm not all that interested in what [first state] says. I'm not doing this,” we don't have a lot of [recourse].

Disclosures

Prior to the reauthorization of the ESEA in 2015, research on aiding and abetting showed that employers (e.g., local school districts) sometimes enter into agreements or engage in other practices that can suppress information about incidents or allegations of sexual misconduct (GAO, 2010). Examples of these include, but are not limited to:

- Entering into agreements, including termination and resignation agreements, severance agreements, collective bargaining agreements, and confidentiality and nondisclosure agreements, that prevent employers from disclosing information about allegations of sexual misconduct
- Expunging information from an employee's permanent personnel record

- Providing letters of recommendation that omit information about incidents or allegations of sexual misconduct
- Entering into private settlements following a lawsuit (e.g., the school district sued by family of a victim) that prevent employers from disclosing information about allegations of sexual misconduct.

These practices typically prevent an employer from sharing any information about allegations or investigations of sexual misconduct with anyone, including prospective employers, and sometimes allow all information related to sexual misconduct to be expunged from personnel files. When local actors in public, private, and charter schools facilitate or agree to these types of information-suppression arrangements, they may be assisting those who have engaged in or allegedly engaged in sexual misconduct to maintain their access to minors and students in other schools.

Laws and policies designed to prevent aiding and abetting can require current or former employers, as well as SEAs, to disclose information to prospective employers about a job applicant’s involvement or alleged involvement in sexual misconduct, including incidents that may have led to the applicant’s investigation, resignation, termination, or other disciplinary actions. This section describes state laws and policies related to these information-sharing practices as well as to prohibitions on suppressing information related to sexual misconduct.

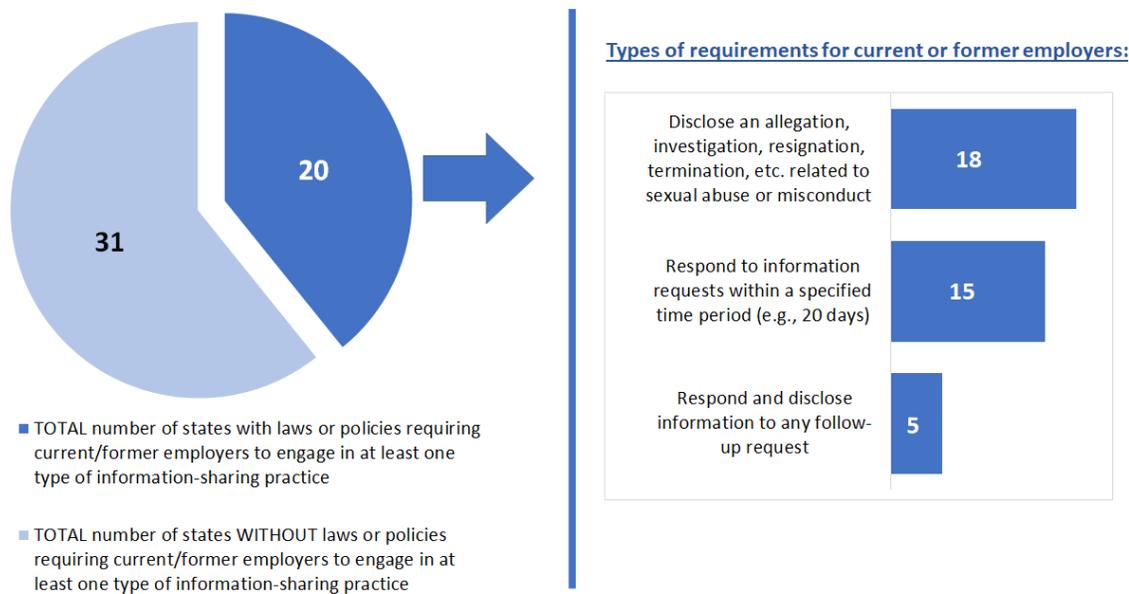
Laws and policies governing current and former employers

Twenty states have enacted laws or policies that require current or former employers to share personnel information with prospective employers.

Of these 20 states, almost all (18) require current or former employers to disclose information to prospective employers about an allegation, investigation, resignation, or termination related to sexual abuse and misconduct (exhibit 6). Should a prospective employer make a follow-up request for information, five states require the current or former employer to respond and disclose information to that request. One SEA respondent explained that state laws require current and former employers to share all personnel records, including information in personnel files: failure to do so “would be clearly [aiding and] abetting.” Fifteen states’ laws or policies require another information-sharing practice: prior employers are required to respond to a request for information within a specified time period (e.g., within 20 days) after receiving it.²²

²² It was beyond the scope of this study to determine whether the state laws described in this paragraph were intended to apply to employers in other states, and if so, what mechanisms states had adopted to enforce these laws with out-of-state employers.

Exhibit 6. Number of states with and without laws and policies requiring current or former employers to engage in information-sharing practices



n = 51

Exhibit reads: Twenty states have enacted laws or policies requiring current or former employers to engage in at least one type of information-sharing practice. Of these 20 states, 18 have laws requiring a current or former employer to disclose an allegation, investigation, resignation, termination, etc. related to sexual abuse and misconduct.

Note: Bars on the right do not sum to the total in the pie chart (20 states) because states can require more than one type of information-sharing practice.

Source: Document review, verified by 94 percent of the SEAs (48 of 51) included in the study.

Although 20 states have laws or policies requiring current or former employers to engage in at least one type of information-sharing practice with prospective employers, the majority of states (31 states) have no such laws or policies as of October 2020.

SEA respondents noted that their laws and policies authorize the SEA to share information about incidents of sexual abuse and misconduct with prospective employers who make a request.

State respondents gave examples of the types of information the SEA is authorized to share when a prospective employer submits a request for information about an applicant. These range from information about allegations and pending investigations to information about disciplinary actions on teacher licenses and convictions. As one respondent explained, “We are authorized to release full records of all allegations to any public school that asks for that, for a current or prospective employee.”

Nonetheless, in the interval between a complaint’s being filed and a disciplinary action taken or a conviction secured, an individual could apply for a position in another school. One SEA respondent shared how they attempted to close this particular loophole:

We call other states all the time and give them a heads-up when we know that someone who[m] we're investigating is going elsewhere. We also make every individual who's investigated [aware that] they must tell any public school system upon [submitting an] application that they are under investigation.

Statewide databases are a resource for sharing information with prospective employers about disciplinary actions taken or pending against school employees, according to SEA respondents.

Types of statewide databases include a job application data system, a database of disciplinary actions maintained by a professional practices office, a teacher certification database, and an online public safety and criminal justice network. One respondent shared that district administrators have access to an e-certifications database that will alert them to whether there is currently or has ever been an investigation against a certified school employee. If disciplinary action has been taken against the school employee, this information is also provided. Respondents in two SEAs shared how their respective SEA databases are used in their state:

[O]ur office maintains a database for all of our disciplinary actions, and our pending disciplinary cases can be found and are available and viewable by any member of the public.

[A district] administrator has access to what's called our e-certifications screens where they can go in and see if ... we've taken disciplinary actions against [certified individuals], such as reprimanded them, suspended them, or revoked their certificate. There would be a red banner up there, saying, "Disciplined through the Office of Professional Practices."

A respondent in a fourth SEA described the advantages of having a statewide job application system through which job applicants must consent to the release of information to potential employers, thereby giving potential employers easy access to critical information regarding an applicant's eligibility for employment:

The fact that an investigation is pending might not be available to the public, but it certainly would be available to a potential employer. The advantage of using the statewide job application system is that [applicants] consent to the release of a whole bunch of different types of information.

State respondents also noted that prospective employers can access information on teachers through the National Association of State Directors of Teacher Education and Certification (NASDTEC), to which about half (23) of SEAs belong. The NASDTEC database allows prospective employers in member states to track disciplinary actions against licensed teachers (or "licensed action") across states. States can voluntarily report licensed staff with a record of disciplinary action, such as job dismissal or license revocation. During the hiring process, prospective employers can check the database for disciplinary actions against licensed teachers across states. As one state respondent described:

[A]t the culmination of the investigation, if licensed action is taken against the individual, then that information is logged in the NASDTEC database and becomes available to our counterparts in each of the other states. And if that person does not already hold a credential in the other state, when they would apply for a reciprocal license, it would "ping" them in the system and preclude them from being able to proceed.

Although many SEAs use the paid-member-based NASDTEC database, it lacks some critical information. First, it references only certified employees. In addition, it does not reveal why employers have taken disciplinary actions against teachers and thus would not specifically disclose a history of sexual abuse or misconduct. Finally, [its information may not be as timely as may be required. That is, as a 2018 report explained: “an educator accused of sexual abuse or misconduct can be employed at another school before any record appears in the [NASDTEC] database” (Grant, Wilkerson, & Henschel, 2018, p. 6).

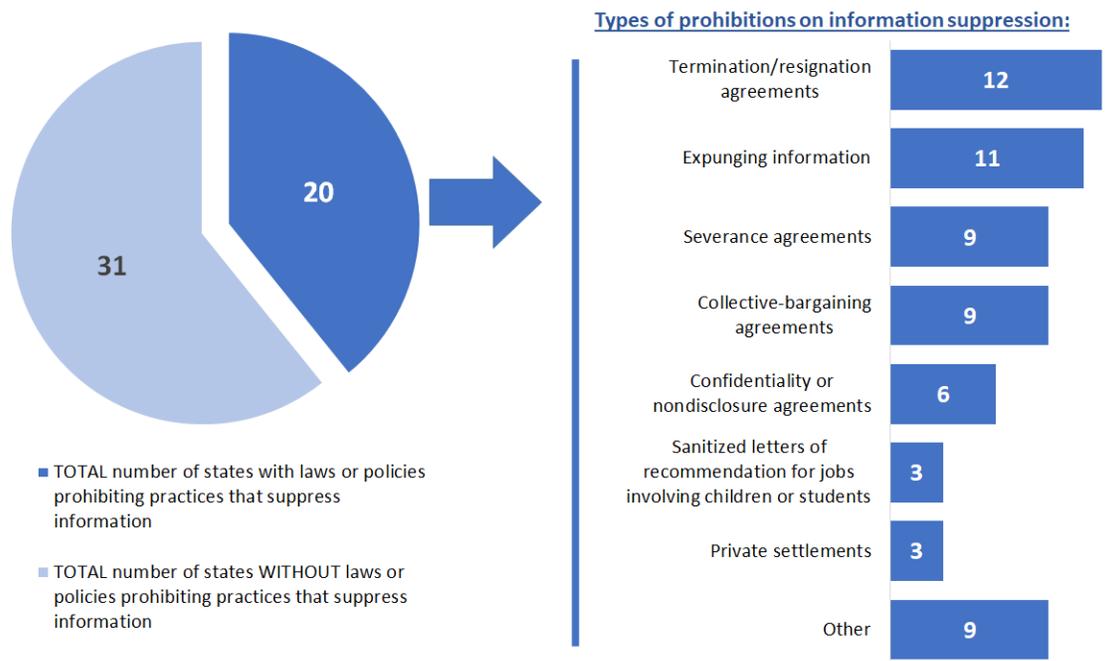
Laws and policies prohibiting information suppression

Twenty states have enacted laws or policies that explicitly prohibit suppressing information regarding school employee sexual misconduct; the majority of states (31), however, have not enacted any such laws or policies.

The 20 states with laws and policies that prohibit information suppression use various approaches. For example, 11 states prohibit current or former employers from expunging information regarding allegations or other findings of sexual misconduct from employee records (exhibit 7). In addition, several states prohibit suppression of this type of information in termination/resignation agreements (12 states²³), severance agreements (9 states), collective bargaining agreements (9 states), or confidentiality or nondisclosure agreements (6 states). Three states prohibit current or former employers from entering into private settlements with those who have engaged or allegedly engaged in sexual misconduct that would suppress information and avoid involving law enforcement or the legal system. These types of agreements or settlements would prevent current or former employers from disclosing information related to sexual misconduct to prospective employers.

²³ Note that although these 12 states prohibit information suppression in termination/resignation agreements, certain cases do not require formal separation agreements and employees are permitted to leave a school or district without documentation describing the circumstances behind their resignation or termination.

Exhibit 7. Number of states with and without laws and policies prohibiting practices that suppress information on school employee sexual misconduct



n = 51

Exhibit reads: Twenty states have enacted laws or policies prohibiting practices that suppress information about sexual misconduct. Of these 20 states, 12 have laws prohibiting termination/resignation agreements.

Note: Bars do not sum to the total in the pie chart (20 states) because states can prohibit more than one type of information-suppression practice.

Source: Document review, verified by 94 percent of the SEAs (48 of 51) included in the study.

One way states’ laws prohibit information suppression is by disallowing schools and employees from entering into any agreement or settlement that would prevent a school from reporting an incident to the SEA or law enforcement agency. State respondents referred to such agreements or settlements as “silent resignations,” which allow an employee with an allegation of sexual misconduct or with a pending investigation to seek employment in another school without disclosing to a prospective employer the reason for resigning. One SEA respondent described the impact of the state law that specifically prohibits silent resignations:

There’s a lot less “passing the trash”²⁴ these days where people resign and go to another district or state—a lot of that has gone by the wayside because in [our state], there’s a prohibition in the education law on these silent resignations related to inappropriate sexual relationships. You’re not allowed to have someone silently resign and not report that to the SEA. An administrator’s license might be in jeopardy if they know about [sexual misconduct or] bad moral character and fail to report it to us.

²⁴ “Passing the trash” and “the dance of the lemons” are colloquialisms often used by the popular press to describe situations where employers allow known sexual predators to quietly leave their jobs. With no criminal conviction or disciplinary record, predators can obtain new jobs and move on to other victims.

Several interview respondents described how laws and policies prohibiting information suppression can help prevent common scenarios in which school or district leaders, wanting to avoid public scrutiny, intentionally permit silent resignations rather than terminating employees and filing the required documentation of the circumstances behind the terminations. As one state respondent described:

[T]here are plenty of times you will look into someone, and you've got probable cause to believe there was sexual misconduct. But for whatever reason, maybe you let them resign instead of being fired. That happens a lot.

Similarly, another state respondent explained how some schools completely avoid terminating employees who allegedly engaged in sexual misconduct by placing them in a different school in the same district, effectively exploiting a loophole in the law.

Three states have prohibited current or former employers from writing sanitized letters of recommendation for those engaged or allegedly engaged in sexual misconduct.

In these three states the laws prohibit letters of recommendation for those engaged or allegedly engaged in sexual misconduct if the letters do not disclose the misconduct. These laws apply to a variety of employees and school sectors. In one state, the legislation prohibits letters of recommendation for “instructional personnel, administrative personnel, or school officers,” whereas another state’s law is more comprehensive and prohibits letters for “all employees, contractors, and agents of [state] districts and public charter schools.” The legislation in the third state prohibits staff in “districts and charter schools” from writing letters for “any [such] employee whose job involves contact with children.”

Reported gaps in state laws and policies governing disclosures

Some states disclose information about final disciplinary actions on teacher licenses and convictions only, but not pending complaints or investigations.

State respondents reported variations in what information they are authorized to share, with whom, and about whom. Some SEAs make information available to the public, whereas others share this information only with prospective employers who request it. Few states share information about complaints and pending investigations. One state respondent noted that privacy concerns prevent current employers from disclosing information about complaints or pending investigations to potential employers. As the respondent explained:

In relation to employment and what a current employer can disclose to a potential employer ... the privacy laws and the ability of the employee to sue over anything disclosed in that regard [has] dampened that ability to disclose any possible incidents.

Another state respondent explained that the SEA will not share information about allegations or pending investigations with districts if a formal conviction did not occur: “If a district reached out to us [about a background check] we would not be able to disclose an allegation [that did not result in a conviction].” In addition, because SEAs often have no jurisdiction over non-certified or non-licensed employees, the information available to prospective employers is typically limited to certified staff only.

Prohibitions on writing letters of recommendation may apply only to certified public school employees.

One state respondent reported that prohibitions on writing letters of recommendation apply only to certified individuals in their state and do not apply to contractors or non-certified school employees. The state respondent described this gap:

Charter schools don't have to have certified educators, so there's a little bit of a loophole.... People can write a letter of recommendation [for a noncertified school employee] without [that employee's being in] the registry of [certified] people ineligible to work in public schools. The only people that we can sanction would be the certified people.

State respondents noted another gap, which occurs when districts, not the SEA, are responsible for local policies prohibiting letters of recommendation. In states lacking laws or policies related to this form of information suppression, the state cannot regulate or enforce a prohibition on letters of recommendation. As a respondent from one such state put it: "There is no stopgap mechanism at the state level to penalize or to stop a colleague or an administrator ... from writing a letter of recommendation, and that has happened."

Scope of Provisions Adopted by States to Prohibit Aiding and Abetting

The scope of activities required by state laws and policies to prevent aiding and abetting varies across states (as shown in exhibit 10). At one end of the continuum, a few states have enacted provisions in almost every one of the categories identified in this report. Nine states (shaded in blue) have adopted one or more provisions from all four of the categories described above: prospective employer requirements, job applicant requirements, current or former employer requirements, and prohibitions on information suppression. Another 26 states (shaded in gray) have adopted provisions from one or more of these categories, but not all. Finally, 16 states (shaded in green) require criminal background checks and fingerprinting²⁵ but no other provisions. In the absence of research showing which provisions or clusters of provisions are effective at preventing sexual misconduct in schools, this report refrains from characterizing particular portfolios of state provisions as "comprehensive" or "extensive," or in any way indicating that any state's approach is sufficient to prevent most instances of sexual misconduct. However, states do vary in the number and scope of provisions enacted. The findings that follow attempt to characterize this range.

²⁵ Of these 16 states, one does not require fingerprinting, only criminal background checks.

Nine states have prohibited aiding and abetting by enacting laws and policies that regulate multiple aspects of district and school hiring practices and disclosure policies.

The nine states, shaded in blue, on the far-left side of exhibit 8, have laws and policies regulating multiple aspects of district and school hiring practices and disclosure policies.²⁶ For example, these nine states have put in place provisions requiring prospective employers to request information from current or former employers regarding an applicant’s eligibility for employment as well as to require written authorization from an applicant for current or former employers to disclose applicant information and records. In addition, these states have enacted multiple provisions requiring current or former employers to share personnel information with prospective employers and prohibiting employers from entering into agreements or private settlements that suppress information about an employee’s background, employment history, and disciplinary status. In short, these states have put in place laws and policies that, collectively, address many of the loopholes that have led prospective employers to unknowingly hire individuals who have engaged in sexual misconduct. These higher-activity states constitute the smallest group represented in exhibit 8.

The largest number of states (26 states) have laws and policies that regulate some but not all aspects of employer hiring practices, job applicant requirements, current or former employer requirements, or prohibitions on information suppression. We consider these states, shaded in gray in the center of the graphic, moderate-activity states. For example, State 10 has seven provisions regulating the hiring process—three for employers, three for job applicants, and one regulating the information-sharing practices of current and former employers—but no provisions prohibiting information suppression. State 35 has two provisions to prevent aiding and abetting: one that regulates prospective employer hiring practices and one that regulates job applicant requirements, but none that touch upon current and former employers or information-suppression policies.

Sixteen states require only criminal background checks but no other laws or policies that prohibit aiding and abetting.

Conducting criminal background checks is the most widely adopted hiring practice (51 states require these) and is the only anti-aiding and abetting practice enacted by 16 states, shaded in green on the far-right side of the graphic.

²⁶ Because the information in exhibit 8 might be misconstrued as monitoring whether states have fulfilled the requirements of Section 8546—which is not the purpose of this study—numbers mask state names to maintain their anonymity.

III. States' Role in Developing Laws and Policies Prohibiting Aiding and Abetting Sexual Misconduct in Schools

This chapter describes the processes SEAs used to develop new or revise existing laws prohibiting aiding and abetting sexual misconduct in schools in response to Section 8546, with special attention paid to the involvement of other state agencies and organizations as well as the level of effort required. It relies on interview data collected in summer and fall 2020 with respondents in 48 SEAs.²⁷ The chapter also describes states' reported rationales—including responding to the requirements of Section 8546—for developing laws and policies prohibiting aiding and abetting. It concludes with a description of challenges SEAs faced in developing these laws and policies.

How States Responded to Section 8546

Nineteen states responded to the requirements of Section 8546 by revising existing laws and policies, developing new ones, or responding in other ways.

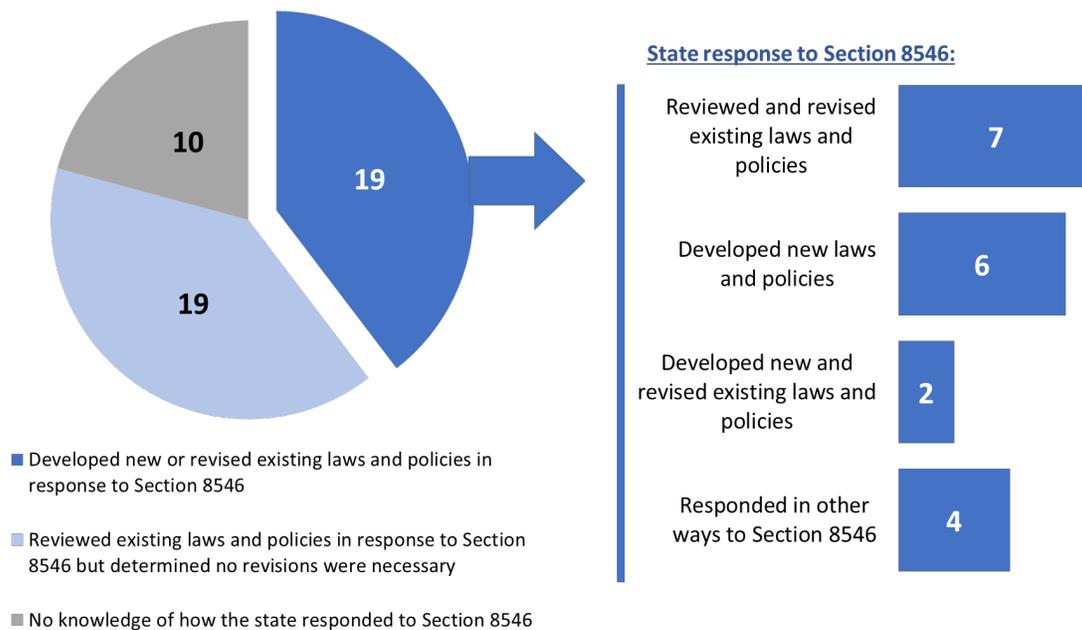
Since ESEA was reauthorized in 2015, states appear to have made progress in responding to the requirements of Section 8546. That is, based on this review, the number of states that passed relevant laws or policies responding to Section 8546 has significantly increased since 2017, when only four states had enacted any laws or policies other than criminal background checks that reflect the ESEA mandate (Grant, Wilkerson, & Henschel, 2018).²⁸ Among the 19 states that responded to Section 8546, seven SEAs reported their agencies revised existing laws and policies, six developed new laws or policies, and two both revised existing laws and developed new ones. Respondents in four of the 19 SEAs reported other ways of responding to Section 8546. For example, one state had legislation pending, but not yet passed, that adopted the language of Section 8546, and another had plans to review existing laws and policies to determine whether they sufficiently responded to the requirements of Section 8546 (exhibit 9). One SEA respondent described the new or revised laws the state enacted in 2018:

So there were five new [or revised] public acts that came out in 2018 on this issue [of aiding and abetting]. The first one ... covers criminal background checks for all LEA school district employees that work closely with students ... and then [a second statute], which was to get at the requirements of [Section 8546], prohibits school districts from entering into nondisclosure agreements during or as a prerequisite to settlements for acts of sexual misconduct. It also prohibits employees from assisting others in obtaining employment if the employee knows that the person has engaged in sexual misconduct involving a minor or a student.

²⁷ Forty-eight of 51 SEAs responded to our interview requests, for a response rate of 94 percent. The findings described in this chapter (chapter 3) and chapter 4 rely on the interview data collected from 48 SEAs.

²⁸ Early reports found variation in state awareness and implementation of the federal requirement and in procedures and practices states enacted to prohibit aiding and abetting employment (Grant, Wilkerson, & Henschel, 2018). As of January 2017, for example, 39 states had no plans to create relevant legislation or policy, either because they were unaware of the Section 8546 provision or because, based on the study authors' assessment, states erroneously believed that existing laws fulfilled the ESEA mandate (Grant, Wilkerson, & Henschel, 2018). Although many states referenced mandatory reporting requirements as sufficient to respond to ESEA's criteria, Grant, Wilkerson, and Henschel (2018) determined that these laws do not fulfill the requirements in the provision.

Exhibit 9. Number of states that did and did not develop new or revise existing laws and policies in response to the requirements of Section 8546



n = 48

Exhibit reads: Nineteen states developed new or revised existing laws and policies in response to the requirements of Section 8546. Of these 19 states, 13 revised existing laws and policies.

Source: SEA interviews.

Another 19 SEAs—or state legislatures—concluded that existing state laws and policies responded sufficiently to the requirements of Section 8546 and that no updates were necessary.

Respondents in these 19 states (exhibit 9) described reviewing existing laws or policies related to hiring practices or disclosures but made no updates in response to Section 8546. In interviews, respondents explained they already had laws and policies in place that they believed were sufficient to prohibit hiring practices and disclosure agreements that aid and abet new employment of individuals engaged in sexual misconduct. As one respondent in a state with many provisions prohibiting aiding and abetting explained, “I think many of the systems and laws and regulations that we’ve described in this call predate Section 8546.... I think we’ve had these kind of robust accountability systems in place for a long time.”

In a state with a few provisions prohibiting aiding and abetting, one SEA respondent explained that although the SEA had proposed new legislative language in response to Section 8546, its proposal was rejected by key stakeholders:

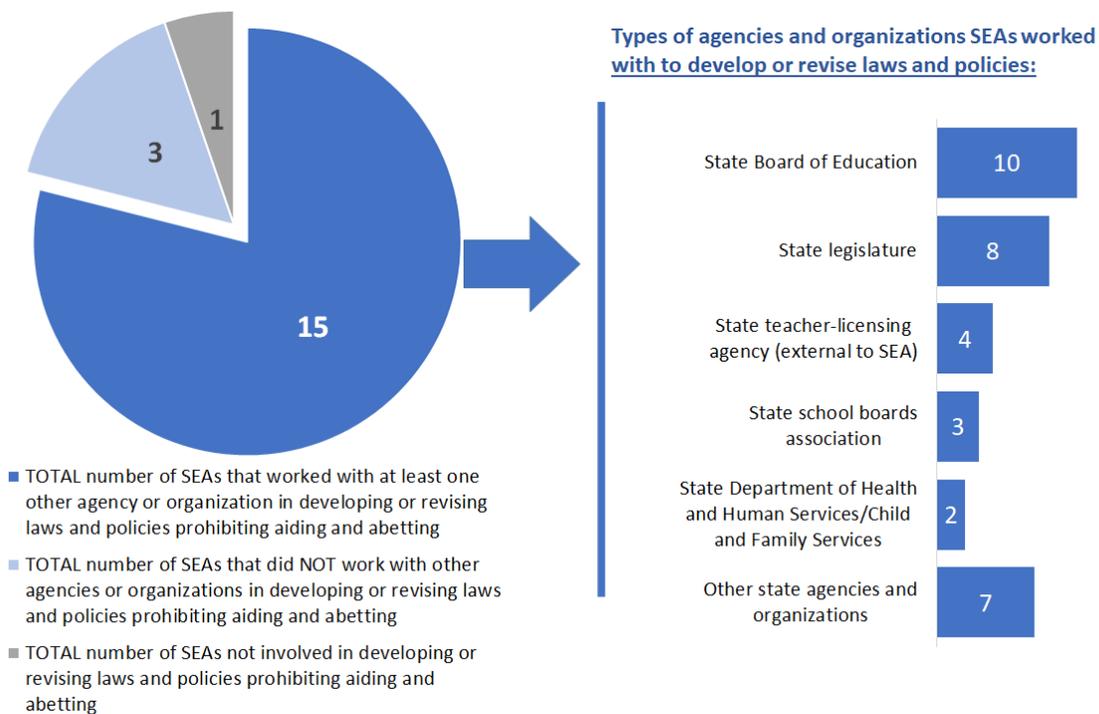
To be honest with you, that federal statute didn't cause any changes. The statutes that are in place now were already in place.... There were some state board members who were really invested in the prior statutes who actually said, “We feel like what we have already covers all of that; we don't need any changes,” and rejected the proposed language [we put forward].

How States Developed or Revised Laws and Policies Prohibiting Aiding and Abetting

Most SEAs that developed or revised laws and policies in response to Section 8546 worked with other agencies and organizations to do so.

Among the 19 SEAs that developed or revised their laws and policies in response to Section 8546, respondents in most (15 states) reported that the process they used involved working with other agencies and organizations (exhibit 10). These included the state board of education (10 states), the state legislature (8 states), the state teacher-licensing agency (external to the SEA) (4 states), the state school boards association (3 states), the state department of health and human services or child and family services (2 states), and other state agencies or organizations (7 states) such as teacher unions, advocacy organizations, and local school districts. Respondents in a few SEAs (3 states) reported that the SEA did not work with other agencies and organizations but instead worked independently to revise existing SEA policies, not laws. Finally, respondents in one SEA reported that the SEA was not involved in developing or revising laws and policies related to aiding and abetting.

Exhibit 10. Number of SEAs that worked with other agencies and organizations in developing new or revising existing laws and policies in response to the requirements of Section 8546



n = 19

Exhibit reads: Fifteen SEAs that developed or revised laws and policies in response to the requirements of Section 8546 worked with at least one other agency or organization to do so. Of these 15 SEAs, 10 worked with the state board of education to develop or revise laws or policies.

Note: Bars do not sum to the total in the pie chart (15 states), because multiple state agencies, organizations, and/or boards can be involved in developing, reviewing, or updating laws and policies that prohibit aiding and abetting.

Source: SEA interviews.

Respondents who had helped develop new or revise existing laws or policies in response to Section 8546 or to prohibit aiding and abetting described a “painstaking,” “intensive” process requiring the involvement of multiple stakeholder groups.

Respondents described struggling to write statutory language that would not conflict with other laws and policies, such as teacher codes of ethics, or with the needs and requirements of other stakeholder groups. As one respondent explained, crafting legislative language that solves problems rather than creates them is a difficult and delicate process:

We have to involve law enforcement, DCS [Department of Child Services], the state board, there are so many stakeholders, and each of those stakeholders has their own requirements, so being able to find statutory language that all agencies can get on board with and that complies with both state and federal law, it's just a lot of cooks in the kitchen, so to speak.

In one state that had successfully developed new legislation prohibiting aiding and abetting, respondents explained that engaging with multiple stakeholder groups early and often in the legislative process ultimately smoothed the way for passage:

In terms of legislative action, it moved rather quickly because we engaged stakeholders early by explaining the bill and making sure that the perspectives of all stakeholders were clearly understood. We also worked in partnership with schools, and groups representing schools, which was important to moving the legislation forward—otherwise, there could have been misunderstandings about what could be accomplished. [We] had a lot of conversations with the state school boards association and involved them in the legislative process so that when it was ready to be signed into law, they were [on board].

Why States Developed or Revised Laws and Policies Prohibiting Aiding and Abetting

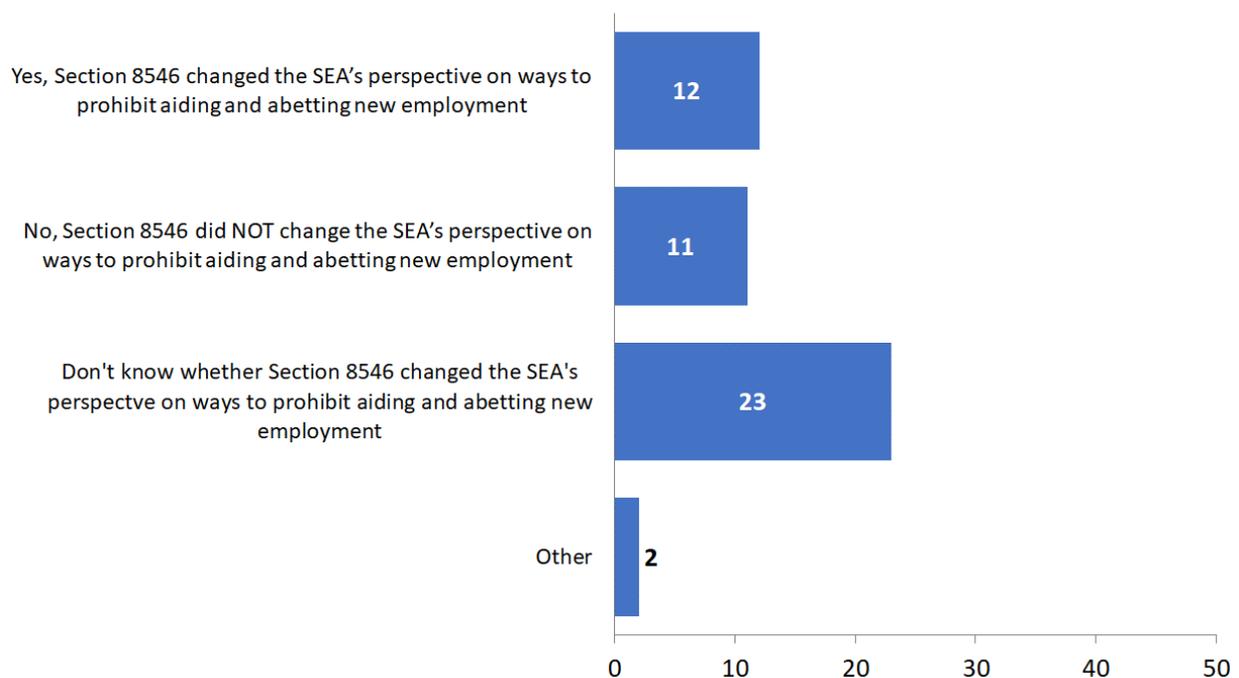
Respondents in a quarter of the SEAs reported that Section 8546 affected their agency’s perspective on ways to prohibit aiding and abetting, in that it clarified state responsibilities and called on them to protect the safety of students.

Respondents in 12 SEAs reported that the requirements of Section 8546 affected their agency’s perspective on ways to prohibit aiding and abetting (exhibit 11). These interview responses suggested that Section 8546 had in some cases contributed to renewed state action to protect students. As one respondent reported, “It did bring [sexual misconduct] to the forefront and we realized that we’re not a perfect state and that it’s going to happen somewhere.” In addition, respondents said the federal law helped their agency identify gaps in state laws and policies, such as those related to contractors. As another respondent explained: “Now we fingerprint contractors so if there was a criminal history, that would be seen; capturing the contractors just keeps our children safer.” Respondents in another SEA explained that before Section 8546, they had not disciplined people who assisted others in getting a job. Respondents in a third SEA said the law helped the agency step up its efforts to raise awareness in the

field about “passing the trash” and educators moving to different positions. SEA respondents in a fourth state explained that their legislature was spurred to enact new laws partly in response to Section 8546 but also partly in response to an incident involving a teacher with a history of sexual misconduct being passed from school to school:

There was the federal law, but also at the same time, there were some things happening in the state that were pushing the legislature to [act], and those two things got meshed together in [this statute]. Some of it was driven by a case in [one school district] where a teacher had been passed from school to school, but the history of discipline was not following the teacher and so a new school would not be aware that there were allegations of sexual misconduct attached to this teacher. So it was that case, and a couple other things, combined with this federal law, that led to [this statute].

Exhibit 11. SEAs reporting that Section 8546 changed the agency’s perspective on ways to prohibit aiding and abetting new employment



n = 48

Exhibit reads: Respondents in 12 SEAs reported that the requirements of Section 8546 had changed the SEA’s perspective on ways to prohibit aiding and abetting new employment.

Source: SEA interviews.

Respondents in 11 SEAs said the requirements of Section 8546 had not changed their agency’s perspective on ways to prohibit aiding and abetting the employment of individuals engaged in sexual misconduct. A few respondents explained they were already well aware of the steps required to prevent aiding and abetting, having worked on the issue long before Section 8546 was enacted. As one respondent explained: “We have a continuous improvement mindset intended to make our practices better; I think we’re always looking more comprehensively at child protection.” Similarly, another

respondent said she believed that Section 8546 fit into already established state mechanisms intended to prevent educators accused of misconduct from moving easily from district to district. A third respondent reported that a sexual misconduct case in another country was what spurred the SEA to act.

Most states prohibited aiding and abetting new employment by enacting laws; few states developed regulations, codes of ethics, or policies to regulate district and school hiring practices and disclosure policies.

As shown in exhibit 12, as of fall 2020, states had enacted 131 acts or statutes (which include the various hiring and disclosure provisions described in chapter 2) but few regulations (11 regulations),²⁹ codes of ethics (2 codes of ethics), or policies (4 policies) to prohibit the employment of individuals engaged in sexual misconduct. Most SEA respondents were unable to shed much light on why states tended to favor laws over other strategies to respond to the requirements of Section 8546 and/or prohibit aiding and abetting sexual misconduct. Respondents in two SEAs, however, offered one explanation, which is that laws are more enforceable than codes of ethics or policies:

Anything that we want to be extremely enforceable, we make sure it gets into statute or into the state board rule, which is considered administrative law, it's binding. Anything that we put out in policy or guidance is just that. So any time we have something of this serious of a nature, we would never just put it in a guidance document, we would put it in statute or administrative law.

When it comes to some of the health and safety requirements, law and regulation carries more weight for our LEAs [particularly those that] include [many] individual charter public schools. And, so passing laws does carry a little bit more weight for when we are working with these LEAs to implement these [requirements].... So, to the extent that laws and regulations eliminate that ambiguity and create an equal regulatory field, I think that there's no pushback, whereas policy can create some level of ambiguity [with districts].

²⁹ Regulations are standards and rules adopted by administrative agencies that determine how laws will be enforced. Like laws, regulations are codified and published so that parties are on notice regarding what is and is not legal. Regulations often have the same force as laws, since, without them, regulatory agencies would not be able to enforce laws (https://blogs.findlaw.com/law_and_life/2015/10/whats-the-difference-between-laws-and-regulations.html).

Exhibit 12. Number of state laws, regulations, codes of ethics, and policies states have enacted to prohibit aiding and abetting

Type of ordinance	Number of state laws, regulations, codes of ethics, and policies
Laws	131
Regulations	11
Codes of ethics	2
Policies	4
TOTAL	144

n =144

Source: Document review, verified by 94 percent of the SEAs (48 of 51) included in the study.

Challenges to Developing or Revising State Laws and Policies Prohibiting Aiding and Abetting

Challenges to state efforts to develop or revise laws and policies that address the requirements of Section 8546 included stakeholder or legislator pushback and existing privacy laws.

Respondents described stakeholder pushback against their efforts to develop laws and policies prohibiting aiding and abetting. For example, respondents in one state reported that some stakeholders argued that “probable cause” is not a criminal offense and therefore should not incur revocation of educator licenses and abrogation of future employment in schools. In a second state, respondents said a stakeholder would not accept prohibitions on relationships between educators and students when the student was of legal age. Another reported challenge was existing privacy laws that prevent districts from disclosing personnel records.

In some states, respondents reported successfully overcoming the stakeholder challenges they confronted and going on to enact legislation, whereas in other states, respondents were unable to surmount very similar challenges.

IV. SEA Implementation of Laws or Policies Prohibiting Aiding and Abetting Sexual Misconduct

This chapter describes how SEAs communicate with local districts about laws or policies that prohibit aiding and abetting the employment of individuals who have engaged in sexual misconduct with a student or minor. It also describes how SEAs support local implementation of these laws and policies. The information, based on interviews with SEA representatives, describes variations of implementation support, including how SEAs:

- Support local implementation of Section 8546 and/or state laws or policies prohibiting aiding and abetting
- Monitor local compliance with state laws and policies prohibiting aiding and abetting
- Document incidents of sexual misconduct.

The chapter concludes with a description of challenges SEAs face in implementing laws or policies related to Section 8546.

Communicating the Requirements of Section 8546 and/or Laws and Policies Prohibiting Aiding and Abetting

SEA support for local implementation of state laws and policies begins with communicating the requirements of Section 8546 and/or state laws prohibiting aiding and abetting.

Respondents in 32 SEAs indicated their SEA communicates with local districts about the requirements of Section 8546 and/or state laws and policies prohibiting aiding and abetting.

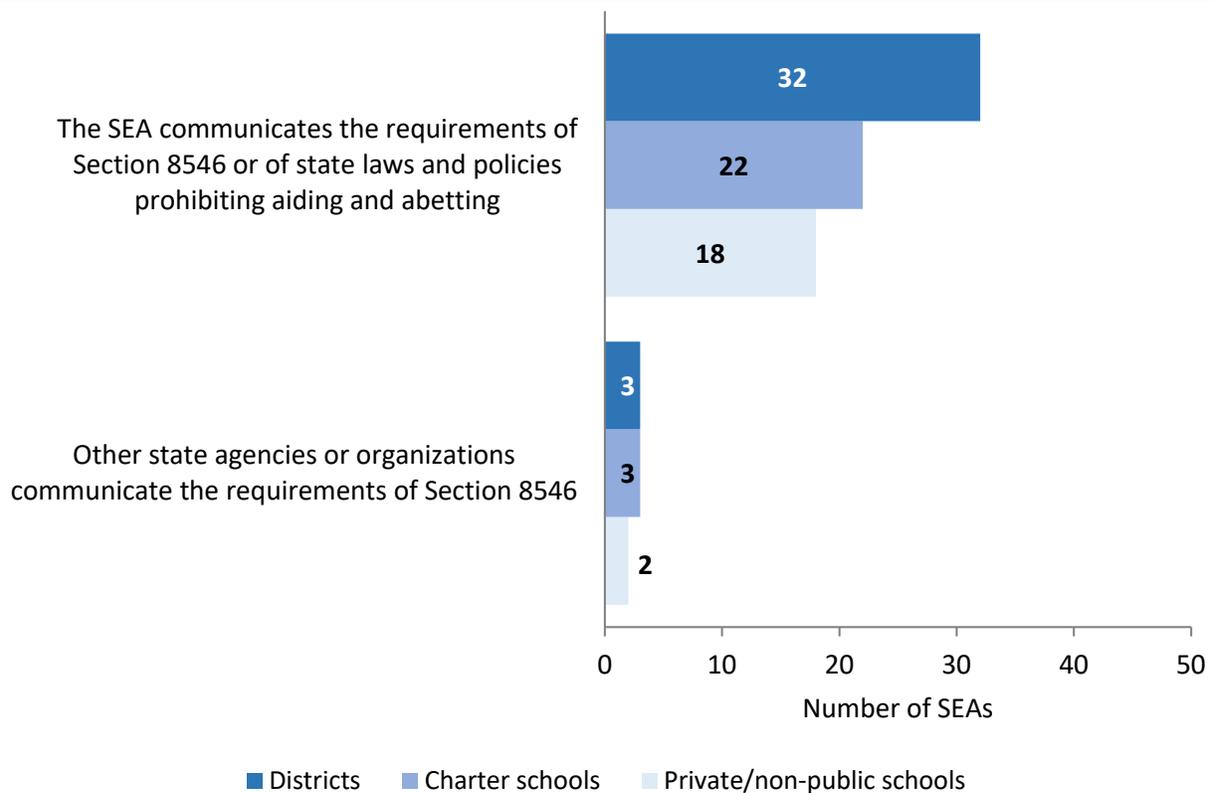
According to SEA respondents, 32 SEAs communicate about the requirements of Section 8546 and/or state laws and policies prohibiting aiding and abetting to their districts (exhibit 13). In these 32 SEAs, 22 also communicate with charter schools, and 18 communicate with private/non-public schools about the requirements of Section 8546 and/or state laws and policies prohibiting aiding and abetting.

The district and school personnel with whom SEAs communicate about Section 8546 and/or laws and policies prohibiting aiding and abetting include district superintendents, district or school attorneys, human resources (HR) directors, and school principals. One state respondent commented that informing school district leaders about laws and policies is important but explained that his lack of familiarity with Section 8546 has limited the communication the SEA has had with districts:

I wasn't familiar with 8546. We've been pretty wrapped up in doing what we do and I hadn't paid a ton of attention to it... We need to communicate this out, because I think the biggest challenge ... is making sure that superintendents or local school boards are aware of the need for the [hiring and disclosure] policies and that the structures are in place for them to meet the requirements [of Section 8546].

Respondents in three SEAs reported that state agencies or organizations other than the SEA, such as school boards associations and professional standards boards, communicate the requirements of state laws and policies, including those related to Section 8546. These entities reportedly communicate the requirements to districts, other agencies, or organizations (in three states), charter schools (in three states), and private/non-public schools (in two states). One state respondent explained that the SEA is not responsible for educating districts about federal or state laws: “It’s [the districts’] responsibility to know the law. They are all part of the school boards association, and the school boards association has law trainings where these [laws] are mentioned.”

Exhibit 13. Agencies communicating requirements of Section 8546 or of state laws and policies prohibiting aiding and abetting to districts, private/non-public schools, and/or charter schools



n = 48

Exhibit reads: Respondents in 32 SEAs indicated their SEA communicates with local districts about the requirements of Section 8546 and/or state laws and policies prohibiting aiding and abetting.

Note: Bars do not sum to the total number of SEAs because states can communicate with more than one type of entity.

Source: SEA interviews.

A smaller number of respondents reported that their SEA communicates the requirements of state laws and policies to charter schools (18 states) and to private/non-public schools (18 states).

Most typically, state respondents indicated that private/non-public schools that receive services paid for with federal funds receive SEA communications about federal program requirements. However, these communications are not specifically targeted to non-public-school leaders. Instead, states convey the information through communications channels for public schools, such as trainings and association meetings typically attended by public school staff. As one state respondent described:

Any non-publics in [our state] that do receive federal funds, they're always invited to participate in our Title IX or teacher code of conduct [trainings] and any opportunity that we make available to our public-school systems.

SEAs also communicate information about Section 8546 and/or laws and policies prohibiting aiding and abetting through their websites, which are accessible to public, non-public, and charter schools. One state respondent described how the SEA provides written guidance and resources on its website to communicate the state's laws and policies, including guidance pertaining to Section 8546:

[W]e developed a website landing page that stipulates all the requirements of our local laws, including 8546. On that page, we include the model policies that schools and LEAs can use when they're developing their own policies, training resources, and curricular guides.... [We] shared these resources and this website landing page with our LEAs via newsletters from our agency, as well as from the public charter school board and the state board of education. SEAs communicate information about policy requirements, including Section 8546, about once or twice a year using established communication mechanisms.

The extent of SEA communication with private/non-public schools and/or charter schools, as reported by interview respondents and discussed above, may undercount the actual outreach of SEAs because a number of respondents did not know whether or not the SEA communicates with these groups (exhibit 16).

The frequency of reported communications related to the requirements of Section 8546 or aiding and abetting laws ranged from just once following the passage of Section 8546 legislation to twice a year. State respondents indicated that communicating twice a year was feasible because their presentations on Section 8546 coincided with state conferences and association meetings already scheduled. Other vehicles for communicating requirements included using administrator memoranda, newsletters, automated broadcasting systems, and email. SEA respondents indicated that these mechanisms are common ways of communicating requirements and updates for all state laws and policies. One state respondent described how the SEA reaches local staff by presenting at their conferences:

We would have [communicated the requirements of Section 8546 or aiding and abetting laws and policies] through conferences, so we partner with a lot of the associations and we go to their law conferences and monthly membership conferences. We attend HR associations' conferences.... We also work directly with the charter state school board to ensure that their charter schools know what they should be looking for when they're going to hire an educator.

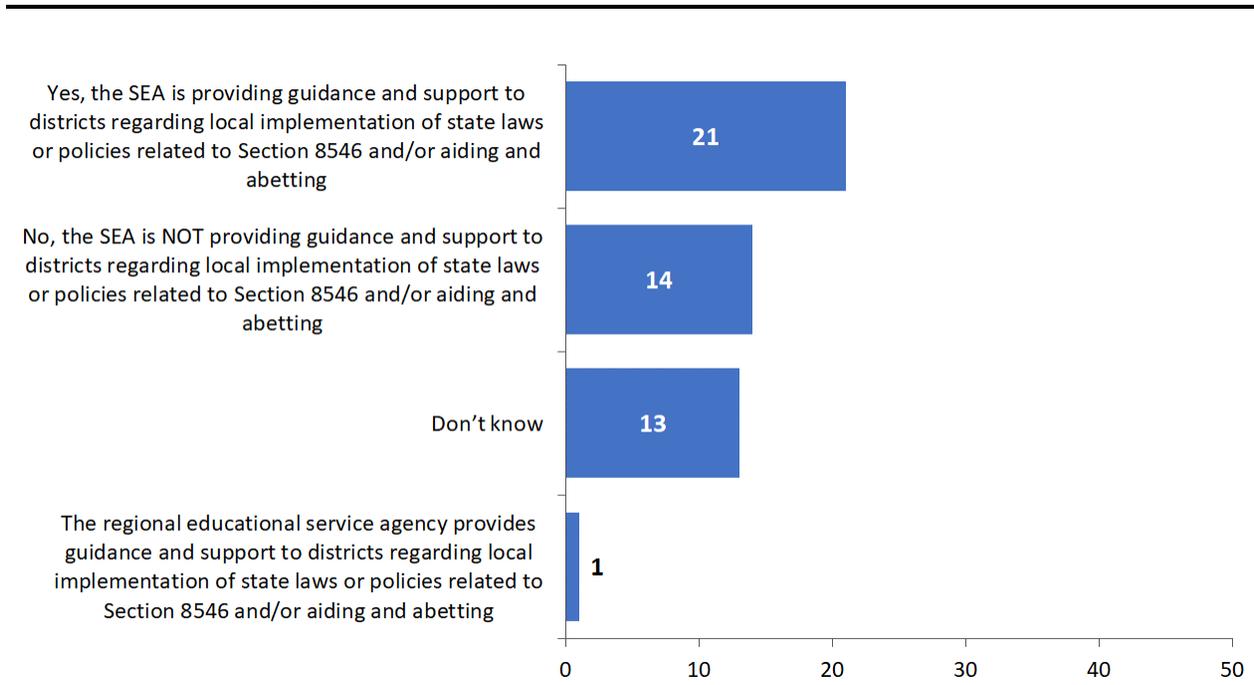
Delivering Supports to Help Districts Implement Section 8546 and/or Laws and Policies Prohibiting Aiding and Abetting

In addition to communicating the requirements of state laws and policies in order to raise awareness, some SEAs provide additional training, resources, and support for implementation to local school districts.

Nearly half of SEAs (21) provide guidance and support to help districts implement state laws and policies related to aiding and abetting.

Respondents in 21 SEAs reported that their agency provides written guidance, model policies, and trainings to help districts implement state laws and policies pertaining to aiding and abetting sexual misconduct. Respondents in 14 SEAs reported that their SEA does not provide implementation assistance to districts, and respondents in another 12 SEAs did not know what, if anything, their SEA did. One respondent indicated that a regional educational service unit, not the SEA, supports local implementation of laws and policies related to aiding and abetting (exhibit 14).

Exhibit 14. SEAs reporting providing or not providing guidance and support to districts regarding local implementation of state laws or policies related to Section 8546 and/or aiding and abetting



$n = 48$

Exhibit reads: Respondents in 21 SEAs reported that their agency is providing guidance and support to districts regarding implementation of state laws or policies related to Section 8546 and/or aiding and abetting.

Source: SEA interviews.

State respondents who reported providing regional and local training shared examples of training topics, including hiring practices, codes of ethics, educator sexual misconduct, educator licensing requirements, mandatory reporting, and investigations and enforcement. One SEA respondent described the training the agency provides:

We do six regional trainings so that every district in the region can come get trained on sex discrimination in schools, sexual harassment, and teacher sexual misconduct. And then every district is required to undergo annual training on the Teacher Code of Ethics, which covers sexual misconduct, so we make sure that they're trained quite a bit.

Other state agencies or associations also support districts in implementing laws and policies related to Section 8546 and/or aiding and abetting, according to SEA respondents. These include school boards associations, principal and superintendent associations, local district consortia, departments of human resources, child and family services, and law enforcement. Support provided by these agencies or associations primarily takes the form of trainings concerning hiring practices, mandatory reporting, and investigations.

Respondents in five SEAs reported that their SEA, in collaboration with other agencies, provides model policies to help districts develop local policies that prohibit aiding and abetting.

Respondents indicated that SEA support to districts includes providing model policies to help districts meet the requirements of Section 8546. Respondents in these states shared that districts look to model policies for language and content that ensure their local policy complies with Section 8546 and/or state laws prohibiting aiding and abetting. All five of these states developed model policies in collaboration with the state school boards association (SBA), and the association then shares the policies with its members. One respondent described the SEA/SBA collaboration:

[The SEA] constructs a sample policy ... we advise [districts] that [a policy] is necessary, but the policies are made and approved locally by county boards of education. We partner with the [state] school boards association on all policy development, and they provide technical assistance to their membership on policy development.

Another SEA respondent described how model policies support districts by providing them with language they can adopt or a template they can adapt to address their specific policy needs:

[Districts] can either adopt the model policy in full that we basically helped write for them or they can use it as a guide when they're developing their own policy and for that [developing their own policy], we've also given them resources to utilize for policy development.

Monitoring Local Compliance with State Laws and Policies

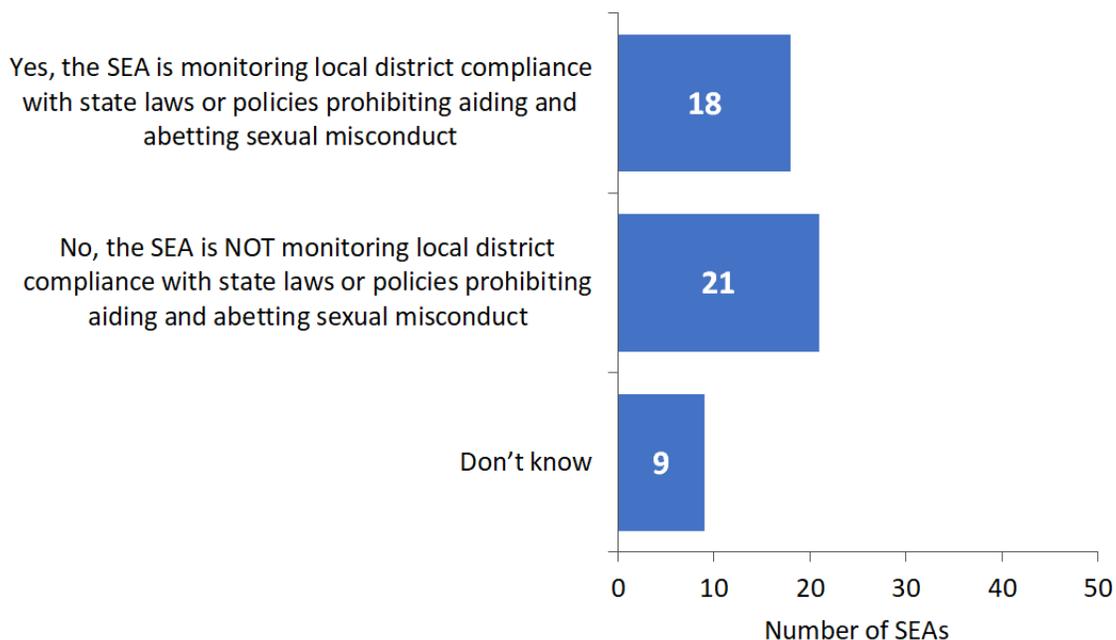
Eighteen SEAs monitor district compliance with state laws or policies prohibiting aiding and abetting sexual misconduct

Monitoring in these 18 states usually consists of either assurances or policy audits, which respondents said they use to confirm the presence of policies that address Section 8546 requirements and/or state

laws and policies prohibiting aiding and abetting (exhibit 15). One respondent explained what this looks like:

[The LEA assurance document] includes all of the federal and state mandates. It's a ... survey that [LEAs] have to go through, and they have to check where [the policy] is, and then they have to link to it ... and put in a description of it. Then we have [SEA] staff members who go through and [randomly] spot-audit them to determine whether or not [the policy is there].

Exhibit 15. Number of SEAs reporting monitoring or not monitoring district compliance with state laws or policies prohibiting aiding and abetting sexual misconduct



n = 48

Exhibit reads: Respondents in 18 SEAs reported that their agency is monitoring district compliance with state laws or policies prohibiting aiding and abetting sexual misconduct.

Source: SEA interviews.

SEA respondents noted that their agencies also monitor districts through accreditation audits, which typically are examinations of district policies and would include anything pertaining to aiding and abetting. As one state respondent explained:

Regional accreditation officers are the mechanism for the [SEA] to review whether districts have policies and whether they're compliant. That is something that would happen often as part of an annual review for school accreditation purposes.

SEA compliance monitoring includes ensuring that districts conduct background checks, confirm job applicants' licensure and certification status, and properly report and investigate incidents of sexual misconduct, according to respondents.

To support districts that have not complied with state laws and policies, SEAs may offer trainings or technical assistance targeted to the areas in which they need assistance. For example, one state respondent explained that a code-of-ethics training would be required of a district out of compliance. Another state respondent reported that sanctions would be brought against superintendents whose districts are not in compliance with state and federal laws:

The superintendent, being the representative to ensure that all policies including state-level and federal are implemented, could potentially have a code-of-ethics violation if they failed to implement this policy. It would be more after the fact that a situation happened.

More than a third of SEAs (21) do not monitor district compliance with state laws and policies.

Respondents in 21 SEAs reported that their SEA does not monitor district compliance with state laws or policies. Respondents in six SEAs reported they did not know if their SEA monitors, and those in three states indicated that their SEA does something other than monitor whether districts properly conduct background checks or report incidents of sexual abuse or misconduct (exhibit 15).

Among the SEAs that do not monitor compliance, respondents explained that they do not believe the SEA has authority to monitor district hiring practices.³⁰ As one respondent explained: “Hiring falls back to school boards. We do not have any authority to direct or influence any hiring processes for local districts.” A respondent in another state indicated that the SEA’s role in supporting district implementation of state and federal laws does not go beyond providing technical assistance: “The statute places the primary [implementation] burden on local districts ... the SEA doesn't [monitor] outside of the technical assistance we provide pertaining to the model policies.” Finally, one state respondent explained that given the lack of a state law in response to Section 8546, there is little for the SEA to monitor in this area: “There is no such problem with compliance with the larger state law because we don't have much of a larger state law.”

Documenting Complaints and/or Incidents of Sexual Misconduct among Districts

Thirty-three SEAs document district complaints and/or incidents of sexual misconduct.

According to interview respondents, while most SEAs do not provide guidance to districts or monitor their compliance with prohibitions on sexual misconduct, two-thirds of SEAs (33 states) nevertheless collect information or reports from districts on incidents of sexual misconduct; eight SEAs do not. Respondents in seven SEAs indicated they did not know whether their SEA documents district complaints and/or incidents of sexual misconduct (exhibit 16).

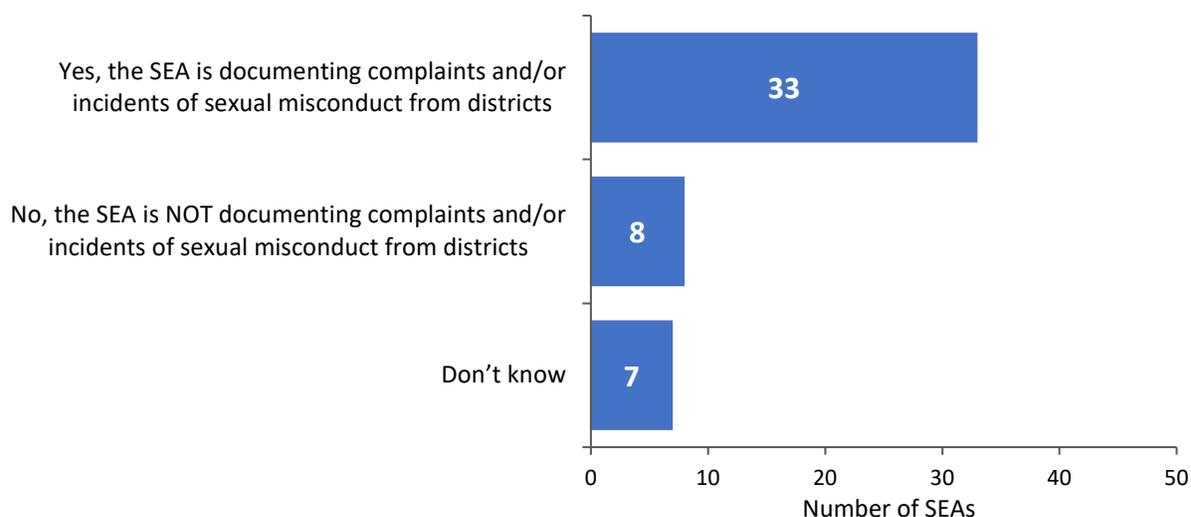
The 33 SEAs that collect information use licensure and certification databases as well as databases documenting investigations and their outcomes to store information about complaints and/or incidents of sexual misconduct. State respondents primarily described documenting formal complaints or incident notifications received through mandatory reporting requirements in the state. Complaints or

³⁰ States sign assurances when they receive ESEA funds, and the SEA can withhold ESEA funding when districts do not comply with ESEA requirements.

notifications can come from districts as well as from outside agencies such as law enforcement or child protective services. One state respondent described how the SEA receives and documents complaints from districts:

We log every complaint that the department receives. It's not just sexual misconduct complaints, but any complaint the department received is at least logged and noted, even if it's not investigated for whatever reason.

Exhibit 16. Number of SEAs reporting documenting or not documenting complaints and/or incidents of sexual misconduct in districts



n = 48

Exhibit reads: Respondents in 33 SEAs reported their agency documents complaints and/or incidents of sexual misconduct in districts.

Source: SEA interviews.

Most states reported documenting complaints for certified, but not non-certified, staff. As one SEA respondent explained, documenting certified staff through the statewide licensure system is “easier,” whereas documenting non-certified employees is “less efficient as they move from district to district.” Only one state respondent indicated the SEA documents complaints regarding non-certified staff in its computer system, although districts are not obligated to report these complaints to the SEA.

Finally, some respondents reported that although their SEA does not document complaints and/or incidents of sexual misconduct, other state agencies do. For example, in some states, the professional standards board or agency overseeing educator licensing is responsible for documenting complaints and/or incidents of sexual misconduct.

Challenges to Implementation of Laws and Policies That Prohibit Aiding and Abetting

This section outlines implementation challenges described by state respondents, including challenges related to communication and resources. In eight SEAs, respondents indicated that their SEA had faced

no challenges related to implementing Section 8546 or state laws and policies prohibiting aiding and abetting.

State respondents cited challenges associated with the ongoing communication required to ensure that districts remain aware of the requirements of Section 8546.

Respondents in SEAs described an ongoing need to communicate with districts to ensure they remained aware of the federal requirements under Section 8546. As one state respondent explained:

I think the biggest challenge as far as implementation ... is just communication and then making sure that all the pieces stay in place. I think that's just continuing communication with districts and HR staff to know the importance of the requirements [of Section 8546].

State respondents indicated that SEAs do not always have a way to monitor district compliance with state laws or policies prohibiting aiding and abetting.

State respondents noted challenges in monitoring district compliance with the requirements of Section 8546 and/or state laws or policies prohibiting aiding and abetting. For example, one state respondent indicated that the SEA has no way of knowing whether districts comply with state laws regarding hiring practices, such as whether districts properly contact applicants' previous employers:

Sometimes we just don't know what we don't know. The assumption is that it's required by law, so the district that gets an applicant is going to send out the form to other previous employers, but we don't have a way to actually track that [it is] happening for every person that applies for a job. [We are] making the assumption that it's being done.

According to SEA respondents, districts report challenges in amassing the resources necessary to gather comprehensive employment information on job applicants.

State respondents shared that districts report a financial and time burden in gathering and confirming all former employment information for job applicants. One state respondent described the breadth of information collection and the amount of paperwork the requirement creates:

Our [aiding and abetting] law is relatively broad, and requires a prospective employee to provide information regarding all current employers, whether or not they're a school entity, as well as any employer where there was direct contact with children for any period of time. Arguably, if you worked as a babysitter when you were in high school, you could say you have to provide that information and then the school has to go back and confirm all of that information.

Another state respondent pointed out the amount of time and costs of conducting background checks for new employees:

[One challenge] is the time that it takes to do the checking. In a large LEA, [there can be] a lot of criminal background checks. Then there's the cost associated with doing criminal background checks that are required on every new employee. I think those are two big challenges for LEAs.

V. Summary and Implications

Summary of State Efforts to Prohibit Aiding and Abetting

To protect students from sexual abuse and misconduct, in 2015 Congress included a provision in the reauthorization of ESEA requiring states to adopt laws or policies that prohibit employers from assisting or aiding and abetting school staff 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. As of October 2020, all states (51) require criminal background checks but vary in the scope of their enactment of laws and policies regulating district and school hiring practices and/or disclosure policies to prohibit aiding and abetting. For example, of the 51 states, 19 require prospective employers to contact prior employers for information about an applicant's certification status. Similarly, of the 51 states, 20 prohibit employers from engaging in practices that suppress information about incidents or allegations of sexual misconduct.

Respondents in most SEAs reported helping in some ways to support the implementation of Section 8546 and/or laws and policies prohibiting aiding and abetting. For example, respondents in 32 SEAs reported that their SEA communicates the requirements of Section 8546 and/or state laws and policies prohibiting aiding and abetting to districts and schools. In addition, 21 SEAs reported providing support and guidance to help districts implement state laws and policies related to aiding and abetting. This includes sharing model policies as well as guidance and training materials on how to develop policies.

Finally, SEA respondents described some of the challenges they faced in addressing the requirements of Section 8546. The remainder of this chapter describes what some SEA respondents say they need from the U.S. Department of Education and other states to address these challenges.

What SEAs Reported Needing from the Department to Address Challenges Related to Section 8546

During the study, SEA respondents described what they need from the Department to respond to Section 8546. State respondents most often identified two particular supports: examples of effective state and district policies that prohibit aiding and abetting sexual misconduct (19 states), and clearer federal guidance on Section 8546 (12 states). In addition, several SEA respondents (6 states) called for a national database of school employees that the federal government oversees and/or authorizes. The following describes these expressed needs more fully.

Respondents in 19 SEAs want the Department to vet and share examples of policies and practices other states are using to address the requirements of Section 8546.

While the Department cannot mandate or prescribe how states and districts should respond to the requirements of Section 8546,³¹ SEA respondents [would nevertheless like the Department to provide model state and LEA policies, promising practices, and non-regulatory guidance documents, such as a "Dear Colleague" letter or a Frequently Asked Questions (FAQ) page that support states' efforts to respond to the requirements of Section 8546. Indeed, SEA respondents reported wanting to learn from

³¹ Section 8546 (c) states that 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."

peers, while also valuing Department perspectives on what is worth replicating. Some respondents pointed to the range of capacity among SEAs, explaining that it is challenging and inefficient for every state to respond to Section 8546 in isolation:

[We would like to see] some policy language that other states have found helpful or some way to share some of that type of information, so that those of us that are a small SEA and small staff don't have to try to figure everything out on our own.

It's really difficult to reach out to individuals [in other states] to find more information on how to try to mitigate these things from even occurring.... I was a teacher and an assistant principal so I understand the school system. But individuals in my position mostly come from politics and policy. And so, how do you drive consistency amongst states?

Regarding policy models, some respondents specified that they were interested in models of state policy related to Section 8546, while others were interested in models for LEA adoption. Besides facilitating the development and refinement of state policies, model policies from other states and the Department could provide leverage in getting buy-in from policymakers and other stakeholders.

We would certainly welcome any guidance as we begin to craft this [policy] and see what other states are doing to make sure that they have policies in place that address it. It would help us in formulating our policy and pushing it forward where it can be monitored.

[It] would be easier to get these things passed if I knew other states and what they're doing. A big thing in getting policy passed is [being able to say] these are the states who are doing that and getting an "A" on how they're doing it.

In addition to policy models, many of these 19 respondents were also interested in examples of practices and guidance that other states use to ensure compliance with Section 8546 requirements. For example, SEA respondents expressed interest in knowing how different states obtain employment information from other states, use subpoena power for investigations, use a state licensure database, or collect employment and misconduct information from LEAs.

I think it would be good just to hear what other states are doing with addressing the requirements of 8546, especially those who might have more a direct role with enforcement of employment practices. As we mentioned, we don't collect this type of information around employment, specifically these from LEAs, but if other SEAs do, it'd be good just to hear how that works and what they're doing.

I think what would be helpful [is] if there were best practices out there that [the Department has] seen the other states develop, other systems that have been successful.

Respondents in 11 SEAs expressed a need for clearer definitions and guidance from the Department regarding Section 8546.

One respondent said the SEA needs clarity about the “probable cause” language included in Section 8546: “The use of probable cause in the legislation is not something we see a lot of in a civil context in [our state]. We need clarity around the wording.” Similarly, another respondent explained that the lack

of a formal definition of employers' "aiding and abetting" could allow for different interpretations of the law:

With aiding and abetting, a term like that could have such a multitude of different meanings for different folks. We try to avoid using language in legislation and then, certainly, in implementation, where there could be room for confusion or getting out of responsibility for or being held liable for something.

All 11 respondents would welcome a formal guidance document, such as a "Dear Colleague" letter or an FAQ, that could address ambiguities in the law. Respondents in two states wanted guidance that could be disseminated to other audiences, such as licensing bodies external to the SEA, other SEA divisions, superintendents associations, school boards, district human resources staff, and general counsels.

There was little communication [about Section 8546] besides the letter that came out from USED to say, "Oh, by the way, notice that this was included in the reauthorization of ESEA" And so it got everyone's attention, but they did not provide any clarification of the language, what they were hoping for, and what they were expecting. And to my knowledge, there's been no opportunity for training around that policy. What do they mean by aiding? What does that look like? Where's the threshold? So it's really left open.

Respondents in five states were interested in trainings or training materials, particularly those that could be shared with LEAs, school boards, and superintendents associations. For example, as one respondent explained, online training modules could help state leads communicate Section 8546 requirements to responsible parties efficiently, accurately, and with authority.

I think it would be really helpful if there was an online training or something that could be developed that we could share with the districts, and that we could use within the SEA even.... We are just learning as we go, and we're more than willing for any help or any information that would help us be able to help with training districts because truthfully, that's not my expertise.

SEAs need help with cross-state information-sharing; some respondents proposed a national database of school employees.

When asked about needed supports, respondents in six states explicitly wanted a national database that generates free and accessible information about the employment histories of all school staff; their eligibility for employment based on their certification status; any disciplinary actions or findings related to abuse, neglect, or sexual misconduct; and their criminal background. Having access to this type of information through a uniform, cross-state information system could address the data challenges SEAs reported confronting. Indeed, cross-state communication related to Section 8546 can be challenging and time-consuming for SEAs. As one SEA respondent explained:

Information is usually very heavily protected given that it involves children, but the concern I have is the interstate piece because it is extremely difficult to get information from other states. I had a situation with [another state] this week, and I was able to get [the information] within a week, but we had to issue a subpoena ... in order to get [it]. So, if there was some way for there to be a flow of information, I know that would make everything more efficient. It's an entire process and every state differs [in the way] it relates to public records release. Some states make you file FOIA [Freedom of

Information Act] requests, some states make you issue a subpoena; it just varies. So, if there was a uniformity as it relates to [interstate data sharing], that would be very helpful in allowing us to be more efficient.

While many SEAs use the NASDTEC database, it references only certified employees, is a voluntary, paid-membership organization, and, as noted in chapter 2, does not reveal why disciplinary actions are taken against teachers and therefore would not disclose an applicant's history of sexual abuse or misconduct involving a student or minor.

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Appendix A. Statutory Language

SEC. 8546. 20 U.S.C. 7926 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.

Appendix B. Study Methods

This appendix provides additional information on the study methodology to supplement the briefer description in the introduction to the report. The following sections describe the strategies used to identify data sources for the extant document review and state interviews; develop the data-collection instruments; and collect and analyze the data.

Identifying Data Sources

Described here are the strategies used to identify the universe of documents for the extant document review and for identifying state officials for the telephone interviews.

Extant Document Identification

The search for documents used a two-stage process: (1) an initial search for relevant statutes, pending legislation, regulations, and/or policies; and (2) screening to select the final documents for review. Specifically, analysts first searched for states' legislative documents through online databases such as the National Conference of State Legislatures Education Bill Tracking Database, LegiScan, a comprehensive database of all pending and enacted state legislation, and CaseText, a legal database of state, territory, and federal statutes, regulations, and case law, as well as SEA websites, state board of education websites, state legislature and statutes websites, and other online sources.

To ensure a comprehensive review of states' statutes, pending legislation, regulations, and/or policies, analysts conducted searches on keywords or phrases using search terms that included:

- "child abuse and reporting"
- "sexual and school"
- "sexual"
- "criminal and school"
- "criminal"
- "reporting"
- "background or criminal and check"
- "aiding and abetting educator sexual abuse"
- "Every Student Succeeds Act Section 8546"
- "passing the trash"

Further, by searching for specific terms (e.g., "sexual," or "criminal"), analysts found relevant documents regardless of the phrasing states used. This is because the word "sexual" rarely appears in education laws or statutes except when it relates to misconduct, and the word "criminal" rarely appears in education laws or statutes unless it refers to reporting incidents or background checks. The search focused on documents published after December 2015, when ESEA was reauthorized.

After the search, a topical review of titles and key words helped narrow the pool of documents to be reviewed. At this stage, analysts selected documents that referenced (1) sexual misconduct, (2) schools, or (3) state statutes, pending legislation or bills, or regulations. In addition, analysts selected documents that referenced:

- Requirements specific to Section 8546
- Actions that school employees, contractors, agents, or SEA or local school district representatives could take to prohibit aiding and abetting following an incident of school employee sexual misconduct
- Job applicant requirements
- Hiring agency requirements.

This process yielded relevant documents in all 50 states and the District of Columbia.

Outreach to State Interview Respondents

The study team obtained contact information for state coordinators of the Title IV, Part A, Student Support and Academic Enrichment grants program from the Office of Elementary and Secondary Education (OESE) to begin outreach procedures.

To solicit participation from SEA officials, interviewers undertook a two-step process. First, once the study received Office of Management and Budget (OMB) clearance, interviewers prepared email notification letters and study information packets for Chief State School Officers in all 50 states and the District of Columbia. The emails were electronically signed by the OESE Assistant Secretary and included a study description with a discussion of its importance and purpose; specific information on the data-collection schedule and reporting plans; provisions for maintaining the confidentiality of participants and data security; the organizations the Department contracted to conduct the study; and the benefits to be derived from the study. The notification email, sent by OESE, struck an appropriate balance between communicating the mandate for participation and reassuring states that OESE did not intend to publish analyses of individual states' policies or practices nor of their compliance with federal laws. Finally, the email included the names and phone numbers of the OESE staff and study team members who could answer questions about the study.

Instrument Development

Guided by the study questions, the study team developed document review and interview protocols intended to maximize the quality and depth of the information collected while minimizing respondent burden.

Exhibit B-1 is a crosswalk of study questions and sub-questions by source of data. Overall, the extant document review and state interviews were designed to be complementary. For example, the document review generated preliminary frequencies of the number of states that enacted statutes prohibiting aiding and abetting sexual misconduct in schools. The state interview data permitted the study team to investigate how SEAs developed state statutes, regulations, codes of ethics, and/or policies that prohibit aiding and abetting employment, including their successes and challenges. In addition, the state interview data permitted the study team to examine how states communicate, guide, and assist districts and schools in implementing the requirements of state laws and policies prohibiting aiding and abetting.

Exhibit B-1. Study questions and source of data

Study question	Extant document review	State interviews
1.To what extent do states have statutes, regulations, codes of ethics, and/or policies that prohibit assisting or aiding and abetting the employment of school staff, contractors, or agents who have engaged, or where there is probable cause to believe they have engaged, in sexual misconduct with a student or minor?	√	√
a. Do state statutes, pending legislation, regulations, codes of ethics, and/or policies that pertain to assisting or aiding and abetting offer specific models, guidelines, or practices to prohibit aiding and abetting employment? If so, what are they?	√	√
2. How did states develop laws, regulations, codes of ethics, or policies to address Section 8546?		√
a. Who was involved in the process?		√
b. How did states decide whether to introduce state statutes as opposed to develop policies or codes of ethics?		√
c. What challenges have SEAs faced in developing statutes, regulations, codes or ethics, and/or policies to address Section 8546?		√
3. How are SEAs implementing laws, regulations, codes of ethics, or policies that prohibit assisting or aiding and abetting?		√
a. How are SEAs communicating the requirements of their state laws, regulations, or policies to districts?		√
b. What guidance and technical assistance, such as trainings, are SEAs providing to districts and schools regarding local implementation of laws or policies pertaining to the requirements of Section 8546?		√
c. How are SEAs supporting school districts and schools in drafting policies pertaining to the requirements of Section 8546?		√
d. How are SEAs monitoring districts’ compliance with laws or policies pertaining to the requirements of Section 8546? Do states have a reporting process for potential violations?		√
4. What challenges have SEAs faced in implementing state laws, regulations, or policies required under Section 8546?		√
a. What challenges have districts reported to SEAs?		√
b. How have SEAs and districts addressed the challenges?		√

Extant Document Review Protocol and Data-Capture Tool

The extant document review, presented in appendix C, was designed to ensure collection of complete, comprehensive, and consistent documentary data across states. Because a law’s every word is presumed to be intentional, the study team scrutinized each document to determine whether the language used reflected the requirements of Section 8546. For example, the team looked to see whether state statutes, legislation, or regulations defined who should not be aided or abetted (for example, employee, contractor, or agent) as well as who should not aid or abet (such as SEAs, local

school districts or school boards, school employees, school contractors, school agents), and who was the victim (a student or a minor).

The design of the document review protocol was informed by model legislation developed by the national nonprofit Stop Educator Sexual Abuse Misconduct and Exploitation (S.E.S.A.M.E.).³² The S.E.S.A.M.E. Act provides states with examples of legislative language that are relevant to the requirements of Section 8546. Because S.E.S.A.M.E. Act legislative language has been adopted by five states (Connecticut, Maryland, Nevada, New Jersey, and Pennsylvania), the document review protocol was designed to capture the provisions of those laws. The protocol also supported the collection of emergent laws or provisions not already included in the protocol.

To facilitate data management, retrieval, and analysis, the study team established an online data repository hosted through Qualtrics, SRI's secure, password-protected, web-based survey platform, to capture and catalog the data collected through the extant document review. The online repository included (1) fields to capture codes for each of the elements in the document review protocol, and (2) fields to capture section numbers and/or specific legislative or regulatory language to capture the evidence for each code. The repository tool allowed analysts to indicate the presence or absence of statutes, regulations, or codes of ethics on aiding and abetting sexual misconduct using a "check/no check" coding system. For example, analysts assigned a "check" or "no check" to indicate the presence or absence of state statutes, regulations, or codes of ethics mandating that employers prohibit agreements or contracts that allow for suppressing information (such as confidentiality agreements). The tool created one record for each state but provided sufficient flexibility to allow analysts to capture specific information for each statute, regulation, or code of ethics reviewed.

Pilot Testing and Interrater Agreement

Before applying the protocol in the full review of state documents, analysts piloted the protocol with a sample of state documents and established interrater agreement. The pilot ensured the tool had face validity for reviewers (i.e., items were clear and understandable) and content validity (i.e., the protocol included items that accurately represented all aspects of aiding and abetting). Analysts received a training that included an in-depth explanation of each protocol item. The reviewers provided feedback on how to clarify items to enhance the protocol's face validity. The training also demonstrated how the protocol codes would be applied to an example state statute.

After the training, reviewers independently applied the protocol to the same two state documents and compared their coding. The trainer facilitated the discussion to help the reviewers recalibrate any differences in coding. The follow-up discussion also identified any modifications or additions to protocol items that would improve the protocol's content validity. Next, the reviewers applied the revised protocol to five different states' documents (one state per reviewer). During the follow-up discussion, reviewers discussed how to revise the protocol to ensure consistent data documentation across states. After additional adjustments to the protocol were made, the reviewers used the protocol on the same state documents to compare their coding again. This follow-up discussion completed the pilot phase as reviewers reached consensus on each of the protocol items.

³² The national nonprofit Stop Educator Sexual Abuse Misconduct and Exploitation (S.E.S.A.M.E.) developed the S.E.S.A.M.E. Act to provide states with legislative language that prohibits policies and practices that contribute to the employment of those credibly accused of sexual misconduct, such as failing to require full employment history, contact all former employers, or disclose termination or disciplinary actions.

State Interview Protocol

A semi-structured protocol designed for interviews with SEA officials can be found in appendix D. This protocol used the study questions as its organizing framework. It included broad questions to initiate discussion, followed by focused probes to elicit additional information about key topics related to each of the study questions. The protocol also included probes to follow up on vague or incomplete responses. Protocol questions addressed the processes for developing or planning to develop state legislation, regulations, policies, and codes of ethics to address Section 8546; SEA practices for communicating, guiding, and monitoring districts; and challenges SEAs face in implementing these requirements.

Pilot Testing

After refining the interview protocol to respond to initial feedback from OESE, the interview protocol was pilot-tested with a purposefully selected sample—developed in consultation with OESE—of three state officials and revised based on the testing. The study team selected states for the pilot-test sample based on a range of state characteristics, including the following:

- Range in number of required employment practices intended to prohibit or inhibit behaviors recognized to contribute to aiding and abetting individuals engaged or believed to have engaged in sexual misconduct (i.e., many and few)
- Geographic diversity
- Size (i.e., states with many and few schools)

The study team made a few minor changes to the protocol based on pilot respondents' feedback, which included (1) referencing, where relevant, other agencies, organizations, and boards that may be involved in developing policies that address the requirements of Section 8546, and (2) adding a question about the types of support and assistance SEAs need from OESE in order to respond to the requirements of Section 8546. Finally, pilot respondents verified that the information could be collected in approximately 60 minutes.

Data Collection

Each interview was conducted in late summer or early fall 2020 by telephone or Zoom videoconferencing by an experienced interviewer and was audio-recorded and transcribed. During the scheduling process, the interviewer described the purposes of the data collection, assured interviewees' confidentiality, and asked whether interviewees would consent to audio-recording. Because of the potential sensitivity of the subject matter, the interviewer assured interviewees that individuals would not be identified by name in any report, and data would be reported in a way that did not reveal their identity or the identity of their state, except for that which is already public.

Interviewer training

All interviewers participated in interview training approximately three weeks before they began scheduling interviews with SEA officials. Interviewer training addressed the purposes of the study, the content of the protocols, and interviewing and data-capturing procedures. Department staff attended the training and shared information about the study background and the Department's interests in generating findings that could guide its technical assistance to states.

The training covered etiquette and procedures for making contact with SEA officials and maintaining communications, what interviewers should be listening for, how to motivate respondents to provide accurate and complete information, and how to probe for additional information. The training ensured that all interviewers understood the sensitive nature of these interviews and the options available if respondents hesitated to respond to questions as well as how to arrive at consensus when respondents in a group interview contradicted one another.

The study team planned one interview per SEA, but group interviews were conducted if the state identified multiple key individuals with relevant knowledge and responsibilities. SEA administrators were expected to be the primary sources for answering the study questions.

Maximizing response rates

As necessary, interviewers followed up with prospective respondents and confirmed their willingness to participate. To maximize participation, interviewers worked with state Title IV coordinators and other relevant state officials to develop a Zoom or telephone interview schedule that accommodated the schedules and needs of state staff.

After sending the first email about scheduling, interviewers waited one week for a response. If no response appeared, interviewers sent a follow-up email. After three more days of non-response, the interviewer sent a second follow-up email, asking to be referred to others in the SEA who might know about state laws and policies prohibiting aiding and abetting employment. Two days after that, the interviewer called the SEA and asked to speak to the selected state official. Interviewers completed 48 interviews by late summer or fall 2020, for a response rate of 94 percent.

Data collection and capture

To prepare for the interviews, interviewers reviewed the list of state laws, regulations, and codes of ethics—documented in the review of state documents—to avoid asking respondents to explain basic information such as common acronyms, key laws, regulations, or codes of ethics. At the start of each interview, interviewers reviewed the human subjects protections associated with the data collection and analyses and obtained the respondent's consent for participation, which included confirming consent for the interview to be audio-recorded. At the end of each interview, interviewers emailed each state respondent the list of state laws and regulations that analysts identified as having addressed hiring practices or disclosures that prohibit aiding and abetting, and asked the respondent to review and verify the accuracy of the list. Finally, after completing each Zoom or telephone interview, interviewers sent the audio files to a preselected vendor for transcription. Once the transcriptions were completed, analysts uploaded the transcripts into text files for coding and analysis using ATLAS.ti, a qualitative analysis software program (Hwang, 2008).

Data Analysis

The analysis plan was designed to maximize the value of both the extant and interview data collected for this study. The plan involved four major steps. First, the study team updated the results of the extant document review analysis with new information collected during the interviews and that state officials later reviewed and verified. Second, the study team coded and analyzed the interview data. Third, the study team generated a limited set of frequency counts based on the interview data. Finally, the study team merged the extant data with the interview data to answer the study questions.

Verifying and Updating Extant Document Review Data

In fall 2020, based on state officials' review and verification, analysts updated the state-by-state tables of laws and policies identified in 2019 that prohibit hiring practices and information-suppression policies that aid and abet sexual misconduct in schools. The verification process involved several steps. First, after each state interview, we updated the state-by-state tables to include any other laws, regulations, codes of ethics, or policies respondents identified during the interview. Next, we shared two tables with each state that summarized its laws and policies prohibiting aiding and abetting. We asked state respondents to review their table entries and make corrections. The tables were accompanied by a one-page description of the document review and data verification process (exhibit B-2).

As shown in exhibit B-3, the first sample table summarized the statutes, pending legislation, regulations, codes of ethics, and policies that the study team had identified during our initial document review or during the interviews. The second sample table included the statutory, regulatory, ethics, or policy language identified in the document review.

We asked respondents to review the tables and provide feedback on the completeness of the information as well as the accuracy of our categorization of the state laws and policies included in table 1 (e.g., "prohibits confidentiality or non-disclosure agreements when they contain language that suppress information" or "require job applicants to provide written authorization for employers to disclose employee information," etc.). In addition, we asked respondents to identify any other laws, regulations, codes of ethics, or policies that address the requirements of Section 8546 and add them to table 2, in the row labeled "Additional laws, regulations, codes of ethics, or policies that respond to Section 8546." Where required, we updated and returned the tables to state officials for their review and approval. We asked respondents to sign the first page of the document review verification form or send an email verifying the completeness and accuracy of the information provided in the tables.

The report presents updated numbers of states that have statutes, regulations, policies, or codes of ethics that address the requirements of Section 8546 with respect to hiring practices and information disclosure. In addition, the study team identified state laws, regulations, codes of ethics, or policies to serve as models, guidelines, or practices to prohibit aiding and abetting employment, and elaborated these with detail, when available, from the interview data. Appendix E ("Statutory Language for Illustrative State Laws Prohibiting Aiding and Abetting") presents the results of these analyses.

Exhibit B-2. Description of state document review and data verification process, as shared with state interview respondents

**Verification of State Summary Table
STATE**

Thank you for participating in our recent interview regarding your state's response to ESSA Section 8546. As you know, the study has two parts. Part 1 was a systematic review of publicly available state documents, including statutes, pending legislation, and regulations from all 50 states, Washington, D.C., and the island territories. Part 2 consisted of interviews with knowledgeable SEA staff in all 56 jurisdictions about laws and policies to prohibit aiding and abetting sexual misconduct in schools. The final report will aggregate data from both the document review and the interviews across states. The report will not include tables with results for individual states nor will it report information by state; it will include tables with total aggregated counts. As a next step, we are asking interview respondents to review a summary table for their state (see attached) to ensure that we have accurately identified and categorized state laws and policies that respond to ESSA Section 8546.

How we created the summary. We searched for all publicly available state statutes, pending legislation, regulations, and codes of ethics that prohibit aiding and abetting the continued employment of school employees who have engaged in sexual misconduct with a student or minor. All documents were retrieved and reviewed between May and August 2019. We coded each statute, regulation, or code of ethics to indicate whether it addressed the following types of hiring or information disclosure policies or practices:

Information-sharing requirements for current or former employers

Hiring requirements for potential employers

Prohibitions on agreements or contracts when they contain language that suppresses information

Requirements for job applicants

As necessary, we updated the attached summary to reflect additional information or clarification provided during the interview.

Review and verification. The document that follows includes two tables. The first table presents a summary of the statutes, pending legislation, regulations, and codes of ethics that we identified during our initial document review. The second table includes the statutory, regulatory, or ethics language in each document, as well as data entry fields to capture any feedback you may have about this information's accuracy or completeness. We ask that you review these tables and provide the following:

Feedback on the accuracy of our categorization of the laws or policies included in Table 1 (enter your feedback in the shaded row labeled "Comments/Corrections" in Table 2).

Additional laws, regulations, codes of ethics, or policies that we should add to Table 1. That is, if you know about other laws or policies that address the requirements of Section 8546, please add them to Table 2, in the row labeled "Additional laws, regulations, codes of ethics, or policies that respond to Section 8546." Please add as many rows as necessary.

Once you have completed your review, please select one of the following (double click the corresponding box and select "Checked"), save this Word file, and return it to me:

I have reviewed the summary table and no changes are required.

I have reviewed the summary table and have included additional comments or edits in Table 2

Exhibit B-3. Sample state document review verification tables

Table 1: STATE XX laws, regulations, codes of ethics, and policies that prohibit aiding and abetting

Statutes, Regulations, Codes of Ethics, Policies	Information-sharing requirements for current or former employers				Hiring requirements for potential employers						South Carolina Prohibition of the following agreements or contracts when they contain language that suppress information							Requirements for job applicants							
	Respond to info. requests within a specified time	Disclose info. and records	Respond to any follow up requests	Other	Check eligibility & cert. status in current state	Conduct criminal background check	Request SEA notification of pending criminal charges	Request info. from current and former employers	Require fingerprinting	Require statement re: discipline, discharge, non-renewal, etc.	Require statement re: abuse or sexual misconduct investigation	Collective bargaining agreement	Confidentiality or nondisclosure agreements	Expunging information	Letters of recommendation	Other	Private settlements	Severance agreements	Termination/resignation agreements	Require name and all contact info. for current and all former employers	Written auth. for employers to disclose applicant information	Written statement on whether subject of abuse or sexual misconduct invest.	Written statement on license/cert., suspended, surrendered, revoked	Written statement on whether disciplined, discharged, non-renewal, etc.	Other Agreements
43-58.1																			✓						
59-19-117					✓																				
59-25-115									✓																

Table 2: STATE XX statutory, regulatory, code of ethics, or policy language that prohibit aiding and abetting

Statutes, Regulations, Codes of Ethics, Policies	Language
43-58.1	This report is required notwithstanding any termination agreement to the contrary that the district board of trustees or superintendent may enter into with the educator.
Comments / Corrections	
59-19-117	A) An individual hired by a local school district board of trustees to serve in any capacity in a public school in this State shall undergo a name-based XXX criminal record search conducted by the local school district using records maintained by XXX Law Enforcement Division pursuant to regulations contained in subarticle 1, Article 3, Chapter 73 (B) Before beginning full-time clinical teaching experience in this State, a teacher education candidate shall undergo a state criminal records check by the XXX Law Enforcement Division and a national criminal records check supported by fingerprints by the Federal Bureau of Investigation.
Comments / Corrections	
59-25-115	(B) Before beginning full-time clinical teaching experience in this State, a teacher education candidate shall undergo a state criminal records check by the XXXX Law Enforcement Division and a national criminal records check supported by fingerprints by the Federal Bureau of Investigation.
Comments / Corrections	
Additional laws, regulations, codes of ethics, or policies that respond to Section 8546	

Coding and Analyzing Interview Data

While this study is not “testing” explicit hypotheses, the study purpose and questions specifically focused on the SEA response to enactment of Section 8546. To organize and inform the data collection, coding, and analysis, the study team identified seven broad categories of legislative or policy responses related to prohibiting aiding and abetting employment. The first two—hiring practices and disclosure policies—regulate the information that prospective employers collect and that current and prior employers disclose in order to prevent school personnel who have engaged in sexual misconduct from obtaining new employment in education. The provisions regulate the vetting process for new school employees by requiring prospective employers to contact current and prior employers as well as requiring current and prior employers to disclose relevant information about an applicant regarding involvement in incidents of sexual misconduct.

Three other categories of provisions—mandatory reporting, investigations and enforcement, and education and training—can influence the hiring process by generating data and raising awareness about incidents of sexual misconduct, but do not directly address the hiring practices of districts and schools.

This distinction between provisions that apply specifically to employers and other kinds of provisions relevant to aiding and abetting is not intended to interpret the requirements of Section 8546 but to provide an organizing framework for the study. In other words, we did not approach coding or analysis of interview data “*tabula rasa*,” such that the researcher constructs meaning without guidance from a theoretical framework or predetermined coding structure. The analytic approach we adopted here, analytic induction, was practical because it allowed for both the generation and testing of theory (Erickson, 1986; Glaser & Strauss, 1967; Hammersley, 2010).

The following sections describe how researchers coded and analyzed the interview data.

Coding

To apply the process of analytic induction to coding, researchers used ATLAS.ti. The ATLAS.ti program allows users to divide interview data into segments, attach codes to the segments, and find and display all instances of similarly coded segments for analysis (Miles & Huberman, 1994). Multiple analysts can search, organize, code, and annotate (i.e., add comments and memos) interview transcripts from different states simultaneously. This process enabled efficient data organization, coding, and analysis across all researchers and state interview files.

Developing codes

Researchers developed predetermined codes to organize and query the dataset for further analysis. These codes included, for example, the study question number and interview question number as well as the state. Other predetermined codes represented key aspects of the conceptual framework and the focus of interview questions, both of which informed our lens for analyses. These included codes for categorizing data by direct or indirect strategies as well as implementation strategies and challenges, for example. Researchers also used predetermined codes such as “yes” and “no” for interview answers that warranted quantification for summary statements in reporting.

Researchers also developed emergent codes during the coding process to capture salient data that might represent important variations and nuances in state responses to interview questions. The combination of predetermined and emergent coding allowed for an exhaustive approach to developing

codes for interview data.

Applying codes

The coding process was designed to produce a coding schema that would be applied consistently and reliably across multiple coders.

Step 1. Initial coding training. We began with a training on the predetermined codes, structuring of codes, and coding within ATLAS.ti. The training was intended to ensure that coders shared the same understanding of the predetermined codes as they related to the interview questions and broader study questions. The training also covered emergent coding. Following the training, all coders coded interview transcripts from the same two states. During this process, coders noted any emergent codes they believed were relevant and any changes to predetermined codes or their structure that might be necessary. The coding team and senior project staff met to debrief and agree upon any changes to the coding schema or structure. Coders recoded their transcripts accordingly.

Step 2. Coding and calibration. Coders then coded a different set of interview transcripts, which senior staff reviewed for accuracy and consistency of coding application. Coders and senior staff debriefed again to calibrate how they were coding interview data and to surface any newly emergent codes or adjustments to increase the precision of predetermined codes. Coders once again revisited previously coded transcripts to ensure codes incorporated any changes and were consistently applied. Throughout the coding process, and to ensure that coders demonstrated interrater agreement (that is, coders agreed on the appropriate codes to apply to the text and applied them consistently), analysts came together on a weekly basis to discuss and calibrate how they were coding the interview data.

Analysis

The analyses of the qualitative interview data were guided by two core principles: structuring the analyses such that they yielded policy-relevant findings, and ensuring the qualitative analyses adhered to standards of evidence and triangulation of data sources.

Step 1. Conducting data queries. Using ATLAS.ti, the study team queried the dataset using predetermined and emergent codes. Conducting queries by codes allowed researchers to retrieve the data that were relevant to the planned analyses. For example, for study question 4, the researcher would submit a query for all data coded as study question 4 or for a particular interview question related to study question 4. Researchers could also submit queries using codes that selected data across study questions or interview questions. For example, researchers could use the “state” code to examine coded data within a state, across interview questions. Another example is that researchers could query the data using a code such as “challenges” to select and examine all data that represented any type of challenge referenced across interview questions and states.

Step 2. Generating frequency counts. Where coders applied predetermined codes of “yes,” “no,” and “somewhat” to a subset of interview questions, those data were analyzed to produce frequency counts. These counts provided a simple, top-level overview of responses to specific interview questions that lent themselves to this type of tally. Examples include whether states developed new laws or policies to address Section 8546 or revised existing ones, or whether SEAs communicated the requirements of Section 8546 to school districts, private/non-public schools, or charter schools.

Step 3. Generating and validating themes and assertions. In this process, researchers read through the coded text for themes to give more depth and description to the codes. For purposes of this study, a

theme is the manifestation of repeated instances of similar responses across interviewees that are validated through a search for confirming and disconfirming evidence (i.e., segments of interview data).

Step 4. Identifying representative examples. Once the themes were identified, the team queried relevant text to identify quotes and examples that illustrated or explained the finding overall or to discern a subgroup of states. In addition, the study team identified quotes and examples that raised any noteworthy issues not captured by the interview protocol.

Appendix C. Document Review Protocol

Protocol Reviewer: _____
 State Reviewed: _____
 Date Reviewed: _____

I. Document Overview

	Statute or policy number	Date introduced or adopted	Notes on adoption/ introduction date (optional)	Document Type	(Document Type) If Other (specify):
a. Document 1 Title:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	▼ Statute or act ... Other	<input type="checkbox"/>
b. Document 2 Title	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	▼ Statute or act ... Other	<input type="checkbox"/>
...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
s. Document 19 Title	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	▼ Statute or act ... Other	<input type="checkbox"/>
t. Document 20 Title	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	▼ Statute or act ... Other	<input type="checkbox"/>

II. Reference to Victims

Reference to who is considered a victim. Check all of the actors referenced in the document. *indicates those specific to Sec. 8546

	Excerpts	NOTES	Statute	Regulation	Code of Ethics	Name of statute, bill, regulation, other
a. Minor*			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Student*			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Child/children			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Other_1 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Other_2 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Other_3 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Notes (optional): _____

III. Requirements for current or former employers:

This section pertains to additional actions beyond section 8546 that school employees, contractors, agents, or SEA or LEA representatives may be required to take to prohibit aiding and abetting following an incident of school employee sexual misconduct. Check any action that the documents reference.

A. Prohibition of the following agreements or contracts when they contain language that suppress information to be shared with prospective employers:

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other	Local school boards	Regional education agencies	Public schools	SEAs	LEAs / School districts	School contractors ³³	School agent	Charter schools	Private, parochial, and non-public schools	Other
a. Confidentiality or nondisclosure agreements			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Collective bargaining agreements			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Termination/resignation agreements			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Severance agreements			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Letters of recommendation			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Private settlements			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Forced arbitration for victims			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Expunging information			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Other (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

³³ Individuals who perform work for schools under a contract.

A.1. Does the document reference other types of agreements or contracts that are prohibited when they contain language to suppress information to be shared with prospective employers?

Yes

No

A.2. Prohibition of other agreements or contracts when they contain language that suppress information to be shared with prospective employers:

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other	Local school boards	Regional education agencies	Public schools	SEAs	LEAs / School districts	School contractors	School agent	Charter schools	Private, parochial, and non-public schools	Other
a. Other_1 (SPECIFY)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Other_2 (SPECIFY)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Other_3 (SPECIFY)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Other_4 (SPECIFY)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Other_5 (SPECIFY)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B. Reporting requirements following an incident. To:

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other	Local school boards	Regional education agencies	Public schools	SEAs	LEAs / School districts	School contractors	School agent	Charter schools	Private, parochial, and non-public schools	Other
a. Local law enforcement agency			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Child protective services			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. State education agency			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. District leaders			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. School resource officer			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Title IX district coordinator			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. State teacher-licensing administrator (e.g., state board of education)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Other (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B.1. Are there additional reporting requirements?

Yes

No

B.2. Reporting requirements following an incident. To:

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other	Local school boards	Regional education agencies	Public schools	SEAs	LEAs / School districts	School contractors	School agent	Charter schools	Private, parochial, and non-public schools	Other
a. Other_1 (SPECIFY)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Other_2 (SPECIFY)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Other_3 (SPECIFY)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Other_4 (SPECIFY)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Other_5 (SPECIFY)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C. Current/former employers' response to potential employer information-sharing requests.

These actions prohibit school employees, contractors, or agents from being employed in other schools, including schools in other states. Prohibiting aiding and abetting includes the hiring practices of potential employers, which includes seeking information from current or former employers. Check any language in the document that pertains to requirements for current or former employers in responding to information requests from potential employers.

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other	SEAs	LEAs / School districts	Local school boards	Regional education agencies	Public schools	School contractors	School agent	Charter schools	Private, parochial, and non-public schools	Other
a. Must disclose an allegation, investigation, resignation, termination, etc., related to sexual abuse or misconduct to potential employers			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Must respond and disclose information to any follow-up request from potential employers			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Designates that response to information requests should be within a specified time period from receiving the request (e.g., 20 days)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Other (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Are there additional requirements for current/former employers' response to potential employers?

- Yes
- No

C.2. Current/former employers' response to potential employer information-sharing requests.

These actions prohibit school employees, contractors, or agents from being employed in other schools, including schools in other states. Prohibiting aiding and abetting includes the hiring practices of potential employers, which includes seeking information from current or former employers. Check any language in the document that pertains to requirements for current or former employers in responding to information requests from potential employers.

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other	SEAs	LEAs / School districts	Local school boards	Regional education agencies	Public schools	School contractors	School agent	Charter schools	Private, parochial, and non-public schools	Other
a. Other_2 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Other_3 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Other_4 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Othe_5r (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Notes (optional): _____

IV. Requirements for school entity/Independent contractors in application review

A. Requirements for **job applicants**:

The hiring agency (school, district) would make these requirements of job applicants during the hiring process. Check any requirements included in the document.

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other	Applicant type: school employees	Applicant type: school contractors	Applicant type: school volunteers	Applicant type: substitute employees	Applicant type: school agents
a. Provision of name and all contact information for current and all former employers in which applicant had direct contact with children			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Written authorization for current and former employers to disclose information about the applicant and records			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Written statement of whether applicant has been the subject of an abuse or sexual misconduct investigation			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Written statement of whether the applicant has been disciplined, discharged, non-renewed, asked to resign, resigned, or separated from employment			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Written statement of whether the applicant had a license, professional license, or certification suspended, surrendered, or revoked while allegations of abuse or sexual misconduct were pending or due to a finding of abuse or sexual misconduct			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Other (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

A.1. Are there other requirements for job applicants?

- Yes
- No

A.2. Requirements for **job applicants**:

The hiring agency (school, district) would make these requirements of job applicants during the hiring process. Check any requirements included in the document.

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other	Applicant type: school employees	Applicant type: school contractors	Applicant type: school volunteers	Applicant type: substitute employees	Applicant type: school agents
a. Other_2 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Other_3 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Other_4 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Other_5 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B. Hiring requirements for **potential employers**:

These requirements pertain to the hiring agency, including schools, districts, and independent contractors. Check any requirements included in the document.

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other	SEAs	LEAs / School district	Local School Boards	Regional education agencies	Public schools	School contractors	School agent	Charter schools	Private, parochial, and non-public schools	Other
a. Request information from current and all former employers		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
b. Require statement as to whether applicant was the subject of an abuse or sexual misconduct investigation		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
c. Require statement as to whether applicant was disciplined, discharged, non-renewed, asked to resign, resigned, or separated from employment		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
d. Check eligibility for employment or certification status in current state		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
e. Check eligibility for school employment or certification status in other states where formerly employed		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
f. Conduct criminal background check		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
g. Require fingerprinting		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
h. Inquire with SEA regarding notification of pending criminal charges against applicant		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
i. Other (Specify)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

B.1. Are there other hiring requirements for potential employers?

- Yes
- No

B.2. Hiring requirements for **potential employers**:

These requirements pertain to the hiring agency, including schools, districts, and independent contractors. Check any requirements included in the document.

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other	SEAs	LEAs / School district	Local School Boards	Regional education agencies	Public schools	School contractors	School agent	Charter schools	Private, parochial, and non-public schools	Other
a. Other_2 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Other_3 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Other_4 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Other_5 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Notes (optional): _____

V. Enforcement

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other	SEAs	LEAs / School districts	Employers	Other (describe in text box)	Local school boards	Regional education agencies
a. State investigation of allegation of sexual misconduct			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Monitoring of local policies and procedures related to aiding and abetting sexual misconduct			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Civil penalty (barring school entity from contracting with independent contractors)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Disciplinary action for applicant			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Disciplinary action for former employer			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Disciplinary action for current employer			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Monitoring of statewide databases (e.g., criminal justice, public safety, teacher licensing)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Other (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Are there other enforcements?

- Yes
- No

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other	SEAs	LEAs / School districts	Employers	Other (describe in text box)	Local school boards	Regional education agencies
a. Other_2 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Other_3 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Other_4 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Other_5 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Notes (optional) _____

VI. Exceptions

Are the exceptions outlined in Sec. 8546 referenced?

- No
- Yes

The statute, bill, regulation, or other document states that the requirements of 8546 shall not apply if:

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other
a. The information giving rise to probable cause is properly reported to a law enforcement agency with jurisdiction over the alleged misconduct			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. The information giving rise to probable cause is properly reported to any other authorities as required by federal, state, or local law, including Title IX and Title IX regulations			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. The matter has been officially closed or the prosecutor or law enforcement confirms no probable cause			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. The school employee, contractor, or agent has been charged and acquitted or exonerated			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. There are no charges filed against or indictment of school employee, contractor, or agent within 4 years of the date informed			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Other (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Are there other exceptions that are referenced in the document?

- Yes
- No

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other
a. Other_2 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Other_3 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Other_4 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Other_5 (Specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Notes (optional): _____

VII. Regulations

Does the state have statutes or pending legislation that authorizes executive branch agencies (e.g., state education agency, state department of child and family services) to issue regulations to prohibit aiding and abetting?

- Yes
- No

Which agencies are authorized to issue regulations to prohibit aiding and abetting?

	Statute	Regulation	Code of ethics	Excerpt	Name of statute, bill, regulation, other	Notes
a. SEA (e.g., state department of education, state department of public instruction)	<input type="checkbox"/>	<input type="checkbox"/>				
b. State attorney general	<input type="checkbox"/>	<input type="checkbox"/>				
c. State department of child and family services/welfare	<input type="checkbox"/>	<input type="checkbox"/>				
d. State department of health	<input type="checkbox"/>	<input type="checkbox"/>				
e. Other_1	<input type="checkbox"/>	<input type="checkbox"/>				
f. Other_2	<input type="checkbox"/>	<input type="checkbox"/>				
g. Other_3	<input type="checkbox"/>	<input type="checkbox"/>				
h. Other_4	<input type="checkbox"/>	<input type="checkbox"/>				
i. Other_5	<input type="checkbox"/>	<input type="checkbox"/>				

VIII. Definitions

Definitions relevant to Section 8546

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other
a. Sexual misconduct			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Verbal, directed toward or with a child or student			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Non-verbal, directed toward or with a child or student			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Written, directed toward or with a child or student			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Electronic communication, directed toward or with a child or student			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Physical contact, directed toward or with a child or student			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Child porn directed toward or with a child			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Trafficking directed toward or with a child			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Other (specify):			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Are there other definitions relevant to Section 8546?

- Yes
- No

	Excerpts	NOTES	Statute	Regulation	Code of ethics	Name of statute, bill, regulation, other
a. Other_2 (specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Other_3 (specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Other_4 (specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Other_5 (specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Other_6 (specify)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

This completes the protocol. If this state has multiple documents or you need to edit any of your responses, please select back at this time to start at the beginning. If you are done, please click "Submit."

Appendix D. Interview Protocol

Introduction and Consent

Introduce yourself and thank the administrator for participating in the interview.

Explain the purpose of the study and topics to be covered in the interview by reading the following statement to interview respondents:

The Study of State Policies to Prohibit Aiding and Abetting Sexual Misconduct in Schools will document how each state, plus the District of Columbia and the island territories, has responded to ESEA Section 8546. Section 8546 of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) of 2015, requires laws, regulations, or policies that prohibit school employees, contractors, or agents, or any SEA or district, from assisting (or “aiding and abetting”) school employees, contractors, or agents in obtaining a new job (apart from the routine transmission of administrative and personnel files) if the individuals or agencies know, or have probable cause to believe, the latter employees, contractors, or agents engaged in sexual misconduct with a student or minor in violation of the law.

To be clear, our goal as researchers is to describe how SEAs are responding to Section 8546, and not to monitor state actions or evaluate state compliance with federal law. As stated in Section 8546, “The Secretary shall not have the authority to mandate, direct, or control the specific measures adopted by a State, State educational agency, or local education agency under this section.”

The study began with our reviewing publicly available state documents and continues with interviews with key SEA officials in each state. The purpose of our state document reviews was to generate preliminary information on existing or pending statutes, regulations, policies, or codes of ethics that respond to Section 8546. We are now interviewing key SEA officials to learn about their perspectives on responding to the requirements in ESEA Section 8546; how they implement related policies or procedures in their work with local school districts; the successes and challenges to implementation; and any support or assistance they may need from the U.S. Department of Education to respond to Section 8546.

Explain the provisions for protecting interview respondents’ privacy and steps taken to minimize risk of data breach by reading the following statement to respondents at the beginning of each interview:

As part of the study, the study team will share its findings with the U.S. Department of Education. However, data collected during the interviews will be summarized across all the states participating in interviews. Individuals will not be identified by name in any report, and interview data will be reported in a way that does not reveal your identity or the identity of your state. However, we may use anonymous quotes to help illustrate the findings. Except for that which is already public, every effort will be made to maintain the confidentiality of all information collected, and we will not provide information that identifies you or your state to anyone outside the study team, except as required by law.

The risk of a data breach is low, but nevertheless exists. We have taken steps to minimize the risk that confidential information collected during this interview will be shared beyond members of the research team. We are taking notes today in a file stored on a secure, password-protected site. Only the researchers who are responsible for analyzing the interview data have access to this site. Once our report to the Department is final, the interview transcripts and related files will be destroyed.

If this is a group interview:

In addition, we ask that you agree to keep the names of the participants in this group interview—and the details of the group discussion—confidential.

Advise respondents that the interview will last approximately 60 minutes.

Explain that respondents may decline to answer any of the interview questions or stop the interview without penalty of any kind.

You may decline to respond to any of the interview questions – just let me know and I will move on to the next question. You may also choose to end the interview at any time without penalty of any type.

Invite questions from respondents.

Explain whom they can contact if they have questions about the interview:

If you have questions after this interview, you may contact Leslie Anderson, the project director, or [name] at the Department. Contact information for both Leslie and [name] was included in the email that I sent you to confirm this interview. I will also include it in a follow-up email after this interview.

Confirm respondent's (respondents') willingness to participate in the interview.

Do we have your consent to proceed with the interview?

Ask permission to audio-record the interview using the following statement:

We would like to record this conversation in order to ensure that we accurately capture your comments. If you agree, we will retain the recording only until we are able to validate the quality of the transcript, at which point the voice recording will be destroyed. If at any point you would like me to stop the recording, please ask and I will stop it. Do you agree to allow us to record the interview?

Confirm respondents' current position and responsibilities within the agency/organization, including how long they have been in their current role in the state.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0287.

Interview Questions

NOTE: Interviewers asked all follow-up questions as specified in the protocol. In addition, interviewers were directed to seek clarification of any response they judge to be vague or incomplete. The primary strategy for seeking clarification was to ask respondents to provide specific examples to illustrate their responses. A second strategy was to ask respondents to “say more” or to “expand on” or “explain the meaning of” a particular comment.

Background & state context

1. What responsibility do you and your office within the SEA have for developing or implementing state policies specifically related to preventing new employment of those known or believed with probable cause to have engaged in sexual misconduct regarding a student or minor? *[Probe for names of other SEA offices or other state agencies, organizations, or boards that may also have responsibility for developing or implementing these policies.]*
2. Preventing sexual misconduct of students and minors is a complicated matter of law and policy. We thought it would be helpful to talk through some specific examples to help us understand how your state’s laws, regulations, codes of ethics, and/or policies are intended to prevent aiding and abetting new employment of a school employee, contractor, or agent (“staff member”) known or believed with probable cause to have engaged in sexual misconduct with a student or minor. To the extent you have such policies, could you walk us as best you can through what should happen in this state in each of the following scenarios? Are you aware of what should happen in each scenario according to your state laws, regulations, codes of ethics, and/or policies?

Scenario 1: A school staff member who was believed with probable cause to have engaged in sexual misconduct with a student or minor asks for a letter of recommendation from a colleague also employed in the district (i.e., a teacher, principal, or administrator) who knows about the accusations of sexual misconduct.

Scenario 2: A school district administrator or school principal receives an application for employment from an individual who currently works in another school district. There is probable cause to believe that this individual has engaged in sexual misconduct with a student or minor, but the district administrator or school principal who receives the application does not know that.

Scenario 3: A school staff member accused of sexual misconduct with a student or minor has been exonerated in an investigation and asks for a letter of recommendation.

Scenario 4: A school staff member convicted of sexual misconduct with a student or minor requests that the incident not be documented in his personnel file or disclosed to anyone outside the school.

[Probe for how specific policies around hiring practices and disclosures should ultimately prevent employment in schools or in positions with access to children in Scenarios 1, 2, and 4.]

Developing state statutes, legislation, regulations, and/or policies that address Section 8546

3. To your knowledge, which state agencies were involved in developing, reviewing, or updating laws, regulations, codes of ethics, and/or policies to address Section 8546? What role did the SEA play in this process?

[Probe for who was involved and roles in discussions/policy decisions, e.g., state legislators, Governor's office, SEA offices, state superintendent/commissioner of education, state boards or other state agencies or organizations, district administrators, teacher unions, etc.]

4. *[Skip to Q5 if respondent does not know.]* To your knowledge, what laws, regulations, and/or codes of ethics did the state legislature, SEA, or other state agencies, organizations or boards:
- develop in response to the requirements of Section 8546?
 - review and update in response to the requirements of Section 8546? How and in what ways were *[laws, regulations, codes of ethics, and/or policies]* updated?
 - To your knowledge, did decisionmakers favor laws over policies? If so, why?
5. What policies and procedures has the SEA developed, revised, or updated to address Section 8546?
- Which offices within the SEA were involved in developing those policies?

[Probe for whether other state agencies, organizations, or boards were involved in developing those policies]

- What process did the SEA follow to develop these policies? How did the SEA engage key stakeholders? *[Listen for: District and school administrator involvement, parent involvement.]*

Now, I'd like to ask you some questions about the SEA's role in particular:

6. To what extent, if at all, did the requirements of Section 8546 change the SEA's perspective on ways to prohibit aiding and abetting new employment of individuals known or believed with probable cause to have engaged in sexual misconduct with a student or minor?
- Does the SEA define and/or interpret what "assisting employment" or "aiding and abetting" means?
7. What, if any, challenges did your SEA encounter when *[helping develop or reviewing/revising]* laws, regulations, codes of ethics, and/or policies that respond to the requirements of Section 8546? How and to what extent were these challenges resolved?

Implementing statutes, legislation, regulations, and/or policies that address Section 8546

8. How is the SEA communicating the requirements of Section 8546 and of state laws or policies prohibiting aiding and abetting to each of the following institutions and individuals:
- Local school districts
 - Private/non-public schools receiving federal funds
 - Charter schools
 - Contractors

- a. How would a district administrator know what constitutes educator sexual misconduct in his or her district or school?
 - b. How would a district administrator know what constitutes “assisting” an educator in this situation in obtaining a new job?
9. How does the SEA support districts and schools (i.e., public, including charter schools, as well as private schools receiving federal funds) to develop policies that reflect state laws, codes of ethics, and/or policies that prohibit aiding and abetting?
- a. Does the SEA partner with other state agencies to provide this support? Which agencies?
10. What guidance and technical assistance, such as trainings, is the SEA providing to districts and schools regarding local implementation of state laws or policies pertaining to the requirements of Section 8546? Which offices in the SEA are responsible for providing guidance and technical assistance to districts and schools?
- [Listen for how the SEA supports proper investigations of incidents of aiding and abetting employment of individuals known or believed with probable cause to have engaged in sexual misconduct, including whether the SEA appoints trained investigators. Listen for policies requiring regular background checks on all school employees; SEA liaisons for districts investigating allegations of educator sexual misconduct; or exit interviews with school personnel who have responded to a documented case of misconduct.]*
- a. Does the SEA partner with other state agencies to provide this support? Which agencies?
11. How, if at all, does the SEA monitor local districts’ compliance with state laws or policies prohibiting aiding and abetting?³⁴ For example, what processes are in place to monitor employer implementation of required hiring practices, such as conducting criminal background checks on job applicants? *[Probe for how often monitoring occurs around specific laws, regulations, or policies related to hiring practices and/or disclosures of information.]*
- a. How does the SEA support districts and/or schools that have not complied with the law and/or policies that prohibit aiding and abetting?
 - b. What other state agencies are responsible for ensuring compliance with state laws and policies, in addition to the SEA? What are their responsibilities?
12. How does the SEA track complaints and/or incidents of sexual misconduct from districts? *[Probe for whether the SEA has a statewide database on educator incidents of sexual misconduct in schools it can share with districts]*
- a. Does the SEA require districts to maintain records of incidents of sexual misconduct in schools?

³⁴ Note to interviewers (not part of questions) to keep discussion specifically around 8546: the “actors” who should be monitored to ensure compliance with state laws under 8546/the SEA are not the school personnel who engaged or are alleged to have engaged in misconduct, but rather the administrators, contractors, agents, and LEAs who may “assist” them. SEAs under 8546 are not responsible for investigations of teachers for misconduct. This assurance is about investigating their “aiders and abettors” for the aid they may offer them. This is an important distinction for the line of questioning in the interview.

13. What is the SEA's process for determining whether district policies respond to state laws prohibiting aiding and abetting? [*Probe for how often the SEA has reviewed district policies to determine whether they reflect state laws prohibiting aiding and abetting?*]
 - a. To your knowledge, to what extent do districts have policies in place that reflect state laws and policies prohibiting aiding and abetting?

Successes and challenges to implementing state laws and policies that address the requirements of Section 8546

14. Do you have any examples that lead you to believe that your state's laws and policies prohibiting aiding and abetting have prevented any school employee, contractor, or agent known or believed with probable cause to have engaged in sexual misconduct with a student or minor from obtaining a new job?
15. [*If the state has laws, regulations, codes of ethics, and/or policies that address Section 8546*] What challenges, if any, has the SEA encountered in its efforts to implement laws, regulations, codes of ethics, and/or policies, that address Section 8546? [*When SEAs describe challenges, probe for examples. As needed, ask how those challenges have hindered implementation of state laws (e.g., How so?).*]
 - a. What strategies has the SEA used to address these challenges and to what extent have they been effective?
16. To your knowledge, what challenges, if any, have districts encountered in their efforts to develop, implement, or enforce laws, regulations, codes of ethics, and/or policies that address Section 8546?
 - a. What strategies have the SEA and/or school districts used to address these challenges and to what extent have they been effective?
17. What types of support and assistance do you need, if any, from the Department in order to respond to the requirements of Section 8546?

Wrap-up

18. Is there anything else that we should know about your state's laws and policies that address the requirements of Section 8546?

Appendix E. Statutory Language for Illustrative State Laws Prohibiting Aiding and Abetting

This appendix provides examples of the statutory language that select states use to prohibit aiding and abetting employment, with elaboration, where available, from the interview data.

Hiring laws specific to prospective employers

Several states developed laws that articulate the hiring practices employers must use to prohibit aiding and abetting sexual misconduct.

Connecticut's law, for example, specifies that prospective education employers may not offer employment to an applicant without first obtaining a variety of information, including the applicant's certification status; any disciplinary actions or findings related to abuse, neglect, or sexual misconduct; and notification of any criminal charges. In particular, the law specifies that it applies to a wide range of school types, including public schools, charter schools, magnet schools, and non-public schools (exhibit E-1).

Another state's law explicitly requires districts to request information from out-of-state employers, which serves to safeguard prospective employers from unknowingly hiring out-of-state candidates who were previously investigated, terminated, and/or lost their certification (GAO, 2010):

(3) Before hiring an applicant, a school district shall request in writing, electronic or otherwise, the applicant's current and past employers, including out-of-state employers, to provide the information described in subsection (2)(a) of this section, if any. The request shall include a copy of the statement signed by the applicant under subsection (2) of this section.

The law in a third state requires districts to check the state's Department of Social Services Central Registry database to ensure that an individual does not have a founded case of abuse or neglect in the state or in other states. As the respondent explained:

Exhibit E-1. Sample legislation regarding requirements for prospective employers

No local or regional board of education, governing council of a state or local charter school, interdistrict magnet school operator or supervisor agency of a nonpublic school shall offer employment to an applicant for a position, including any position that is contracted for, if such applicant would have direct student contact, prior to such board, council, operator or supervisor agent: (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.

Connecticut (CGS 10-222c)

[The database] also extends to other states where the applicant may have lived, so if the individual has a founded case of sexual abuse in [neighboring states] and comes to seek employment in a [State] school, that individual would have to be subject to a search of the social services records in that other state.

Hiring laws specific to job applicants

Several states developed laws intended to capture and account for the various circumstances under which an applicant may have resigned, been disciplined, or terminated. One state's law succinctly describes requirements for a multifaceted written statement regarding an employer's actions related to allegations of abuse or sexual misconduct. In particular, this law requires written disclosures that include circumstances in which (1) a school administrator handled an incident internally, (2) a full investigation was not finalized, or (3) an employee resigned before being terminated.

A written statement of whether the applicant: has ever been disciplined, discharged, nonrenewed, asked to resign from employment, resigned from or otherwise separated from any employment while allegations of abuse or sexual misconduct as described in clause (A) were pending or under investigation, or due to an adjudication or findings of abuse or sexual misconduct as described in clause (A).

Exhibit E-2 is another example of legislative language, from a New Jersey law, requiring job applicants to provide extensive and specific information regarding their employment qualifications, including their employment history, certification status, disciplinary status, and whether they have ever been the subject of a sexual abuse or misconduct investigation. In addition, this legislative language names school types and positions, including contracted service providers, and requires a job history dating back 20 years. In addition, it casts a wide net, requiring applicants to disclose information about pending investigations as well as resignations, disciplinary actions, and certification status.

Exhibit E-2. Sample legislation regarding requirements for job applicants

A school district, charter school, nonpublic school, or contracted service provider holding a contract with a school district, charter school, or nonpublic school shall not employ for pay or contract for the paid services of any person serving in a position which involves regular contact with students unless the school district, charter school, nonpublic school, or contracted service provider: a. Requires the applicant to provide:

(1) A list, including name, address, telephone number and other relevant contact information of the applicant's: (a) current employer; (b) all former employers within the last 20 years that were schools; and (c) all former employers within the last 20 years where the applicant was employed in a position that involved direct contact with children;

(2) A written authorization that consents to and authorizes disclosure of the information requested under subsection b. of this section and the release of related records by the applicant's employers listed under paragraph (1) of this subsection, and that releases those employers from liability that may arise from the disclosure or release of records;

(3) A written statement as to whether the applicant: (a) has been the subject of any child abuse or sexual misconduct investigation by any employer, State licensing agency, law enforcement agency, or the Department of Children and Families, unless the investigation resulted in a finding that the allegations were false or the alleged incident of child abuse or sexual misconduct was not substantiated; (b) has ever been disciplined, discharged, nonrenewed, asked to resign from employment, resigned from or otherwise separated from any employment while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct; or (c) has ever had a license, professional license, or certificate suspended, surrendered, or revoked while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct.

New Jersey Stat. § 18A:6-7.7

Laws governing information-sharing

Sample legislative language from states that require employers to engage in specific information-sharing practices includes specific and detailed language describing who is responsible, what information they are required to disclose, and to whom.

As shown in exhibit E-3, Missouri's statute describes the requirements and enforcements for districts and charter schools responding to information requests about former employees with a substantiated finding from a sexual abuse and misconduct investigation. The statute stipulates that the district or charter school must disclose the investigation to any prospective employer in a public school. The statute also states that if the district or charter school dismissed the employee or permitted a silent resignation and fails to disclose this information to a prospective employer, the district or charter school would be directly liable for damages if the employee sexually abuses or commits misconduct with a student at the employing district or charter school. The statute, however, does not reference employers or employees of private schools.

Another example statute presents typical language for addressing the requirements relating to current or former employers' information-sharing practices. The statute specifies that current or former employers must disclose documents in the applicant's personnel file relating to all instances of sexual misconduct within a specified period of time (e.g., 20 business days).

[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.

This statute applies to current or former employers and requires sharing any documents related to instances of sexual misconduct, regardless of whether instances have been substantiated, investigated, or have resulted in a disciplinary action.

Exhibit E-3. Example of state legislation regarding requirements and enforcements for information disclosures

If a district or charter school has previously employed a person about whom the children's division has conducted an investigation involving allegations of sexual misconduct with a student and has reached a finding of substantiated and another public school contacts the district or charter school for a reference for the former employee, the district or charter school shall disclose the results of the children's division's investigation to the public school... [I]f a district or charter school...dismisses the employee or allows the employee to resign in lieu of being fired and fails to disclose the allegations of sexual misconduct when furnishing a reference for the former employee or responding to a potential employer's request for information regarding such employee, the district or charter school shall be directly liable for damages to any student of a subsequent employing district or charter school who is found by a court of competent jurisdiction to be a victim of the former employee's sexual misconduct, and the district or charter school shall bear third-party liability to the employing district or charter school for any legal liability, legal fees, costs, and expenses incurred by the employing district or charter school caused by the failure to disclose such information to the employing district or charter school.

*Missouri 168.133.5;
Mo. Rev. Stat. 162.068.4*

Laws governing information suppression

Legislation that prohibits information suppression related to sexual misconduct includes an Oregon law (exhibit E-4) that exemplifies a comprehensive prohibition on information suppression by specifically referencing termination/resignation agreements, severance agreements, collective bargaining agreements, contracts, and any other type of agreement that suppresses information about sexual misconduct. The statute prohibits education providers from entering into any agreement that would suppress information about an ongoing investigation, interfere with reporting or disciplining a current or former employee for a substantiated report of sexual abuse or misconduct, or require expunging substantiated information related to sexual abuse or misconduct from any documents. The statute uses broad language such as “education provider” and “current or former employee” when designating to whom the statute applies. The statute would not apply, however, to complaints or unsubstantiated reports of sexual abuse or misconduct.

Exhibit E-4. Sample legislation regarding requirements and enforcements for information disclosures

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.

Oregon Rev. Stat. 326.603



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