

## BILL ANALYSIS

Senate Research Center  
86R21692 GCB-F

C.S.S.B. 1256  
By: Bettencourt  
Education  
4/12/2019  
Committee Report (Substituted)

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, certified educators employed by school districts and open-enrollment charter schools who engage in inappropriate conduct with students are required by law to be reported to the State Board for Educator Certification (SBEC)/Texas Education Agency (TEA) for investigation. If the educator is sanctioned as a result of the misconduct the sanction is placed on the face of the virtual certificate, which is available to all public and private schools. This process is in place to address educators moving from district to district after resigning or being terminated for misconduct. Districts of innovation (DOI) have the ability to place a non-certified employee in a role previously held by a certified educator. There is no similar process for non-certified employees of schools that engage in the same type of misconduct.

S.B. 1256 would create a similar process for non-certified persons who engage in misconduct with students. It would serve to prevent non-certified employees who have been found to have engaged in misconduct with students from gaining employment in public and private schools.

S.B. 1256 affords all students in Texas schools protection from all school employees who have been found to have engaged in an unlawful act or other misconduct with a student by:

- ensuring that non-certified persons who have engaged in unlawful acts or solicited or engaged in romantic relationships with students or minors are terminated from charter schools and districts of innovation;
- creating a registry for non-certified persons who may not be employed by charter schools or districts of innovation;
- prohibiting charter schools from employing people who, after due process, have been placed on a registry prohibiting employment;
- granting authority to sanction those that don't comply with statute;
- requiring the commissioner of education to remove district of innovation status for employing or failing to terminate a person on the registry;
- creating the same superintendent reporting requirements for non-certified employees that currently exist for certified employees and adds principals to the reporting requirements.
- criminalizing failure to report to SBEC; and
- allowing the commissioner of education to audit reporting of misconduct and to review compliance with reporting requirements regarding educator misconduct. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1256 amends current law relating to employing, terminating, and reporting the misconduct of public school personnel and related entity personnel, including creating a registry of persons ineligible for hire; and creates criminal offenses.

## **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Education Agency in SECTION 17 (Section 22.092, Education Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of education in SECTION 17 (Sections 22.093 and 22.094, Education Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 7.028(a), Education Code, to include Sections 21.006(k), 22.093(l), and 22.096 among the sections that are the exceptions to the authorization for the Texas Education Agency (TEA) to monitor compliance with requirements applicable to a process or program provided by a school district, campus, program, or school granted charters under Chapter 12 (Charters), including the process described by Subchapter F (District-Level and Site-Based Decision-Making), Chapter 11, or a program described by certain provisions in the Education Code, and the use of funds provided for such a program under Subchapter C (Special Allotments), Chapter 42, only as necessary to ensure certain criteria.

SECTION 2. Amends Section 12.027(a), Education Code, as follows:

(a) Authorizes the State Board of Education (SBOE) to place on probation or revoke a home-rule school district charter of a school district if SBOE determines that the district:

(1) committed a material violation of the charter, including by failure to comply with the duty to discharge or refuse to hire certain employees or applicants for employment, as provided by Section 12.0271; or

(2)–(3) makes no change to these subdivisions.

SECTION 3. Amends Subchapter B, Chapter 12, Education Code, by adding Section 12.0271, as follows:

Sec. 12.0271. FAILURE TO DISCHARGE OR REFUSE TO HIRE CERTAIN EMPLOYEES OR APPLICANTS. Provides that a home-rule school district commits a material violation of the school district's charter if the school district fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment under Section 22.085 or 22.092.

SECTION 4. Amends Section 12.056(b), Education Code, to provide that a campus or program for which a charter is granted under this subchapter (Campus or Campus Program Charter) is subject to certain actions, including the duty to discharge or refuse to hire certain employees or applicants for employment under Section 12.1059.

SECTION 5. Amends Section 12.063(a), Education Code, as follows:

(a) Authorizes a board of trustees to place on probation or revoke a charter it grants if the board determines that the campus or program:

(1) committed a material violation of the charter, including by failure to comply with duty to discharge or refuse to hire certain employees or applicants for employment, as provided by Section 12.0631; or

(2)–(3) makes no changes to these subdivisions.

SECTION 6. Amends Subchapter C, Chapter 12, Education Code, by adding Section 12.0631, as follows:

Sec. 12.0631. FAILURE TO DISCHARGE OR REFUSE TO HIRE CERTAIN EMPLOYEES OR APPLICANTS. Provides that a campus or campus program granted a charter under this subchapter commits a material violation of its charter if the campus or program fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment under Section 12.1059, 22.085, or 22.092.

SECTION 7. Amends Section 12.1059, Education Code, as follows:

Sec. 12.1059. New heading: REQUIREMENTS FOR EMPLOYMENT OF CERTAIN EMPLOYEES. Prohibits a person from being employed by or serving as a teacher, librarian, educational aide, administrator, or school counselor for an open-enrollment charter school unless certain criteria are met, including that the school has confirmed that the person is not included in the registry under Section 22.092.

SECTION 8. Amends Section 12.115(a), Education Code, to require the commissioner of education (commissioner), except as provided by Subsection (c) (relating to requiring the commissioner to revoke the charter of an open-enrollment charter under certain conditions), to revoke the charter of an open-enrollment charter school or reconstitute the governing body of the charter holder if the commissioner determines that the charter holder committed a material violation of the charter, including by a failure to comply with the duty to discharge or refuse to hire certain employees or applicants for employment, as provided by Section 12.1151.

SECTION 9. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1151, as follows:

Sec. 12.1151. FAILURE TO DISCHARGE OR REFUSE TO HIRE CERTAIN EMPLOYEES OR APPLICANTS. Provides that an open-enrollment charter school commits a material violation of the school's charter if the school fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment under Section 12.1059, 22.085, or 22.092.

SECTION 10. Amends Section 12A.008, Education Code, by adding Subsection (b-1), as follows:

(b-1) Authorizes the commissioner to terminate a district's designation as a district of innovation if the district fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment under Section 12.1059, applicable to the district under Section 12A.004(a)(1) (relating to prohibiting a local innovation plan from providing for the exemption of district of innovation from meeting certain state or federal requirements), or Section 22.085 or 22.092.

SECTION 11. Amends Section 21.006, Education Code, by amending Subsections (a), (b), (b-1), (b-2), (c-1), (d), and (e) adding Subsections (g-1) and (k), as follows:

(a) Makes a nonsubstantive change and defines "other charter entity."

(b) Requires the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement, rather than the superintendent or director of a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement, to notify SBOE if certain incidents occur. Makes conforming changes.

(b-1) and (b-2) Makes conforming changes to these subsections.

(c-1) Requires the report under Subsection (c) (relating to requiring the superintendent or director to notify State Board for Educator Certification (SBEC) of certain misconduct by an employee) to be in writing and in a form prescribed by SBOE and authorizes the report to be filed through the Internet portal developed and maintained by SBEC under Subsection (g-1)

(g-1) Requires SBEC to develop and maintain an Internet portal through which a report required under Subsection (c) may be confidentially and securely filed.

(k) Authorizes the commissioner to review the records of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement to ensure compliance with the requirement to report misconduct under this section (Requirement to Report Misconduct).

SECTION 12. Amends Section 21.0061, Education Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Makes a conforming change to this subsection.

(c) Defines "other charter entity" for purposes of this section (Notice to Parent or Guardian About Educator Misconduct).

SECTION 13. Amends Subchapter B, Chapter 21, Education Code, by adding Section 21.0585, as follows:

Sec. 21.0585. NOTICE TO AGENCY REGARDING REVOCATION OF CERTIFICATE OR PERMIT FOR CERTAIN MISCONDUCT. Requires SBEC to promptly notify TEA for purposes of Section 22.092 if SBEC revokes a certificate or permit of a person on a finding that the person engaged in misconduct described by Section 21.006(b)(2)(A) (relating to requiring the superintendent or director of certain entities to notify SBEC of certain conditions involving an educator employed by or seeking employment by the entity) or (A-1) (relating to requiring the superintendent or director of certain entities to notify SBEC of certain conditions involving an educator engaging in certain relationships).

SECTION 14. Amends Subchapter C, Chapter 22, Education code, by adding Sections 22.0815 and 22.0825, as follows:

Sec. 22.0815. APPLICABILITY OF SUBCHAPTER TO DISTRICTS OF INNOVATION AND OTHER CHARTER ENTITIES. (a) Defines "other charter entity" for purposes of this section.

(b) Provides that a prohibition, restriction, or requirement imposed by this subchapter (Criminal History Reports) on an open-enrollment charter school applies to the same extent to a district of innovation or other charter entity.

(c) Provides that the failure of a district of innovation to provide information required under Section 22.0832 (National Criminal History Record Information Review of Certain Open-Enrollment Charter School Employees) may result in termination of the district's designation as a district of innovation.

Sec. 22.0825. ACCESS TO CRIMINAL HISTORY RECORDS BY TEXAS EDUCATION AGENCY. Defines "other charter entity" for purposes of this section.

(b) Requires TEA to subscribe to the criminal history clearinghouse as provided by Section 411.0845 (Criminal History Clearinghouse), Government Code, and authorizes TEA to obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for employment or current or former employee of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement.

SECTION 15. Amends the heading to Section 22.085, Education Code, to read as follows:

Sec. 22.085. EMPLOYEES AND APPLICANTS CONVICTED OF OR PLACED ON DEFERRED ADJUDICATION COMMUNITY SUPERVISION FOR CERTAIN OFFENSES.

SECTION 16. Amends Sections 22.085(a) and (e), Education Code, as follows:

(a) Requires a school district, open-enrollment charter school, or shared services arrangement to discharge or refuse to hire an employee or applicant for employment if the district, school, or shared services arrangement obtains information through a criminal history record information review that the employee or applicant has been:

(1) convicted of or placed on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure; or

(2) convicted of:

(A) a felony offense under Title 5 (Offenses Against the Person), Penal Code, if the victim of the offense was under 18 years of age at the time the offense was committed; or

(B) an offense under the laws of another state or federal law that is equivalent to an offense under Subdivision (1) or Paragraph (A).

Deletes existing Paragraph (1)(A) relating to the employee being convicted of a felony offense under Title 5, Penal Code and deletes the designation of Paragraph (1)(B). Deletes existing Subdivision (2) relating to the age or school status of the victim of the offense. Redesignates existing Paragraph (1)(C) as Paragraph (2)(B). Makes nonsubstantive changes throughout.

(e) Authorizes SBEC to impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant for employment, rather than an applicant, if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been:

(1) creates this paragraph from existing text and authorizes SBEC to impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant for employment, if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been convicted of or placed on deferred adjudication community supervision for an offense described by Subsection (a)(1); or

(2) convicted of an offense described by Subsection (a)(2). Deletes existing text relating to the conviction of an offense described by Subsection (a).

SECTION 17. Amends Chapter 22, Education Code, by adding Subchapter C-1, as follows:

SUBCHAPTER C-1. PERSONS NOT ELIGIBLE FOR EMPLOYMENT IN PUBLIC SCHOOLS

Sec. 22.091. DEFINITIONS. Defines "other charter entity" for purposes of this subchapter.

Sec. 22.092. REGISTRY OF PERSONS NOT ELIGIBLE FOR EMPLOYMENT IN PUBLIC SCHOOLS. (a) Requires TEA to maintain and make available through the Internet portal developed and maintained by TEA under Section 22.095 a registry of persons who are not eligible to be employed by a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement.

(b) Requires a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement to discharge or refuse to hire a person listed on the registry maintained under this section.

(c) Requires the registry under this section to list certain enumerated persons as not eligible to be employed by public schools.

(d) Requires TEA to provide private schools and public schools equivalent access to the registry maintained under this section.

(e) Requires TEA to adopt rules as necessary to implement this section.

Sec. 22.093. REQUIREMENT TO REPORT EMPLOYEE MISCONDUCT. (a) Defines "abuse."

(b) Provides that this section applies to a person who is employed by a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement and who does not hold a certification or permit issued under Subchapter B (Certification of Educators), Chapter 21.

(c) Requires the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement, in addition to the reporting requirement under Section 261.101 (Persons Required to Report; Time to Report), Family Code, to notify the commissioner if:

(1) an employee's employment at the school district, district of innovation, charter school, other charter entity, regional educational service center, or shared services arrangement was terminated and there is evidence that the employee:

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

(B) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor; or

(2) the employee resigned and there is evidence that the employee engaged in misconduct described by Subdivision (1).

(d) Requires a superintendent or director to complete an investigation of an employee that involves evidence that the employee may have engaged in misconduct described by Subsection (c)(1)(A) or (B), despite the employee's resignation from employment before completion of the investigation.

(e) Requires the principal of a school district, district of innovation, or open-enrollment charter school, or other charter entity campus to notify the superintendent or director of the school district, district of innovation, charter school, or other charter entity not later than the seventh business day after the date of an employee's termination of employment or resignation following an alleged incident of misconduct described by Subsection (c)(1)(A) or (B).

(f) Requires the superintendent or director to notify the commissioner by filing a report with the commissioner not later than the seventh business day after the date the superintendent or director receives a report from a principal under Subsection (e) or knew about an employee's termination of employment or resignation following an alleged incident of misconduct described by Subsection (c)(1)(A) or

(B). Requires the report to be in writing and in a form prescribed the commissioner.

(g) Requires the superintendent or director to notify the board of trustees or governing body of the school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement and the employee of the filing of the report required by Subsection (f).

(h) Provides that a superintendent or director who in good faith and while acting in an official capacity files a report with the commissioner under Subsection (f) or a principal who in good faith and while acting in an official capacity notifies a superintendent or director under Subsection (e) is immune from civil or criminal liability that might otherwise be incurred or imposed.

(i) Requires the commissioner to refer an educator who fails to file a report in violation of Subsection (f) to SBEC, and requires SBEC to determine whether to impose sanctions against the educator.

(j) Requires the name of a student or minor who is the victim of abuse or unlawful conduct by an employee to be included in a report filed under this section, but provides that the name of the student or minor is not public information under Chapter 552 (Public Information), Government Code.

(k) Provides that a superintendent or director required to file a report under Subsection (f) commits an offense if the superintendent or director fails to file the report by the date required by that subsection with intent to conceal an employee's criminal record or alleged incident of misconduct. Provides that a principal required to notify a superintendent or director about an employee's alleged incident of misconduct under Subsection (e) commits an offense if the principal fails to provide the notice by the date required by that subsection with intent to conceal an employee's alleged incident of misconduct. Provides that an offense under this subsection is a state jail felony.

(l) Authorizes the commissioner to review the records of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement to ensure compliance with the requirement to report misconduct under this section.

(m) Requires the commissioner to adopt rules as necessary to implement this section.

**Sec. 22.094. NOTICE OF ALLEGED MISCONDUCT; INVESTIGATION; HEARING.**

(a) Entitles a person described by Section 22.093(b) and who is the subject of a report that alleges misconduct described by Section 22.093(c)(1)(A) or (B) to a hearing on the merits of the allegations of misconduct under the procedures provided by Chapter 2001 (Administrative Procedure), Government Code, to contest the allegation in the report.

(b) Requires the commissioner, on receiving a report filed under Section 22.093(f), to promptly send to the person who is the subject of the report a notice that includes certain information.

(c) Requires a person entitled to a hearing under Subsection (a) to request a hearing and submit a response to show cause not later than the 10th day after the date the person receives the notice from the commissioner provided under Subsection (b).

(d) Requires the commissioner, if a person who receives notice provided under Subsection (b) does not timely submit a response to show cause why the commissioner should not pursue an investigation, to instruct TEA to make

available through the Internet portal developed and maintained by TEA under Section 22.095 information indicating the person is under investigation for alleged misconduct.

(e) Requires the commissioner, if a person entitled to a hearing under Subsection (a) does not request a hearing as provided by Subsection (c), to:

(1) based on the report filed under Section 22.093(f), make a determination whether the person engaged in misconduct; and

(2) if the commissioner determines that the person engaged in misconduct described by Section 22.093(c)(1)(A) or (B), instruct TEA to add the person's name to the registry maintained under Section 22.092.

(f) Requires the commissioner, if a person entitled to a hearing under Subsection (a) requests a hearing as provided by Subsection (c) and the final decision in that hearing determines that the person engaged in misconduct described by Section 22.093(c)(1)(A) or (B), to instruct TEA to add the person's name to the registry maintained under Section 22.092.

(g) Requires the commissioner, if a person entitled to a hearing under Subsection (a) requests a hearing as provided by Subsection (c) and the final decision in that hearing determines that the person did not engage in misconduct described by Section 22.093(c)(1)(A) or (B), to instruct TEA to immediately remove from the Internet portal developed and maintained under Section 22.092 the information indicating that the person is under investigation for alleged misconduct.

(h) Requires the commissioner to adopt rules as necessary to implement this section.

Sec. 22.095. INTERNET PORTAL. Requires TEA to develop and maintain an Internet portal through which:

(1) a report required under Section 22.093(f) may be confidentially and securely filed; and

(2) TEA makes available certain information.

Sec. 22.096. COMPLIANCE MONITORING. Requires TEA to periodically conduct site visits and review the records of school districts, districts of innovation, open-enrollment charter schools, other charter entities, regional educational service centers, and shared services arrangements to ensure compliance with Section 22.092(b).

SECTION 18. Amends Section 39.0302(a), Education Code, to authorize the commissioner to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is located in this state under certain circumstances, including a compliance review under Section 21.006(k), 22.093(l), or 22.096.

SECTION 19. Provides that as soon as practicable after the effective date of this Act:

(1) SBEC is required to developed the Internet portal required by Section 21.006(g-1), Education Code, as amended by this Act; and

(2) TEA is required to developed the Internet portal required by Section 22.095, Education Code, as added by this Act.

SECTION 20. Requires TEA to establish the registry of persons who are not eligible to be employed by a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement, as required by



Section 22.092, Education Code, as added by this Act, as soon as practicable and not later than January 1, 2020.

SECTION 21. Requires SBEC to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Authorizes, but does not require, SBEC to implement a provision of this Act using other appropriations available for that purpose.

SECTION 22. Requires TEA to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Authorizes, but does not require, TEA to implement a provision of this Act using other appropriations available for that purpose.

SECTION 23. Effective date: September 1, 2019.