86R14266 TSS-D

By:  Leach H.B. No. 3977

A BILL TO BE ENTITLED

AN ACT

relating to employing, terminating, and reporting misconduct of public school personnel and related entity personnel, including creating a registry of persons ineligible for hire; creating a criminal offense.

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

SECTION 1.  Section 7.028(a), Education Code, is amended to read as follows:

(a)  Except as provided by Section 21.006(k), 22.092(l), 22.094, 29.001(5), 29.010(a), or 39.057, the agency may monitor compliance with requirements applicable to a process or program provided by a school district, campus, program, or school granted charters under Chapter 12, including the process described by Subchapter F, Chapter 11, or a program described by Subchapter B, C, D, E, F, H, or I, Chapter 29, Subchapter A, Chapter 37, or Section 38.003, and the use of funds provided for such a program under Subchapter C, Chapter 42, only as necessary to ensure:

(1)  compliance with federal law and regulations;

(2)  financial accountability, including compliance with grant requirements; and

(3)  data integrity for purposes of:

(A)  the Public Education Information Management System (PEIMS); and

(B)  accountability under Chapters 39 and 39A.

SECTION 2.  Section 12.056(b), Education Code, is amended to read as follows:

(b)  A campus or program for which a charter is granted under this subchapter is subject to:

(1)  a provision of this title establishing a criminal offense; and

(2)  a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A)  the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B)  criminal history records under Subchapter C, Chapter 22;

(C)  high school graduation under Section 28.025;

(D)  special education programs under Subchapter A, Chapter 29;

(E)  bilingual education under Subchapter B, Chapter 29;

(F)  prekindergarten programs under Subchapter E, Chapter 29;

(G)  extracurricular activities under Section 33.081;

(H)  health and safety under Chapter 38; [~~and~~]

(I)  public school accountability under Subchapters B, C, D, F, and J, Chapter 39, and Chapter 39A;

(J)  reporting misconduct under Sections 21.006 and 22.092; and

(K)  the duty to discharge or refuse to hire certain employees or applicants for employment under Section 12.1059, 22.085, or 22.091.

SECTION 3.  Section 12.1059, Education Code, is amended to read as follows:

Sec. 12.1059.  AGENCY APPROVAL REQUIRED FOR CERTAIN EMPLOYEES. A person may not be employed by or serve as a teacher, librarian, educational aide, administrator, or school counselor for an open-enrollment charter school unless:

(1)  the person has been approved by the agency following a review of the person's national criminal history record information as provided by Section 22.0832; and

(2)  the school has confirmed that the person is not included in the registry under Section 22.091.

SECTION 4.  Section 12.115(a), Education Code, is amended to read as follows:

(a)  Except as provided by Subsection (c), the commissioner shall 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:

(1)  committed a material violation of the charter, including by a failure to:

(A)  satisfy accountability provisions prescribed by the charter; or

(B)  comply with the duty to discharge or refuse to hire certain employees or applicants for employment, as provided by Section 12.1151;

(2)  failed to satisfy generally accepted accounting standards of fiscal management;

(3)  failed to protect the health, safety, or welfare of the students enrolled at the school;

(4)  failed to comply with this subchapter or another applicable law or rule;

(5)  failed to satisfy the performance framework standards adopted under Section 12.1181; or

(6)  is imminently insolvent as determined by the commissioner in accordance with commissioner rule.

SECTION 5.  Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1151 to read as follows:

Sec. 12.1151.  FAILURE TO DISCHARGE OR REFUSE TO HIRE CERTAIN EMPLOYEES OR APPLICANTS. 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 22.091.

SECTION 6.  Section 12A.008, Education Code, is amended by adding Subsection (b-1) to read as follows:

(b-1)  The commissioner may 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), or Section 22.085 or 22.091.

SECTION 7.  Section 21.006, Education Code, is amended by adding Subsection (k) to read as follows:

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

SECTION 8.  Subchapter C, Chapter 22, Education Code, is amended by adding Section 22.0815 to read as follows:

Sec. 22.0815.  APPLICABILITY OF SUBCHAPTER TO DISTRICTS OF INNOVATION. (a) A district of innovation is subject to a prohibition, restriction, or requirement imposed by this subchapter on an open-enrollment charter school.

(b)  The failure of a district of innovation to provide information required under Section 22.0832 may result in termination of the district's designation as a district of innovation.

SECTION 9.  The heading to Section 22.085, Education Code, is amended to read as follows:

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

SECTION 10.  Section 22.085, Education Code, is amended by amending Subsections (a), (b), and (e) and adding Subsection (g) to read as follows:

(a)  A school district, open-enrollment charter school, or shared services arrangement shall 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[~~:~~

[~~(1)~~]  the employee or applicant has been convicted of or placed on deferred adjudication community supervision for:

(1) [~~(A)~~]  a felony offense under Title 5, Penal Code, if the victim of the offense was under 18 years of age at the time the offense was committed;

(2) [~~(B)~~]  an offense on conviction of which or on placement on deferred adjudication community supervision for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

(3) [~~(C)~~]  an offense under the laws of another state or federal law that is equivalent to an offense under Subdivision (1) [~~Paragraph (A)~~] or (2) [~~(B); and~~

[~~(2)  at the time the offense occurred, the victim of the offense described by Subdivision (1) was under 18 years of age or was enrolled in a public school~~].

(b)  Subsection (a) does not apply if the employee or applicant for employment committed an offense under Title 5, Penal Code and:

(1)  the date of the commission of the offense is more than 30 years before:

(A)  the effective date of S.B. No. 9, Acts of the 80th Legislature, Regular Session, 2007, in the case of a person employed by a school district, open-enrollment charter school, or shared services arrangement as of that date; or

(B)  the date the person's employment will begin, in the case of a person applying for employment with a school district, open-enrollment charter school, or shared services arrangement after the effective date of S.B. No. 9, Acts of the 80th Legislature, Regular Session, 2007; and

(2)  the employee or applicant for employment satisfied all terms of the court order entered on conviction or successfully completed the period of deferred adjudication community supervision.

(e)  The State Board for Educator Certification may 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).

(g)  A school district, open-enrollment charter school, or shared services arrangement shall promptly notify the agency for purposes of Section 22.091 that the school district, charter school, or shared services arrangement discharged or refused to hire an employee or applicant for employment as provided by this section. A school district, open-enrollment charter school, or shared services arrangement is not required to comply with this subsection if the school district, charter school, or shared services arrangement was notified by the agency that the person must be discharged or may not be hired as provided by this section pursuant to a review of the person's criminal history record information by the agency.

SECTION 11.  Chapter 22, Education Code, is amended by adding Subchapter C-1 to read as follows:

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

Sec. 22.091.  REGISTRY OF PERSONS NOT ELIGIBLE FOR EMPLOYMENT IN PUBLIC SCHOOLS. (a) The agency shall maintain and make available to appropriate hiring entities a registry of persons who are not eligible to be employed by a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement.

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

(c)  The registry maintained under this section must list the following persons as not eligible to be employed by public schools:

(1)  a person determined by the agency under Section 22.0832 as a person who would not be eligible for educator certification under Subchapter B, Chapter 21;

(2)  a person who is not eligible for employment based on the person's criminal history record information review, as provided by Section 22.085;

(3)  a person who is not eligible for employment based on criminal history record information received by the agency under Section 21.058(b);

(4)  a person whose certification or permit issued under Subchapter B, Chapter 21, is revoked by the State Board for Educator Certification on a finding that the person engaged in misconduct described by Section 21.006(b)(2)(A) or (A-1); and

(5)  a person who is determined by the commissioner under Section 22.093 to have engaged in misconduct described by Section 22.092(c)(1)(A) or (B).

(d)  The agency shall adopt rules as necessary to implement this section.

Sec. 22.092.  REQUIREMENT TO REPORT EMPLOYEE MISCONDUCT. (a) In this section, "abuse" has the meaning assigned by Section 261.001, Family Code, and includes any sexual conduct involving a student or minor.

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

(c)  In addition to the reporting requirement under Section 261.101, Family Code, the superintendent or director of a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement shall notify the commissioner if:

(1)  an employee's employment at the school district, district of innovation, charter school, 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)  A superintendent or director of a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement shall 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)  The principal of a school district, district of innovation, or open-enrollment charter school campus must notify the superintendent or director of the school district, district of innovation, or charter school 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).

(f)  The superintendent or director must 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). The report must be:

(1)  in writing; and

(2)  in a form prescribed by the commissioner.

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

(h)  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)  The commissioner shall refer an educator who fails to file a report in violation of Subsection (f) to the State Board for Educator Certification, and the board shall determine whether to impose sanctions against the educator.

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

(k)  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. 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. An offense under this subsection is a state jail felony.

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

(m)  The commissioner shall adopt rules as necessary to implement this section.

Sec. 22.093.  NOTICE OF ALLEGED MISCONDUCT; INVESTIGATION; HEARING. (a) A person who is the subject of a report that alleges misconduct described by Section 22.092(c)(1)(A) or (B) is entitled to a hearing under the procedures provided by Chapter 2001, Government Code, to contest the allegation in the report.

(b)  On receiving a report filed under Section 22.092(f), the commissioner shall promptly send to the person who is the subject of the report a notice that includes:

(1)  a statement informing the person that the person must request a hearing within the period provided by Subsection (c);

(2)  a request that the person submit a response within the period provided by Subsection (c) to show cause why the commissioner should not pursue an investigation; and

(3)  a statement informing the person that if the person does not timely submit a response to show cause as provided by Subdivision (2), the agency shall provide information indicating the person is under investigation in the manner provided by Subsection (d).

(c)  A person entitled to a hearing under Subsection (a) must 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 under Subsection (b).

(d)  If a person who receives notice under Subsection (b) does not timely submit a response to show cause why the commissioner should not pursue an investigation, the commissioner shall instruct the agency to provide information indicating the person is under investigation for alleged misconduct to a school district, district of innovation, open-enrollment charter school, or shared services arrangement that makes an inquiry to the agency with respect to a national criminal history record information review of the person under Section 22.0832 or 22.0833.

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

(1)  based on the report filed under Section 22.092(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 22.092(c)(1)(A) or (B), instruct the agency to add the person's name to the registry maintained under Section 22.091.

(f)  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 22.092(c)(1)(A) or (B), the commissioner shall instruct the agency to add the person's name to the registry maintained under Section 22.091.

(g)  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 22.092(c)(1)(A) or (B), the commissioner shall instruct the agency to immediately discontinue providing the information under Subsection (d) indicating that the person is under investigation for alleged misconduct.

(h)  The commissioner shall adopt rules as necessary to implement this section.

Sec. 22.094.  COMPLIANCE MONITORING. The agency shall periodically conduct site visits and review the records of school districts, districts of innovation, open-enrollment charter schools, and shared services arrangements to ensure compliance with Section 22.091(b).

SECTION 12.  Section 39.0302(a), Education Code, is amended to read as follows:

(a)  During an agency investigation or audit of a school district under Section 39.0301(e) or (f), an accreditation investigation under Section 39.057(a)(8) or (14), a compliance review under Section 21.006(k), 22.092(l), or 22.094, or an investigation by the State Board for Educator Certification of an educator for an alleged violation of an assessment instrument security procedure established under Section 39.0301(a), the commissioner may 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.

SECTION 13.  The Texas Education Agency shall establish the registry of persons who are not eligible to be employed by a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement, as required by Section 22.091, Education Code, as added by this Act, as soon as practicable and not later than January 1, 2020.

SECTION 14.  This Act takes effect September 1, 2019.