

By: Meyer

H.B. No. 2738

A BILL TO BE ENTITLED

AN ACT

1
2 relating to employing, terminating, and reporting the misconduct of
3 public school personnel and related entity personnel, including
4 creating a registry of persons ineligible for hire; creating
5 criminal offenses.

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

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

9 (a) Except as provided by Section 21.006(k), 22.092(1),
10 22.094, 29.001(5), 29.010(a), or 39.057, the agency may monitor
11 compliance with requirements applicable to a process or program
12 provided by a school district, campus, program, or school granted
13 charters under Chapter 12, including the process described by
14 Subchapter F, Chapter 11, or a program described by Subchapter B, C,
15 D, E, F, H, or I, Chapter 29, Subchapter A, Chapter 37, or Section
16 38.003, and the use of funds provided for such a program under
17 Subchapter C, Chapter 42, only as necessary to ensure:

18 (1) compliance with federal law and regulations;
19 (2) financial accountability, including compliance
20 with grant requirements; and

21 (3) data integrity for purposes of:

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

24 (B) accountability under Chapters 39 and 39A.

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

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

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

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

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

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

15 (C) high school graduation under Section 28.025;

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

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

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

22 (G) extracurricular activities under Section
23 33.081;

24 (H) health and safety under Chapter 38; ~~and~~

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

27 (J) reporting misconduct under Sections 21.006

1 and 22.092; and

2 (K) the duty to discharge or refuse to hire
3 certain employees or applicants for employment under Section
4 12.1059, 22.085, or 22.091.

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

7 Sec. 12.1059. REQUIREMENTS [~~AGENCY APPROVAL REQUIRED~~] FOR
8 EMPLOYMENT OF CERTAIN EMPLOYEES. A person may not be employed by or
9 serve as a teacher, librarian, educational aide, administrator, or
10 school counselor for an open-enrollment charter school unless:

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

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

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

18 (a) Except as provided by Subsection (c), the commissioner
19 shall revoke the charter of an open-enrollment charter school or
20 reconstitute the governing body of the charter holder if the
21 commissioner determines that the charter holder:

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

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

26 (B) comply with the duty to discharge or refuse
27 to hire certain employees or applicants for employment, as provided

1 by Section 12.1151;

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

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

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

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

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

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

14 Sec. 12.1151. FAILURE TO DISCHARGE OR REFUSE TO HIRE
15 CERTAIN EMPLOYEES OR APPLICANTS. An open-enrollment charter school
16 commits a material violation of the school's charter if the school
17 fails to comply with the duty to discharge or refuse to hire certain
18 employees or applicants for employment under Section 12.1059,
19 22.085, or 22.091.

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

22 (b-1) The commissioner may terminate a district's
23 designation as a district of innovation if the district fails to
24 comply with the duty to discharge or refuse to hire certain
25 employees or applicants for employment under Section 12.1059,
26 applicable to the district under Section 12A.004(a)(1), or Section
27 22.085 or 22.091.

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

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

8 SECTION 8. Subchapter B, Chapter 21, Education Code, is
9 amended by adding Section 21.0585 to read as follows:

10 Sec. 21.0585. NOTICE TO AGENCY REGARDING REVOCATION OF
11 CERTIFICATE OR PERMIT FOR CERTAIN MISCONDUCT. The board shall
12 promptly notify the agency for purposes of Section 22.091 if the
13 board revokes a certificate or permit of a person on a finding that
14 the person engaged in misconduct described by Section
15 21.006(b)(2)(A) or (A-1).

16 SECTION 9. Subchapter C, Chapter 22, Education Code, is
17 amended by adding Section 22.0815 to read as follows:

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

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

26 SECTION 10. Section 22.085, Education Code, is amended by
27 amending Subsection (a) and adding Subsection (g) to read as

1 follows:

2 (a) A school district, open-enrollment charter school, or
3 shared services arrangement shall discharge or refuse to hire an
4 employee or applicant for employment if the district, school, or
5 shared services arrangement obtains information through a criminal
6 history record information review that~~+~~

7 ~~[(1)]~~ the employee or applicant has been convicted of:

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

11 (2) [(B)] an offense on conviction of which a
12 defendant is required to register as a sex offender under Chapter
13 62, Code of Criminal Procedure; or

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

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

20 (g) A school district, open-enrollment charter school, or
21 shared services arrangement shall promptly notify the agency for
22 purposes of Section 22.091 that the district, school, or shared
23 services arrangement discharged or refused to hire an employee or
24 applicant for employment as provided by this section. A school
25 district, open-enrollment charter school, or shared services
26 arrangement is not required to comply with this subsection if the
27 district, school, or shared services arrangement was notified by

1 the agency that the person must be discharged or may not be hired as
2 provided by this section pursuant to a review of the person's
3 criminal history record information by the agency.

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

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

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

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

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

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

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

26 (3) a person who is not eligible for employment based
27 on criminal history record information received by the agency under

1 Section 21.058(b);

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

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

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

11 Sec. 22.092. REQUIREMENT TO REPORT EMPLOYEE MISCONDUCT.

12 (a) In this section, "abuse" has the meaning assigned by Section
13 261.001, Family Code, and includes any sexual conduct involving a
14 student or minor.

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

20 (c) In addition to the reporting requirement under Section
21 261.101, Family Code, the superintendent or director of a school
22 district, district of innovation, open-enrollment charter school,
23 regional education service center, or shared services arrangement
24 shall notify the commissioner if:

25 (1) an employee's employment at the school district,
26 district of innovation, charter school, service center, or shared
27 services arrangement was terminated and there is evidence that the

1 employee:

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

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

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

9 (d) A superintendent or director of a school district,
10 district of innovation, open-enrollment charter school, regional
11 education service center, or shared services arrangement shall
12 complete an investigation of an employee that involves evidence
13 that the employee may have engaged in misconduct described by
14 Subsection (c)(1)(A) or (B), despite the employee's resignation
15 from employment before completion of the investigation.

16 (e) The principal of a school district, district of
17 innovation, or open-enrollment charter school campus must notify
18 the superintendent or director of the school district, district of
19 innovation, or charter school not later than the seventh business
20 day after the date of an employee's termination of employment or
21 resignation following an alleged incident of misconduct described
22 by Subsection (c)(1).

23 (f) The superintendent or director must notify the
24 commissioner by filing a report with the commissioner not later
25 than the seventh business day after the date the superintendent or
26 director receives a report from a principal under Subsection (e) or
27 knew about an employee's termination of employment or resignation

1 following an alleged incident of misconduct described by Subsection
2 (c)(1). The report must be:

3 (1) in writing; and

4 (2) in a form prescribed by the commissioner.

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

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

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

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

24 (k) A superintendent or director required to file a report
25 under Subsection (f) commits an offense if the superintendent or
26 director fails to file the report by the date required by that
27 subsection with intent to conceal an employee's criminal record or

1 alleged incident of misconduct. A principal required to notify a
2 superintendent or director about an employee's alleged incident of
3 misconduct under Subsection (e) commits an offense if the principal
4 fails to provide the notice by the date required by that subsection
5 with intent to conceal an employee's alleged incident of
6 misconduct. An offense under this subsection is a state jail
7 felony.

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

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

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

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

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

26 (2) a request that the person submit a response within
27 the period provided by Subsection (c) to show cause why the

1 commissioner should not pursue an investigation; and

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

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

11 (d) If a person who receives notice provided under
12 Subsection (b) does not timely submit a response to show cause why
13 the commissioner should not pursue an investigation, the
14 commissioner shall instruct the agency to provide information
15 indicating the person is under investigation for alleged misconduct
16 to a school district, district of innovation, open-enrollment
17 charter school, or shared services arrangement that makes an
18 inquiry to the agency with respect to a national criminal history
19 record information review of the person under Section [22.0832](#) or
20 [22.0833](#).

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

24 (1) based on the report filed under Section 22.092(f),
25 make a determination whether the person engaged in misconduct; and

26 (2) if the commissioner determines that the person
27 engaged in misconduct described by Section 22.092(c)(1)(A) or (B),

1 instruct the agency to add the person's name to the registry
2 maintained under Section 22.091.

3 (f) If a person entitled to a hearing under Subsection (a)
4 requests a hearing as provided by Subsection (c) and the final
5 decision in that hearing determines that the person engaged in
6 misconduct described by Section 22.092(c)(1)(A) or (B), the
7 commissioner shall instruct the agency to add the person's name to
8 the registry maintained under Section 22.091.

9 (g) If a person entitled to a hearing under Subsection (a)
10 requests a hearing as provided by Subsection (c) and the final
11 decision in that hearing determines that the person did not engage
12 in misconduct described by Section 22.092(c)(1)(A) or (B), the
13 commissioner shall instruct the agency to immediately discontinue
14 providing the information under Subsection (d) indicating that the
15 person is under investigation for alleged misconduct.

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

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

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

25 (a) During an agency investigation or audit of a school
26 district under Section 39.0301(e) or (f), an accreditation
27 investigation under Section 39.057(a)(8) or (14), a compliance

1 review under Section 21.006(k), 22.092(1), or 22.094, or an
2 investigation by the State Board for Educator Certification of an
3 educator for an alleged violation of an assessment instrument
4 security procedure established under Section 39.0301(a), the
5 commissioner may issue a subpoena to compel the attendance of a
6 relevant witness or the production, for inspection or copying, of
7 relevant evidence that is located in this state.

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

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