

The Texas Education Agency (TEA) proposes amendments to §§153.1201, 153.1203, 153.1207, 153.1209, and 153.1251, concerning the registry of persons not eligible for employment in public schools. The proposed amendments would parallel the terms used in rule with the terms used in statute for clarity and ease of reference and implement Senate Bill (SB) 1356, 87th Texas Legislature, Regular Session, 2021.

BACKGROUND INFORMATION AND JUSTIFICATION: Under Texas Education Code, §§22.092(c)(5), 22.093(c)(1)(B), and 22.094(e)(2), the commissioner will add a person's name to the registry of persons who are not eligible to be employed by a Texas public school if the commissioner finds that the person "engaged in sexual contact with a student or minor." To match this wording in statute and thereby avoid confusion or misinterpretation, the proposed amendments would replace the term "sexual conduct" in §§153.1201, 153.1203, 153.1207, and 153.1251 with the term "sexual contact." The meaning and usage would remain the same.

The proposed amendments to §153.1201 and §153.1251 would add *nonprofit teacher organizations* to the definitions and to the list of entities that can request access to the registry of persons not eligible for employment in public schools. These proposed changes are necessary to implement SB 1356, 87th Texas Legislature, Regular Session, 2021, which requires that commissioner-approved nonprofit teacher organizations have the same access to the registry of persons not eligible for employment in public schools as public schools and private schools.

The proposed amendments to §§153.1203, 153.1207, and 153.1209 would include technical edits such as updating a cross reference title and removing unnecessary acronyms.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Garcia has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is less confusing by aligning more closely with language in statute and allowing nonprofit teacher organizations to ensure that tutors they place in assignments with students are safe and eligible to work in Texas public schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins October 15, 2021, and ends November 15, 2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on October 15, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §22.091, which sets out the definition of "other charter entity" for the rest of the subchapter; TEC, §22.092, as amended by Senate Bill 1356, 87th Texas Legislature, Regular Session, 2021, which requires the Texas Education Agency to maintain and make available a registry of persons who are not eligible to work in Texas public schools; sets out who will be included in the registry; requires that the agency provide equivalent access to the registry to public schools, private schools, and nonprofit teacher organizations; and grants the agency rulemaking authority as necessary to implement; TEC, §22.093, which requires superintendents or directors of Texas public schools to report certain misconduct by uncertified individuals to the commissioner of education; TEC, §22.094, which sets out the notice and hearing requirements for a person reported to the commissioner under TEC, §22.093, requires that the agency put information on the internet showing that a reported person is under investigation, and gives the commissioner rulemaking authority as necessary to implement; and TEC, §22.095, which requires that the agency develop and maintain an internet portal where the agency makes available the registry of persons ineligible to be employed in public schools and information about people who are under investigation by the commissioner.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§22.091, 22.092, and 22.093-22.095.

<rule>

§153.1201. Definitions.

- (a) Solicitation of sexual contact [~~conduct~~] --Deliberate or repeated acts that can be reasonably interpreted as the solicitation by an employee of a relationship with a student that is sexual in nature. Solicitation of sexual contact [~~conduct~~] is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity but does not include appropriate relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an employee of sexual contact [~~conduct~~] with a student:
- (1) behavior, gestures, expressions, or communications with a student that are unrelated to the employee's job duties and evidence a sexual intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the intent of such communications or behavior, include, without limitation:
 - (A) the nature of the communications;
 - (B) the timing of the communications;
 - (C) the extent of the communications;
 - (D) whether the communications were made openly or secretly;
 - (E) the extent that the employee attempts to conceal the communications;
 - (F) if the employee claims to be counseling a student, the commissioner of education may consider whether the employee's job duties included counseling, whether the employee reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the employee reported the abuse or neglect to the appropriate authorities; and

- (G) any other evidence tending to show the context of the communications between employee and student;
- (2) making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images;
- (3) making sexually demeaning comments to a student;
- (4) making comments about a student's potential sexual performance;
- (5) requesting details of a student's sexual history;
- (6) requesting a date, sexual acts [~~contact~~], or any activity intended for the sexual gratification of the employee;
- (7) engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;
- (8) inappropriate hugging, kissing, or excessive touching;
- (9) providing the student with drugs or alcohol;
- (10) violating written directives from school administrators regarding the employee's behavior toward a student;
- (11) suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and
- (12) any other acts tending to show that the employee solicited sexual contact [~~conduct~~] with a student.
- (b) Abuse--This term has the meaning assigned by Texas Family Code, §261.001(1).
- (c) Private school--A non-public school that offers a course of instruction for students in Texas in one or more grades from Prekindergarten-Grade 12 and is:
 - (1) accredited by an organization that is monitored and approved by the Texas Private School Accreditation Commission;
 - (2) listed in the National Center for Education Statistics database; or
 - (3) a child care provider that is licensed by the Texas Health and Human Services Commission.
- (d) Employee--A person who is employed by a school district, district of innovation, charter school, service center, or shared services arrangement and does not hold a certification issued by the State Board for Educator Certification under Texas Education Code, Chapter 21, Subchapter B.
- (e) Nonprofit teacher organization--An organization approved by the commissioner of education to participate in a tutoring program under Texas Education Code, §33.913.

§153.1203. Required Reporting by Administrators.

- (a) A person who serves as the superintendent of a school district or district of innovation or the director of a charter school, regional education service center, or shared services arrangement shall notify the commissioner of education in writing by filing a report within seven business days of the date the person either receives a report from a principal under subsection (b) of this section or knew that an employee was terminated or resigned from employment and there is evidence that he or she committed any of the following acts:
 - (1) abused or otherwise committed an unlawful act with a student or minor; or
 - (2) was involved in a romantic relationship with or solicited or engaged in sexual contact [~~conduct~~] with a student or minor.
- (b) A person who serves as principal in a school district, district of innovation, or charter school must notify the superintendent or director of the school district, district of innovation, or charter school no later than

seven business days after an employee resigns or is terminated following an alleged incident of misconduct involving the conduct described in subsection (a)(1) and (2) of this section.

- (c) A superintendent or director of a school district shall complete an investigation of an employee if there is reasonable cause to believe the employee may have engaged in misconduct described in subsection (a)(1) and (2) of this section despite the employee's resignation from district employment before completion of the investigation.
- (d) A report filed under subsection (a) of this section must include:
 - (1) the name or names of any student or minor who is the victim of abuse or unlawful conduct by an employee; and
 - (2) the factual circumstances requiring the report and the subject of the report by providing the following available information:
 - (A) name and any aliases and certificate number, if any, or social security number;
 - (B) last known mailing address and home and daytime phone numbers;
 - (C) all available contact information for any alleged victim or victims;
 - (D) name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;
 - (E) current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and
 - (F) involvement by a law enforcement or other agency, including the name of the agency.
- (e) A report filed with the State Board for Educator Certification in compliance with Texas Education Code ~~[(TEC)]~~, §21.006, regarding a certified educator will be considered to have been filed with the commissioner as a report under this section on the date that the certification of the educator expires before the case is closed.

§153.1207. Request for Hearing.

- (a) A person must submit a written request for a hearing before State Office of Administrative Hearings (SOAH) to Texas Education Agency ~~[(TEA)]~~ staff in accordance with §153.1221 of this title (relating to Filing or Serving Documents on the Texas Education Agency Staff or the Administrative Law Judge) within ten days after the person receives notice as described in §153.1205 of this title (relating to Persons Under Investigation).
- (b) If a person does not timely request a hearing, the commissioner of education will issue a final order with a determination as to whether a preponderance of the evidence supports a conclusion that the person:
 - (1) abused or otherwise committed an unlawful act with a student or minor; or
 - (2) was involved in a romantic relationship with or solicited or engaged in sexual contact ~~[conduct]~~ with a student or minor.

§153.1209. Jurisdiction.

- (a) A contested case commences under this subchapter when a notice of hearing in accordance with §153.1229 of this title (relating to Notice of Hearing) is properly served by the Texas Education Agency (TEA) staff on the person at the address included in the report under §153.1203 of this title (relating to Required Reporting by Administrators ~~[Administration]~~).
- (b) The TEA staff shall refer the case to the State Office of Administrative Hearings (SOAH) if the TEA staff determines a person has timely requested a hearing pursuant to §153.1205 of this title (relating to Persons Under Investigation) and Texas Education Code ~~[(TEC)]~~, §22.094(c).

- (c) Jurisdiction of the SOAH is determined by the administrative law judge under Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure) ¹ and this subchapter after the TEA staff have referred the case to the SOAH.

§153.1251. Notice of Placement on Registry.

- (a) The person's name will be added to the registry of persons not eligible for employment in Texas public schools, in accordance with Texas Education Code, §22.092(c)(5), if the commissioner of education determines in a final order that the person:
- (1) abused or otherwise committed an unlawful act with a student or minor; or
 - (2) was involved in a romantic relationship with or solicited or engaged in sexual contact [~~conduct~~] with a student or minor.
- (b) If known, the Texas Education Agency staff shall notify the employing school district of the commissioner's final order placing the person's name to the registry of persons not eligible for employment in public schools.
- (c) Public [~~Both public~~] and private schools in Texas and nonprofit teacher organizations may request access to search the registry of persons not eligible for employment in public schools.