

TO: Directors of Schools
FROM: Christy Ballard, General Counsel
DATE: July 30, 2018
SUBJECT: New Laws Regarding Teacher Ethics and Teacher Misconduct

During the 2018 legislative session, several bills passed related to teacher ethics and teacher misconduct. These public chapters require local education agencies (LEAs), among other things, to:

- Conduct additional criminal history records checks on employees,
- Report teachers to the State Board of Education (SBE) who have been convicted of certain crimes and those who are terminated, suspended, or resign for certain reasons; and
- Conduct new annual training for teachers on the new teacher code of ethics.

Many of the new legal requirements were either already in the SBE rules or a part of common best practice for the SBE or local boards of education. These changes were made by the general assembly to meet new requirements of the federal Every Student Succeeds Act (ESSA), to ensure Tennessee's laws include provisions to keep students safe, and to address the behavior of a VERY FEW bad actors. Teachers should be knowledgeable about the changes to the law but not fear them. These changes will protect the profession and the majority of highly professional, caring teachers.

Below is a listing of the five (5) new chapters of the public acts of 2018 related to teacher ethics and teacher misconduct with brief summaries of the major changes and links to each public chapter. I encourage you to read each public chapter carefully, discuss them with your board attorney, and provide copies to your administrators and teachers.

Criminal History Records Check Requirements (Public Chapter 1006):

In addition to the mandatory TBI/FBI criminal history records checks conducted at the time of initial employment for teachers or any other position that requires proximity to children, the new law adds the requirement that LEAs and charter schools conduct criminal history records checks for required employees every five (5) years. As a reminder, "employees working in close proximity to students," should be construed broadly to include, for example, cafeteria workers, custodians, school bus drivers, grounds keepers, etc.

The public chapter also mandates participation in the FBI rap back program, which provides automatic updates on an individual's criminal history to LEA and charter school participants. Upon acceptance in the rap back program, the LEA and charter school requirement for criminal history records checks every five (5) years will be eliminated.

Please note that this new public chapter authorizes charter schools to obtain their own Originating Agency Identifier (ORI) from the TBI and to conduct their own criminal history records checks. An ORI is a nine character identifier assigned to an agency that has met the established qualifying criteria for a fingerprint based criminal history records check with the TBI. Charter schools may contact the TBI directly to establish an ORI number and User Agreement with the TBI.

Criminal history records checks were only required by law in 2000. Therefore, LEAs could have employees hired before that date who have never had a criminal history records check.

To be in compliance with the new requirement to conduct criminal history records checks every five (5) years, LEAs and charter schools must immediately review a listing of all employees required by law to be checked and determine any employees who have not had a check in the last five (5) years. This would include employees who were hired prior to 2000 and have never had a check.

After conducting the check of all employees who have not had a check in the last five (5) years, how an LEA or charter school chooses to implement the new criminal history check requirements may depend upon its size and the number of years it has been in operation. Consulting with a board attorney will help each LEA and charter school determine the most efficient and economical way to comply with the new law. One way to comply with the law, would be to develop a tracking system that includes the hire date, date of last criminal history records check, and due date of the next five (5) year check for each individual employee.

The department will provide information on Tennessee's enrollment in the FBI rap back program as it becomes available.

Teacher Code of Ethics Revisions (Public Chapter 937):

This public chapter revises the provisions in the teacher code of ethics significantly. While state law has long provided that a violation of the teacher code of ethics could be a cause for termination of a teacher's employment by an LEA or charter school, the new law now also authorizes the State Board of Education (SBE) to take licensure action against teachers for violations of the code of ethics.

The public chapter now provides that teachers who do not report other teachers who violate the code of ethics are in violation of the code themselves. This is a major change to the public chapter that all teachers should take note of:

- “(a) An educator who has personal knowledge of a breach by another educator of the teacher code of ethics prescribed in §§49-5-1003 and 49-5-1004 shall report the breach to the educator's immediate supervisor, director of schools, or local board of education within thirty (30) days of discovering the breach.
- (b) Failure to report a breach of the teacher code of ethics, or to file a report of any criminal activity or other misconduct that is required by federal or state law, is a breach of the teacher code of ethics.”

LEAs and charter schools should note that the new law requires annual training to teachers on the new teacher code of ethics. The department's office of general counsel will provide the training upon request.

The revised teacher code of ethics is available ([here](#)).

Required Reporting of Teacher Misconduct by Directors (Public Chapter 935):

This public chapter requires a director of schools, director of public charter school, or director of a nonpublic school to report to the SBE:

- Teachers they employ who have been convicted of certain offenses; and
- Teachers who have been suspended or dismissed, or who have resigned, following allegations of conduct, including sexual misconduct, which, if substantiated, would warrant consideration for license suspension or revocation under SBE rule.

Please note that the new law defines "sexual misconduct" as any sexually related behavior with a child or student, regardless of the age of the child or student, whether verbal, nonverbal, written, physical, or electronic that is designed to establish a sexual relationship with the child or student, including, but not limited to, behaviors such as:

- Making sexual jokes, sexual remarks, or sexually suggestive comments;
- Engaging in sexual kidding, sexual teasing, sexual innuendo, or sexualized dialog;
- Dating or soliciting dates or sexual favors;
- Engaging in inappropriate physical contact or touching, groping, grabbing, or kissing; or
- Committing an offense under title 39, chapter 13, part 5, against a child or student

This public chapter also authorizes the SBE to publicly reprimand an individual for failure to report.

The initial reporting form for directors of schools and charter schools is available ([here](#)). The follow up reporting form is available ([here](#)).

Teacher Disciplinary Actions Made Public (Public Chapter 936):

This public chapter requires the SBE to transmit final disciplinary actions on educator licenses to the National Association of State Directors of Teacher Education and Certification (NASDTEC) national clearinghouse and to post on its website all of its final disciplinary actions on educator licenses.

No Employment Assistance for Perpetrators of Sexual Misconduct (Public Chapter 938):

This law was passed to comply with the federal Every Student Succeeds Act (ESSA). The letter from the United States Department of Education regarding the provision in ESSA related to this law is available ([here](#)). The public chapter prohibits LEAs from entering into non-disclosure agreements during, or as a prerequisite to, settlement 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 student.

My office is always available to conduct custom training on the legal requirements addressed in this memorandum and other legal issues upon request. As a follow up to this memorandum, FAQs and a teacher training slide deck relating to this topic will be forthcoming. If you are interested in this training or have additional questions, please contact me at Christy.Ballard@tn.gov or 615-741-2921.