



On The Alert!

Date: April 25, 2017
Attention: ASCIP Members
Affected Department: Risk Management/District Administration
Applicability: K-12 Districts

SECTION 8038 OF ESSA (Every Student Succeeds Act) AND DISTRICT RISK

THE ISSUE

Incidents of educator sexual misconduct are either increasing at an alarming rate or the reporting of such incidents has increased dramatically. In 2014, research conducted by Stop Educator Sexual Abuse, Misconduct, and Exploitation (SESAME) reported that 458 school employees were arrested across the United State for sexual misconduct with students. In 2015, this number increased to 496 arrests.

One study by the U.S. Government Accountability Office (GAO) has reported that the average pedophile who is a school employee molests 73 children over a lifetime. For decades, the practice of allowing offending teachers to simply leave their current Districts and find teaching positions in other Districts has persisted. This practice must stop. Section 8038 of the **Every Student Succeeds Act** (ESSA) will help hold those Districts accountable which continually put children at risk.

SECTION 8038 OF ESSA

Effective July 1, 2016, Section 8038 of the ESSA requires every District to have a policy prohibiting helping a person get a job if it is known (or one has probable cause to believe) that the person engaged in sexual misconduct regarding a minor or a student in violation of the law. ESSA doesn't specify its recourse for Section 8038's violation, but one could infer loss of federal funding (as well as increased District liability for a willful violation of law).

WHAT CAN YOUR DISTRICT DO?

Districts, under the guidance of their legal counsels, should draft board policies addressing this prohibition on aiding and abetting sexual abuse and present these new board policies to the Trustees for adoption.

HOW CAN ASCIP ASSIST YOUR DISTRICT?

If you need additional help, please contact ASCIP's Risk Services staff at (562) 404-8029 to discuss your risk management or loss control needs!

Please contact your ASCIP risk services consultant at (562) 404-8029 to discuss further.

United States Government Accountability Office
GAO
Report to the Chairman, Committee on
Education and Labor, House of
Representatives

December 2010

K-12 EDUCATION

Selected Cases of
Public and Private
Schools That Hired or
Retained Individuals
with Histories of
Sexual Misconduct



GAO-11-200

SEC. 8038. PROHIBITION ON AIDING AND ABETTING SEXUAL ABUSE. Subpart 2 of part F of title VIII, as amended and redesignated by section 8001 of this Act, is further amended by adding at the end the following: SEC. 8546. [20 U.S.C. 7926] PROHIBITION ON AIDING AND ABETTING SEXUAL ABUSE. (a) IN GENERAL.—A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this Act shall have laws, regulations, or policies that **prohibit** any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, **from assisting** a school employee, contractor, or agent in obtaining a new job, **apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe,** that such school employee, contractor, or agent **engaged in sexual misconduct regarding a minor** or student in violation of the law. (b) EXCEPTION.—The requirements of subsection (a) shall not apply if the information giving rise to probable cause— (1)(A) has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and (B) has been properly reported to any other authorities as required by Federal, State, or local law, including title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the regulations implementing such title under part 106 of title 34, Code of Federal Regulations, or any succeeding regulations; and (2)(A) the matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law; (B) the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or (C) the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency. (c) PROHIBITION.—The Secretary shall not have the authority to mandate, direct, or control the specific measures adopted by a State, State educational agency, or local educational agency under this section. (d) CONSTRUCTION.—Nothing in this section shall be construed to prevent a State from adopting, or to override a State law, regulation, or policy that provides, greater or additional protections to prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee who engaged in sexual misconduct regarding a minor or student in violation of the law in obtaining a new job.
