



Do Not Hire Registry

The Texas Education Agency has released long awaited guidance on Article 2A of House Bill 3, the major education bill from this past session. This provision requires schools to report certain allegations of misconduct of non-certified employees (in addition to the current requirement for certified employees) and creates a Do Not Hire Registry of individuals who are not eligible to work in a Texas public school because of misconduct or criminal history. The bill gives the agency the authority to enforce these provisions, including the uniform authority to investigate both certified and non-certified employees and the ability to place both on the Do Not Hire Registry as a possible enforcement action.

While many rules and procedures have not been released, here is what we know so far:

New Reporting Requirements for Non-Certified Educators: HB3 requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the Commissioner of Education if an employee resigned or was terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor, or was involved in a romantic relationship with a student or minor.

Reporting Requirements for Certified Educators: In addition to areas of misconduct applicable for non-certified educators, public schools must report if a certified employee:

- Possessed, transferred, sold or distributed a controlled substance;
- Illegally transferred, appropriated, or expended school funds or property;
- Attempted by fraudulent means to obtain or alter any certificate to gain employment or additional compensation; and
- Committed a criminal offense on school property or at a school-sponsored event.

Administrators may be more likely to report unproven suspicions due to new liability laws:

While administrators who report alleged misconduct in good faith will receive immunity from civil and criminal liability under the new legislation, those who fail to report are subject to sanction by SBEC and to criminal liability, a state jail felony.

Timelines for Reporting Allegations of Misconduct (same for certified and non-certified)

Principal: Report to superintendent within seven business days of learning that an individual was terminated or resigned following an incident of misconduct

Superintendent: Report to TEA within seven business days after the superintendent receives a report from a principal or otherwise learns that an individual was terminated or resigned

Importantly, SB 1476, also enacted this past legislative session, provides for an exception to reporting certified teachers. If the public school conducts an investigation before the educator is terminated or resigns and the results of the investigation finds that the educator did not engage in the alleged conduct, the report to TEA is no longer required. Because of the short timeline involved with the reporting requirements and new liabilities imposed for non-reporting, it is difficult to ascertain how and if these investigations will occur. Little guidance has been released as to how this will be implemented on the district and campus level.

Because the TEA guidance is not clear, if you get any sort of notice that you are under investigation or being reported to TEA or the State Board for Educator Certification (SBEC), contact the TSTA Help Center at 1-877-ASK-TSTA immediately. It is important that you contact the Help Center promptly because you will have a narrow window to file a grievance and remove any erroneous information from your record. If you fail to act quickly, you could lose your job, end up on the Do Not Hire Registry and forfeit an opportunity to be hired by another school district.

Do Not Hire Registry: TEA will be developing a Do Not Hire Registry, will make it available to public schools and will investigate allegations. Educators who are deemed ineligible for employment will be placed on the Registry, and public schools will be required to check the Registry before any hiring. Schools will also have to check the Registry regularly and terminate any employees who have been added.

What is the Registry?

The Registry is an online, searchable list of individuals who are ineligible for employment in a Texas public school based on misconduct or criminal history.

Who will be Placed on the Registry?

1. Individuals who previously had an SBEC certificate revoked for abusing or soliciting an inappropriate relationship with a student or minor.
2. Non-certified employees that the Commissioner has found to have abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship or solicited or engaged in sexual contact with a student or minor; and
3. Individuals who are found ineligible based on deferred adjudication or found to be guilty of certain crimes.

How will TEA Investigate Reports of Misconduct for the Purposes of the Registry?

TEA has not provided rules describing exactly how this step in the process will work. So, **if, at any point, you get notice from your school, school district or TEA informing you that you are under investigation or being reported to TEA, call the TSTA Help Center at 1-877-ASK-TSTA immediately!**

Based on information TSTA has been provided, here is what the process may look like. It is unclear if this process will vary between certified and non-certified employees. We will continue to monitor and update:

1. TEA will receive a report of misconduct either from 1) a school after an employee either resigns or is terminated due to certain misconduct; or 2) DPS notifies TEA of criminal history.
2. Once TEA has reviewed the report, the teacher will receive notice that should give him or her the opportunity to respond and request a hearing. **If you receive notice, you should contact TSTA Help Center immediately. The response to this notice should include a request for a hearing and show cause as to why the alleged individual should not be publicly listed as “under investigation.”**
3. If the employee does not show cause as to why TEA should not investigate the allegations in the report, the employee is identified on the TEA website as being under investigation.
4. TEA then investigates the allegations raised in the report. After the investigation and hearing are complete, the commissioner will make a determination regarding the allegations.
5. If the commissioner finds that the evidence does not support the allegations, the employee’s name will be removed from the TEA website and the individual will be cleared for hire.
6. If the commissioner finds the allegations are substantiated, it will send the individual notice and should give the individual the opportunity to 1) request a hearing and 2) show cause that the individual should not be publicly listed as “under investigation.” If the individual can show cause, the individual will be cleared for hire and any mention of the individual will be removed from the website. If the Commissioner finds the allegations are true, the process is different depending on whether the individual appeals and requests a hearing.
 - a. **If the individual DOES NOT APPEAL, the employee’s name will be added to the registry of persons ineligible to work in public schools, which will be available to the public on TEA’s website.**
 - b. If the individual appeals and requests a hearing, the matter will be heard in the state office of administrative hearings. If an administrative law judge recommends the agency does not sanction the individual, TEA will close the matter and all records must be removed from the website. However, if the administrative law judge does not clear the individual, TEA will place him or her on the Registry and notify the school.

To appeal, you MUST request a hearing. This is the one opportunity to reverse a finding by the Commissioner that you should be placed on the Registry. At this time, TSTA believes that requesting a hearing requires a written response within 10 days of being notified of the Commissioner’s ruling; however, TEA has not provided clear guidance on the matter. TSTA will continue to monitor and update members.

How will the Registry Work?

- Identifiers for current employees or individuals being considered for employment will be uploaded to TEA secure registration
- Registry will return a result if an individual is under investigation or on the Registry
- Registry check is tied to current fingerprinting process
- School staff will also have access to reporting portal
- Once the Registry is launched in early 2020, public schools must check it before hiring potential employees and terminate the employment of anyone on the Registry.

Will the public be able to see who is on the registry?

Yes, there will be a public-facing webpage where members of the public can search the Registry for names. Members of the public will only be able to see the name and status (“under investigation” or “ineligible for hire”) of any individual on the Registry. The public will be able to see the name, approximate age, and the date the individual was placed on the Registry. If a member of the public would like to know further information, they may submit a public information request to the agency. TEA has indicated that this website should feel similar to the virtual certification lookup currently in place.

If at any point you learn that you are on this public website, contact the TSTA Help Center Immediately.

Website: <https://www.youtube.com/watch?v=94l-HZoXZqs&feature=youtu.be>

Implementation Timeline: TEA began developing the Registry and reporting portal for schools in July.

- Proposed rules will be considered at SBEC Meeting in October.
- TEA will provide schools with training resources for the Registry in December.
- By January or February of 2020, the Registry should be launched and the Rulemaking process completed.