



On The Alert!

Date: June 3, 2020
Attention: ASCIP Members
Affected: All Staff
Applicability: K-12 Districts, Charter Schools, Community Colleges

Every Student Succeeds Act (ESSA)

Section 8038 of the ESSA requires every District to have a policy that prohibits assisting a person with obtaining a job if it is known, or one has probable cause to believe that the person engaged in sexual misconduct with a minor or a student in violation of the law. "Assisting" does not include the routine transmission of administrative and personnel files. Although ESSA does not specify its recourse for breach of this section, an inference may be a loss of federal funding as well as increased District liability for willfully violating the law.

ASCIP recommends Districts, under the guidance of their legal counsel, draft a board policy addressing this prohibition on aiding and abetting sexual abuse and communicate this policy with all staff members.

Excerpt 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.

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