Office of Research and Education Accountability

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Educator Sexual Misconduct Involving Students in Tennessee Schools

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Executive Summary

In early 2016, *USA Today* published the results of a national investigation of educator sexual misconduct in schools, particularly looking at each state's efforts to reduce the chances that an employee with a history of sexual misconduct could move from one school to another without repercussions. The series graded states in four areas: background checks of teacher applicants, transparency in publicly sharing licensing and disciplinary information about sanctioned teachers, sharing this information with other states, and whether the state has laws mandating that educators, schools, and school districts report misconduct to the state. Only seven states received an A; Tennessee received an F.

In this report, "educator sexual misconduct" refers to a range of inappropriate behaviors, from sexual communications to intercourse, directed from an educator who works in a school serving grades preK through 12 toward a student or former student. Some of the behaviors are criminal, such as rape, but many others constitute a gray area of conduct that is inappropriate for persons working with or near children. Such conduct could include, for example, engaging students in conversations regarding their romantic or sexual activities or regularly meeting with a student behind closed doors. In some cases, this type of inappropriate behavior is a means that predators use to "groom" children – a way of gradually desensitizing children to inappropriate behavior to gain their trust. Such inappropriate behavior can also be directed toward students by other school personnel who work in close proximity to children, such as bus drivers, janitors, and cafeteria workers, or contracted individuals.

The report is organized in sections to reflect five areas of focus:

- *Safeguards and risks in hiring school personnel* – hiring practices for school personnel in Tennessee;
- *State recordkeeping of educator misconduct cases* – the processes followed by the State Board of Education (SBE) and the Tennessee Department of Education's (TDOE) Office of Educator Licensure (OEL) in cases of educator misconduct;
- *Federal requirements concerning the hiring of school personnel* – school personnel hiring practices and other relevant laws adopted in other states;
- *Clarity in law and policies* – relevant state laws and school district policies, particularly with regard to making school employees aware of expectations and responsibilities; and
- *Child sexual abuse prevention curriculums* – what children are taught in schools concerning personal safety.

Safeguards and Risks in Hiring School Personnel: Status in Tennessee

Tennessee has a standard baseline process for screening applicants – its success hinges on districts' consistently following it.

Tennessee relies heavily on background checks as a primary tool to screen new employees applying to work in schools. A school district makes an employment offer to an applicant, contingent on the results of a fingerprint criminal history background check; if the applicant accepts, the district initiates the check, which is then completed by the Tennessee Bureau of Investigation (TBI). In addition, districts must check three state databases to ensure an applicant's name doesn't appear on them. State law prevents districts from hiring any person whose name is on (1) the Department of Children's Services (DCS) registry of persons who have been substantiated as perpetrators of child abuse, severe child abuse, child sexual abuse, or child neglect; (2) the Department of Health's abuse of vulnerable persons registry; and (3) the TBI's sex offender registry.

An internal audit report from the Tennessee Department of Education (TDOE) in 2013-14 found that some districts reviewed were not fully in compliance in conducting all required background checks – in some instances, background checks had not been completed at the time of hire, though the law requires it.

States differ in the timing of criminal background checks for applicants for school employment, and on who is responsible for implementing them.

The *USA Today* series of articles about teacher misconduct graded Tennessee and six other states with an F, primarily because the state delegates to school districts the responsibility to initiate background checks on school personnel who are hired rather than having this responsibility initiated by the state. In Tennessee, as required by state law, background checks are completed by the Tennessee Bureau of Investigation, a state-level agency, at the directive of a school district at the time an educator, as well as any other school personnel, is offered a position. In states awarded a higher grade by *USA Today*, background checks are conducted at

the state level when an individual seeks a license to teach.

In Tennessee, the onus of determining whether an applicant meets the baseline requirements for hiring (i.e., background check and abuse registries) is on the district. In many other states, applicants are responsible for completing these checks when they are seeking a license to teach, prior to applying for employment with a school district.

Both approaches to using background checks have risks. Requiring that school districts ensure that all of the steps required are completed at the time of hire means that some steps may not always be consistently followed and an individual could be hired for whom clearance has not been fully completed. Requiring that individuals seeking a teaching license initiate all criminal background checks with the proper state-level agencies would free districts from this responsibility, but it might also mean a lag time between completion of the background check and the time a person is hired.

Some Tennessee districts, as well as some other states, have developed procedures to ensure more up-to-date information about existing school employees.

Because the information in a background check can change over time, some Tennessee school districts reserve the right in their policies to conduct periodic background checks on existing employees, including Shelby County Schools and Metro Nashville Public Schools. Similarly, some states require employees to be cleared through updated background checks periodically to continue working in schools. Pennsylvania requires any employee who works with children to renew their background checks every five years.

To address the concern that background checks provide only a "snapshot in time" picture of a person's criminal record, the education departments in some states have started using a "rap back" program to get continuous updates for employees who work in positions of trust with children. Developed from the FBI's Rap Back service, the Ohio Department of Education receives notifications of any criminal history reported to the FBI after an employee is hired. The department receives notifications from Rap Back about criminal arrests or convictions of licensed educators and pupil transportation workers, and notifies their employing school districts. The department also uses the information to inform investigations concerning an educator's license.

Tennessee's requirements for contractors working in schools and for school volunteers may contain potential risks, unless school districts are diligent.

Contractors: Tennessee law requires background checks on all individuals who work under contract through another company and who have direct contact with children or who are on school grounds when children are present. Currently, there is no process requiring districts to audit contractors and vendors to ensure that they are conducting background checks on all their employees working in schools.

Volunteers: Although state law requires school-administered child care centers and childcare programs to conduct background checks to exclude anyone from volunteering in a program if they have a criminal history or history of abuse or neglect, the same is not required for volunteers in K-12 public schools. Many school districts' policies concerning volunteers do not include background check requirements.

Tennessee contributes to and accesses information from other states in a national clearinghouse of actions taken against educator licenses.

Tennessee and 48 other states or jurisdictions have entered into an interstate agreement to share information in a national clearinghouse about individuals who have had actions taken against their professional educator certificates or licenses. Administered by the National Association of State Directors of Teacher Education and Certification (NASDTEC), the clearinghouse allows states to upload information about educators who have had their licenses suspended, revoked, or otherwise invalidated; in turn, other states can look up the disciplinary actions taken against the licenses of out-of-state job applicants to determine if more information is necessary.

OEL routinely consults the clearinghouse when an out-of-state individual applies for a license to teach in Tennessee. SBE has denied applications for those found, through information obtained initially through the clearinghouse and follow-up information with specific states, to have had their licenses revoked in other states for sexual misconduct involving students that did not result in criminal convictions.

Policy Options

The General Assembly may wish to consider the following questions when examining the issue:

- Should local boards of education be required to adopt policies mandating that school districts obtain personnel files from previous employers for job candidates?
- Should job applicants complete criminal background checks prior to applying for a position in a school district, rather than holding school districts responsible for initiating these checks?
- Should school districts be required to conduct periodic background checks of all school employees or adopt a "rap back" service that provides districts with ongoing reports of employees' criminal histories?
- Should the state require criminal background checks of educators during the license renewal process?
- Should school districts be required to notify the Office of Educator Licensure within TDOE if a licensed applicant is legally prohibited by Tennessee law from being hired?
- Should school districts be required to conduct periodic audits of all school district vendors that are responsible for initiating background checks of contracted employees to ensure that background checks are being properly conducted on all employees?
- Should school districts require that all vendors providing direct services to students use the district's identification number to ensure that districts receive the full rap sheet for potential contract employees?
- Should background checks be required for school volunteers?

State Recordkeeping of Educator Misconduct Cases

Because of inconsistencies in the recording of state records, it is difficult to determine the status of some pending cases of educator misconduct.

OREA reviewed the minutes from State Board of Education meetings to determine the actions taken against educators' licenses from 2011 to 2017. Staff then compared the board actions with those in TN Compass, the state's online database of teacher licenses, and a national clearinghouse maintained by the National Association of State Directors of Teacher Education and Certification (NASDTEC) to determine if the records were consistent among all three sources.

The review found several issues, including:

- records in TN Compass that do not indicate a past revocation or suspension of an

educator's license by the State Board;

- Tennessee records that have no corresponding record in the national clearinghouse;
- reports to the national clearinghouse for formal reprimands for some educators but not for others; and
- records that do not match between TN Compass and the national clearinghouse.

SBE does not currently publish a comprehensive list of final resolutions on educators' licenses brought before the board.

SBE's capacity to investigate cases of educator misconduct is limited compared to some other states' capacity.

Currently, the State Board has one full-time staff attorney dedicated to reviewing educator misconduct cases; the general counsel also works with these cases, but has several other duties. Since spring 2017, SBE has reviewed approximately 200 cases from previous years. On average, SBE estimates that it receives approximately 30 new cases for review each month, not all of which concern sexual misconduct. As of fall 2017, the board has a backlog of approximately six to eight months of outstanding cases from 2016-17 to review.

OREA's case review found that some flagged licenses have been under SBE Review status for multiple years. OREA was unable to determine whether SBE never received files from OEL on some cases to prompt a review or whether it received files for which it never initiated a review. It is also possible that actions were taken against some educators' licenses during past board meetings, but OEL did not receive the final order to update the license status in TN Compass.

The delayed ability to review misconduct cases could impact the accuracy and completeness of educators' records as well as the ability to communicate the current disposition of some licenses with districts or other states.

Some other states have boards or commissions with divisions that are responsible for the investigation of cases of educator misconduct, and some of these entities employ dedicated staff to investigate cases of educator misconduct.

The State Board of Education does not have a clear method for organizing files related to educator misconduct cases, which may negatively affect the accuracy of data in TN Compass, as well as in the national clearinghouse to which Tennessee reports.

OREA's review of SBE's files determined that the board does not have a clear method or system for organizing files related to educator misconduct. Little or no documentation exists in SBE's electronic records for approximately 400 of the 800 educators with licenses flagged for SBE Review. A lack of consistent recordkeeping over time has resulted in a scattering of files between OEL and SBE across several possible sources, both paper and electronic.

The electronic files for more recent years' cases are contained in individual folders by educator name within the board's network; however, not all cases have a dedicated folder, and some electronic files were saved only within the email archives of a previous SBE employee, making it difficult to determine if case files existed at all for some individuals. This lack of organized recordkeeping prevents the board from being able to maintain an efficient process for searching for records on individual educators, running reports, or maintaining accurate statistics on the cases it handles.

The spreadsheet used by SBE to track investigations and license dispositions has not been kept up to date; as a result, SBE cannot confirm the status for many cases still pending review. The general counsel and an additional staff attorney hired for this purpose are in the process of reviewing all outstanding cases to determine what action, if any, is necessary to take on these educators' licenses.

Administrative Recommendations

The State Board of Education should consider publishing the final dispositions for all actions taken by the board against educators' licenses. An online database of case histories outlining board actions would allow school districts, as well as out-of-state entities responsible for the licensing and hiring of Tennessee educators, access to information regarding the circumstances of an individual's license case.

The State Board of Education or the Office of Educator Licensure should notify local boards of education when a director of schools fails to report incidents of misconduct to TDOE within 30 days.

The State Board of Education should conduct further research into the best practices of other states' staffing, technology, and processes to determine how it may wish to address issues related to capacity. Currently, along with its general counsel, SBE has one full-time staff attorney solely responsible for reviewing cases of educator misconduct. By comparison, some other states have several staff members dedicated to investigating and reviewing cases

concerning license actions. SBE receives, on average, 30 new cases of educator misconduct to review each month and is in the process of reviewing a backlog of approximately six to eight months of outstanding cases from 2016-17.

The State Board of Education should adopt a better process of file transmission and workflow process with OEL, possibly through the existing TN Compass interface. Currently, SBE and OEL manually transmit files via email, but TDOE is exploring options to enhance TN Compass to contain more workflow processes, including the secure transmission of files. Alongside its analysis of staffing and capacity, SBE should consider the adoption of a case management system to organize its internal files.

Federal Requirements Concerning the Hiring of School Personnel

Tennessee, like most states, has not yet addressed the federal ESSA provision that requires action by states or districts to prevent teachers who have committed sexual misconduct involving students from obtaining employment in other school districts.

In December 2015, Congress passed the Every Student Succeeds Act (ESSA), the newest version of the nation's primary K-12 federal education law, which contains a new provision meant to address a long-time problem in the hiring of teachers: the unofficial practice of passing along employees who had committed some kind of sexual misconduct involving students from one district to another, thus continuing the risk of harm to students. The federal provision is intended to prevent school districts from entering into a confidentiality agreement with an employee who has committed an act of sexual misconduct with a student, which was not necessarily criminal in nature, to provide the employee a neutral or good recommendation.

The ESSA language is broad and leaves implementation decisions wholly to state policymakers, state departments of education, and local school districts. States do not necessarily have to pass *laws* or *rules* to fulfill the requirement: instead, districts can pass board policies that align with ESSA. States must decide how they want to comply with the provision, or determine whether they have existing laws or policies that may fulfill its intent.

Tennessee's state plan for implementing ESSA does not include any language addressing this particular federal provision nor has the General Assembly passed any laws in the past several years to explicitly address the issue. Some other states have passed legislation to more clearly address educator sexual misconduct, both before and after the federal requirements under ESSA.

Some elements of these states' laws include:

- a prohibition against school districts' suppressing of information about the investigation of reported suspected abuse, neglect, or sexual misconduct against a student by a current or former employee
- requirements for school districts to disclose information at the request of other school districts about a finding of abuse, neglect, or sexual misconduct regarding a former employee
- a release from liability for school districts and school district employees that may arise from the disclosure of information about current and former employees
- training requirements for teachers and other school personnel (and, in one state, through teacher preparation programs) that include the maintenance of professional and appropriate relationships with students
- requirements for school district policies concerning electronic communications between staff and students

Policy Option

The General Assembly may wish to consider the following question when examining the issue:

> How is Tennessee planning to meet the ESSA requirement to pass laws, rules, or state and/or local policies to prevent teachers who have committed sexual misconduct involving students from obtaining employment in other school districts?

Clarity in Law and Policies

The definition of educator misconduct in Tennessee law is broad compared to definitions in some other states.

Tennessee law contains no specific definition of educator misconduct, although it does use the phrase in both the criminal and education sections of law to refer to situations that require reporting of incidences of child sexual abuse to the Department of Children's Services. The State Board of Education, however, recently revised and adopted a new educator licensure rule (currently in place as an emergency rule) that provides definitions and examples for certain categories of inappropriate behaviors and actions, as well as revising disciplinary actions the board can take against educators' licenses.

Several other states have added definitions of educator misconduct to state education law to identify inappropriate behavior and actions that could lead to a disciplinary response, such as suspension, or to an educator's termination of employment.

Tennessee school district policies lack clarity about what constitutes educator sexual misconduct that involves students.

Although many Tennessee school districts have adopted a policy concerning staff-student relations, which includes the need to "avoid any appearance of impropriety," few of the policies provide specific examples of what constitutes inappropriate behavior.

Some districts have adopted policies related to employee use of personal communication devices, which include guidelines or directives about interacting with students through social media.

School district policies may not be clear concerning the statutory directive to report allegations of teacher misconduct involving students as child sexual abuse to DCS, law enforcement, or juvenile court officials.

Tennessee law lists school officials and personnel as mandatory reporters of child abuse, including child sexual abuse. Any allegation that such an offense has been committed is required by law to be reported to the Department of Children's Services (DCS), law enforcement, or a juvenile court. A separate section of the law requires all school personnel or local board of education members to notify DCS, law enforcement, or a juvenile court of any incident or investigation of "employee misconduct on the part of any employee of the school system that in any way involves known or alleged child abuse, including . . . sexual abuse."

The two standard district policies concerning the reporting of incidents concerning child sexual abuse are (1) Child Abuse and Neglect and (2) Student Discrimination, Harassment, Bullying, Cyber-bullying, and Intimidation. In most districts, neither of the two policies referred to the part of criminal law quoted above concerning employee misconduct in the context of child sexual abuse.

In addition, in most districts the two policies contain different reporting requirements based on state law. Most districts do not cross-reference these two policies although both may address some similar types of

incidents concerning sexual abuse – an example might be an alleged relationship between a teacher and a student.

Finally, few districts' policies concerning child abuse and neglect refer to "child sexual abuse" at all, though state law requires school personnel to report such incidents. An OREA review of district policies concerning child abuse and neglect policies found that 118 districts' policies provide information on how to report child abuse and neglect but do not refer to child *sexual* abuse at all.

Tennessee's Teacher Code of Ethics does not refer to appropriate boundaries between educators and students.

Tennessee law contains the Teacher Code of Ethics, disregard of which can result in an educator's dismissal. The code, however, does not explicitly refer to inappropriate relationships between teachers and students. Some other states, including Georgia, Ohio, and Pennsylvania have adopted ethics codes for educators that are detailed and straightforward about teacher-student relationships.

Though some districts may conduct training for educators and/or other employees regarding appropriate boundaries between school personnel and students, Tennessee does not require it.

Some districts have indicated to OREA that they provide training to school personnel about appropriate relationships, boundaries, and communications between staff and students, but it is not clear what the training covers, and how often it is provided and to which employees.

Policy Options

The General Assembly may wish to consider the following questions when examining the issue:

- Should Tennessee define "educator sexual misconduct" more specifically in state law or rule?
- Should school districts adopt (or be required to adopt) board policies that address educators' and other school personnel's social media use and appropriate boundaries with students?
- Should local boards of education clarify existing policies related to reporting requirements for teachers and district officials concerning child sexual abuse and educator sexual misconduct?
- Should the statutory teacher code of ethics be revised to include more detailed

expectations of teachers' conduct with students?

- Should local school districts be encouraged or required to provide periodic professional development training that focuses on appropriate boundaries between teachers and students?
- Should Tennessee develop online training concerning educator ethics?

Child Sexual Abuse Prevention Curriculums

According to health education experts, children should be taught about personal safety, appropriate relationships, and boundaries in a manner suitable to grade level and age. In 2014, Tennessee updated its law that required TDOE and DCS to enhance or adopt curriculum materials related to child sexual abuse prevention for students in K-6 to include information on sexual abuse that may occur in the home and to expand the grade band to K-12. Districts have the option, but are not required, to offer health education courses. Because health education is not included in the state's required tests, it is difficult to determine the extent to which it, and specifically the subject of sexual abuse prevention, is taught in schools.

Although the health education standards adopted by the State Board of Education include standards on personal safety and appropriate relationships, it is up to local school districts to select the curriculum and instructional materials they use to teach the standards.

Today, education materials related to personal safety, appropriate relationships, and boundaries – topics that would be most likely to coincide with discussions related to child sexual abuse – may be taught to Tennessee students through several different education standards or education programs. Districts can incorporate sexual abuse prevention in schools by offering health education courses in grades K-12, through various school counseling programs, or, if required by law, through family life education programming. They may choose to deliver targeted instruction on a certain topic using guest speakers or with the assistance of an outside professional agency.

School districts are not explicitly required to teach topics related to sexual abuse prevention. However, in 2014, the Tennessee General Assembly passed Erin's Law, encouraging schools to provide age-appropriate instruction to students in K-12 on personal body safety and how to report sexual abuse.

The original version of Tennessee's sexual abuse prevention law, passed in 1985, required the development of a state plan to address child sexual abuse. The law also required TDOE and SBE to develop ways to inform and instruct both students and appropriate school personnel in all public school districts about the detection, intervention, prevention, and treatment of child sexual abuse, as well as the proper action to take in a suspected case of abuse. TDOE and SBE were to create curriculum materials to assist instructional personnel in delivering the instruction.

In 2014, the Tennessee General Assembly updated the sexual abuse education law as Erin's Law, Public Chapter 706, named after a childhood sexual assault survivor who has advocated for states to pass laws addressing sexual abuse prevention. As of fall 2017, the law has passed in some form in 31 states. Tennessee's version of Erin's Law expands the instruction from K-6 to K-12 and includes instruction on sexual abuse that may occur in the home. While the law does not mandate districts to implement any kind of sexual abuse prevention curriculum, it does require TDOE, the Department of Children's Services (DCS), and SBE to work together to create a comprehensive plan and corresponding curriculum materials that would address the detection, intervention, prevention, and treatment of child sex abuse for grades K-12.

Topics related to sexual abuse prevention and reporting are not included on required state tests; therefore, it is difficult to determine how schools are addressing sexual abuse prevention and reporting in the standards.

Because health education is not a tested subject, it is difficult to determine the extent to which districts are using the recommended curriculums or addressing topics related to sexual abuse prevention and reporting. In general, TDOE does not collect information on curriculums used at the local level; however, should a district choose to implement a health education curriculum as a part of its coordinated school health programming, the district must identify the curriculum used for health education, and the curriculum must follow the state standards.

Policy Options

The General Assembly may wish to consider the following questions when examining the issue:

- Should school districts be required to include sexual abuse prevention instruction in their K-12 curriculums?
- Is there data that could be collected by the Department of Education that would better inform stakeholders if or how districts are addressing topics related to sexual abuse prevention?
- Could the Department of Education provide more support or make resources more readily available for districts to access when teaching students about issues related to sexual abuse prevention and reporting?

Report Conclusion

The General Assembly may wish to hold a series of hearings or convene a task force of stakeholders at the state and district level to consider the findings of this report in total, review the policy options, identify responsible parties, and determine whether any solutions should take the form of law, rules, or policies.

Introduction

In early 2016, *USA Today* published the results of a national investigation of educator sexual misconduct in schools, particularly looking at each state's efforts to reduce the chances that an employee with a history of sexual misconduct could move from one school to another without repercussions.[1] The series graded states in four areas: background checks of teacher applicants, transparency in publicly sharing licensing and disciplinary information about sanctioned teachers, sharing this information with other states, and whether the state has laws mandating that educators, schools, and school districts report misconduct to the state. Only seven states received an A; Tennessee received an F.[2]

This report examines Tennessee's relevant laws, policies, and practices to determine whether there are areas of risk or weakness that could be improved, and makes comparisons to other states' practices. The analysis focuses on

- hiring practices for school personnel in Tennessee, including information about other states' practices;
- the state's records concerning teacher licenses and the actions taken against them for incidents of misconduct;
- relevant state laws and school district policies, particularly with regard to making school employees aware of expectations and responsibilities; and
- what children are taught in schools concerning personal safety.

In Tennessee, data is spread across multiple agencies and jurisdictions: data about specific abuse cases is held by the Department of Children's Services, local law enforcement, and the Tennessee Bureau of Investigation, while relevant data concerning Tennessee educator licenses and the actions against them is managed by the State Board of Education and the Office of Educator Licensure in the Tennessee Department of Education.

In this report, "educator sexual misconduct" refers to a range of inappropriate behaviors, from sexual communications to intercourse, directed from an educator who works in a school serving grades preK through 12 toward a student or former student. Some of the behaviors are criminal, such as rape, but many others constitute a gray area of conduct that is inappropriate for persons working with or near children. Such conduct could include, for example, engaging students in conversations regarding their romantic or sexual activities or regularly meeting with a student behind closed doors. In some cases, this type of inappropriate behavior is a means that predators use to "groom" children – a way of gradually desensitizing children to

inappropriate behavior to gain their trust.[3] Such inappropriate behavior can also be directed toward students by other school personnel who work in close proximity to children, such as bus drivers, janitors, and cafeteria workers, or contracted individuals.

Background

The prevalence of educator sexual misconduct, and that of other school personnel, nationally and in Tennessee is unknown.

It is difficult to determine the number of children who are sexually abused by school personnel nationally or in any given state. The best available and most widely cited national estimate was made by a researcher in a 2004 U.S. Department of Education (USDOE) report based on survey data from 2000: nearly 9.6 percent of students indicated that they had been victims of sexual abuse by school employees at some point during their school years. The researcher further deduced that, assuming the surveys accurately describe the experiences of all K-12 students, "more than 4.5 million students are subject to sexual misconduct by an employee of a school sometime between kindergarten and 12th grade."[4]

The 2004 USDOE report also suggested that the 9.6 percent of students indicating that they had been victims may be low – sex abuse is generally thought by experts to be underreported.[5] (See "How Tennessee law defines 'child sexual abuse'" on pages 4-6.) The report also said, based on studies describing offenders in schools, "many are chronic predators; thus, the number of teachers who abuse is fewer than the number of students who are abused."[6]

In a 2010 report about schools that retained or hired individuals with histories of sexual misconduct, the U.S. Government Accountability Office (GAO) cited the same prevalence statistic using the USDOE report as its source.[7] And a 2014 GAO report about sexual abuse by school personnel found that "the prevalence of this type of abuse is not known. Although several federal agencies collect related data, none systematically identify the extent of sexual abuse by school personnel, and efforts to address this data gap are limited."[8]

A more recent survey found some evidence that rates of sexual abuse in schools may be lower than the figure cited in 2004, but high enough to merit continued preventive efforts. Results from a 2016 survey of 13,052

children about their exposure to abuse in youth-serving organizations, the definition of which included schools, found that the "the overall rate of YSO [youth-serving organizations] maltreatment is modest" and is much lower than the rate of family abuse. The 2016 survey found that 0.8 percent of those surveyed reported exposure in a YSO to some type of mistreatment over their lifetime and 6.4 percent of these experienced sexual abuse. The same survey found that 67 percent of all YSO maltreatment – including cases of sexual abuse – occurred at a school or daycare. The study said "the low comparative rates of exposures to YSO sexual abuse in this survey should not be interpreted to mean that such events are rare in absolute numbers. The rate found in this analysis could translate to a national population estimate of 36,000 cases among the population of children and youths younger than 18 years, certainly worthy of additional prevention efforts."[9]

OREA analysts were also unable to determine the prevalence of school personnel misconduct in Tennessee. Some estimates, however, are:

- The State Board of Education took disciplinary actions against the licenses of more than 90 teachers for incidents of sexual misconduct involving students from January 2011 through July 2017.
- About 160 Tennessee teachers were disciplined for misconduct involving students or other minors, ranging from sending inappropriate text messages to sexual relationships, between 2004 and 2014, according to an investigation by the *Times Free Press* citing State Board of Education records.[10]
- In 2014, 14 cases of school employees in Tennessee accused, charged, convicted, or sentenced for inappropriate relationships with students were reported by media outlets.[11]
- In 2017, news outlets in Tennessee reported on at least four separate cases involving school personnel and sexual abuse of students.

There are few definitive characteristics of adults who abuse children in schools.

Although the overwhelming majority of educators and other school personnel do not abuse students in schools, some do. The public tends to think of child sexual abusers as strangers who can easily be identified as a danger to children, but the educators who become offenders are well-known to their victims and often have good reputations in their communities.[12]

Studies of those convicted indicate that offenders may be either male or female, most are heterosexual, and they may be employed in several different jobs, including teacher, cafeteria

worker, janitor, bus driver, counselor, or any other school employee. An investigation conducted by *Education Week* in 1998 found that "adult educator sexual offender suspects ranged in age from 21-75 years, with an average age of 28. Eight of 10 suspects were male."[13]

Though there is no single profile of perpetrators of child sexual abuse in schools, one report from the U.S. Department of Education states that these individuals may share "certain patterns of behavior."

> Some are monogamous and believe they are in love with a student. Others are "opportunistic predators" who chose the education field specifically to have access to children and youths. Still others are "bad judgment predators" who did not go into education to target children, yet end up in "relationships" that meet their emotional needs. In any scenario, the student's well-being is lost; the offender's concern is meeting his or her own needs at the expense of the child's.[14]

Methodology

To learn about systems in Tennessee and other states that are designed to protect children who may be victimized by adults, including school personnel, OREA analysts:

- interviewed individuals with:
  - the Tennessee Department of Education,
  - the State Board of Education,
  - the Department of Children's Services,
  - the Tennessee Bureau of Investigation,
  - the Tennessee School Boards Association,
  - the Tennessee Organization of School Superintendents,
  - the Tennessee Sexual Assault Center,
  - the Nashville Children's Alliance,
  - the Tennessee Education Association and the Professional Educators of Tennessee,
  - other states' offices involved in taking disciplinary actions against educators' licenses, and
  - other agencies and organizations – for a complete list of agencies and organizations contacted for information, see Appendix A;
- conducted a literature review concerning educator misconduct and child sexual abuse in schools;
- reviewed state academic standards for school counseling and health education as well as

other education programs that may address sexual abuse prevention to determine what children are taught about personal safety;
- reviewed laws passed in other states to address hiring practices in schools and other procedures to ensure the safety of children in the classroom; and
- reviewed records concerning disciplinary actions against educators' licenses from the State Board of Education and the Office of Educator Licensure in TDOE, and made comparisons to the records in the national clearinghouse to which Tennessee reports actions on educator licenses.

Structure of the Report

This report is organized in sections to reflect five areas of focus:

- *Safeguards and risks in hiring school personnel* – hiring practices for school personnel in Tennessee;
- *State recordkeeping of educator misconduct cases* – the processes followed by the State Board of Education and the Tennessee Department of Education's Office of Educator Licensure in cases of educator misconduct;
- *Federal requirements concerning the hiring of school personnel* – school personnel hiring practices adopted in other states;
- *Clarity in law and policies* – relevant state laws and school district policies, particularly with regard to making school employees aware of expectations and responsibilities; and
- *Child sexual abuse prevention curriculums* – what children are taught in schools concerning personal safety.

The State Board of Education provided a letter of response to this report, which can be found in Appendix B.

Additional appendices contain:

- the previous and revised educator licensure rule adopted by the State Board of Education,
- the portion of the federal Every Student Succeeds Act requiring state action concerning the hiring of school personnel,
- the Tennessee Teacher Code of Ethics, and
- the Child Abuse and Neglect policy, procedures, and training guidelines for the Clarksville-Montgomery County School System.

Endnotes: Introduction

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Section 1: Safeguards and Risks in Hiring School Personnel

In a 2010 report, the federal Government Accountability Office found instances across the country of individuals working in schools who had previously engaged in sexual misconduct, some targeting children. Researchers found that these factors contributed to the continued employment of these individuals in schools:

1. School officials allowed teachers who had engaged in sexual misconduct toward students to resign rather than face disciplinary action, often providing subsequent employers with positive references;
2. Schools did not perform pre-employment criminal history checks;
3. Even if schools did perform these checks, they may have been inadequate in that they were not national, fingerprint-based, or recurring; and
4. Schools failed to inquire into troubling information regarding criminal histories on employment applications.[1]

The passing of unacceptable school employees from district to district has happened in Tennessee

On occasion, headlines dot the local news cycles with stories of teachers allegedly engaging in sexual misconduct with students. In some cases, these teachers had records of misconduct in one district, quietly left after a report of abuse, and were hired by another district without disclosing details of the misconduct.

For example, in 2004, a teacher employed by a middle Tennessee school district was convicted of raping a male teenage student. The teacher had been allowed to resign from a nearby school district in 1999 following an investigation for looking at pornographic websites of teenage boys.

Although State Board of Education rules require directors of schools to report to state education officials whenever a teacher or administrator resigns following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation, the district where the teacher was originally employed reportedly had included no complaints on his employment record when he resigned.

Sources: WMC Action News 5, "Tennessee system sometimes misses teachers fired for sex misconduct," 2007, http://www.wmcactionnews5.com/Global/story.asp?s=7241362&clienttype=printable; Policies of the Tennessee State Board of Education, 5.501, License Denial, Formal Reprimand, Suspension, and Revocation Procedure, revised Oct. 19, 2012.

Care must be taken in hiring individuals to work in schools in an effort to avoid, as much as possible, unacceptable behavior. Like all states, Tennessee has adopted laws, rules, and policies concerning some hiring processes and employment procedures for teachers and other school personnel to ensure the safety of children in public schools. However, Tennessee school districts are responsible for all aspects of the hiring process for school personnel, with the state being primarily responsible for ensuring that applicants for teaching positions have the appropriate licenses. With some exceptions concerning prior criminal convictions, Tennessee school districts have discretion in the individuals they hire.

Tennessee is similar to other states in terms of the criminal background checks required for teachers, staff, and contractors who work in close proximity to children. Tennessee school

districts are thus subject to the same risks inherent in hiring individuals who pose no known risk of harm to children based on their background check results; to minimize risks, laws and processes must be consistently followed and applied, and the various means of screening applicants available to districts must be reliable. In addition, districts must sometimes go further to determine whether a particular applicant is suitable, by reviewing the applicant's personnel files from previous employers and being diligent in checking references.

Like any rules, requirements for background checks are only as effective as the data they rely on, the process used to conduct them, and their consistent use in every case.

Areas of potential weakness and concern in the hiring of school personnel are discussed below.

Charter schools and background checks

Who gets background checks?

Charter schools must follow the same background check, fingerprinting, and teaching license requirements as any other public school and district when hiring employees. All employees, including licensed teachers, support staff, bus drivers, substitute teachers, and contract employees, must have a background check and undergo fingerprinting.

Who conducts the background checks?

The law does not specify which entity – an individual charter school or its authorizer – is responsible for conducting the required background checks. Some charter schools opt for the district to conduct the background checks of potential new employees while other charter schools manage this process at the school level.

Are charter school teachers required to have a teaching license?

Yes. All charter school teachers must retain a valid Tennessee teaching license, but charter schools may request a waiver from the licensure requirements for school leaders.

Tennessee has a standard baseline process for screening applicants – its success hinges on districts' consistently following it.

Like most states, Tennessee relies heavily on background checks as a primary tool to screen new employees. School districts are responsible for ensuring that all background checks are completed on each potential candidate, both licensed teachers and other school personnel for hire, and candidates must agree to the background checks before they are done.[2] (Those who do not agree are not considered for hire.)

State law requires all teachers, principals, and supervisors to hold valid licenses to teach in the classroom.[3] The Office of Educator Licensure (OEL) within the Tennessee Department of Education (TDOE) maintains records for all active and inactive licensed teachers in the state within TN Compass, an online database which districts use to verify the license status of teachers and other certified staff.[4] The license statuses for all active and inactive Tennessee educators are publicly available on TN Compass.

All prospective employees – teachers, staff, and contracted employees – must pass a fingerprint criminal history background check conducted by the Tennessee Bureau of Investigation prior to consideration for employment with a school district.[5] In addition, districts are prevented from hiring persons who (1) have been identified by the Department of Children's Services (DCS) as perpetrators of child abuse, severe child abuse, child sexual abuse, or child neglect; (2) who are listed on the state's abuse of vulnerable persons registry maintained by the Department of Health; or (3) who are listed on the sex offender registry, maintained by the Tennessee Bureau of Investigation.[6] Districts must clear all candidates for hire by checking each of these databases before employment begins.

Job applicants for teaching positions must also attest to the school district whether they have been convicted of a misdemeanor or felony in Tennessee or any other state, or if they have ever been dismissed for such causes as incompetence, inefficiency, neglect of duty, unprofessional conduct, or insubordination.[7] Certain convictions and prior actions taken on educators' licenses do not necessarily preclude them from being hired, but failure to disclose them initially could result in dismissal after hire.

An internal audit report from TDOE in 2013-14 found that some districts reviewed were not fully in compliance in conducting all required background checks – in some instances, background checks had not been completed at the time of hire, though the law requires it.[8]

School districts have some discretion in hiring

With some exceptions concerning prior criminal convictions for offenses that involve sexual misconduct, drugs, or violence, Tennessee school districts have discretion in the individuals they hire. In 2017, the Achievement School District (ASD) learned that one of the charter school operators under its jurisdiction, the Capstone Education Group, had hired an interim principal with a prior federal felony conviction. The felony was not among those listed in Tennessee law that prohibit an individual from being hired in a school – in this case, the conviction, which occurred in 2005, was for counterfeiting and drunk driving.

Officials with the Capstone Education Group were made aware of the conviction by the applicant at the time of hiring and, based on the total information they gathered, decided to employ him. He remains employed with the charter operator, which reported that it had followed all legal requirements and conducted extensive reference checks prior to the hiring. In the future, ASD contracts with operators will require them to notify the ASD concerning any issues found through an applicant's criminal background check.

Source: Jennifer Pignolet, "Memphis principal's criminal record spurs ASD policy review," *The Commercial Appeal*, April 12, 2017.

States differ in the timing of criminal background checks for applicants for school employment, and on who is responsible for implementing them.

The *USA Today* series of articles about teacher misconduct graded Tennessee and six other states with an F, primarily because the state delegates to school districts the responsibility

to initiate background checks on school personnel who are hired rather than having this responsibility initiated by the state. In Tennessee, as required by state law, background checks are completed by the Tennessee Bureau of Investigation, a state level agency, at the directive of a school district at the time an educator, as well as any other school personnel, is offered a position.[9] In states awarded a higher grade by *USA Today*, background checks are conducted at the state level when an individual seeks a license to teach.

In Tennessee, the onus of determining whether an applicant meets the baseline requirements for hiring (i.e., background check and abuse registries) is on the district.[10] In many other states, applicants are responsible for completing these checks when they are seeking a license to teach, prior to applying for employment with a school district. Both approaches to using background checks have risks. Requiring that school districts ensure that all of the steps required are completed at the time of hire – which can be a hectic time for districts, particularly close to school start dates – means that some steps may not always be consistently followed and an individual could be hired for whom clearance has not been fully completed. Requiring that individuals seeking a teaching license initiate all background criminal checks with the proper state-level agencies would free districts from this responsibility, allowing them to concentrate on other important aspects of hiring the right candidates – but it might also mean a lag time between completion of the background check and the time a person is hired.

How often do Tennessee teachers renew their licenses?

A Tennessee practitioner license – the initial license issued to an educator after completing an approved educator preparation program – is valid for three years with the option to renew once.

Professional educator licenses – for those who have three years' experience under the practitioner license and have the recommendation of their Director of Schools or 30 hours of professional development points – must be renewed every six years.

Source: State Board of Education, Policy 5.502: Educator Licensure.

In a May 2017 interview with OREA, the General Counsel for TDOE indicated she believes that districts are now largely in compliance with completing the required background checks – but she also regularly encourages districts not to rely solely on those checks, which technically are valid only on the day they are completed. She tells districts to consult the local board attorney and additional sources to ensure that an applicant is a good candidate for hire. For applicants who have previously taught either in another Tennessee district or in another state, personnel files from former employers can provide useful information, including any disciplinary actions taken against an employee and the reasons for them. As for any hire, consulting references and public-facing social media are

also potential sources of useful information.

A potential weakness in Tennessee's processes could occur when an educator with an expired license applies for renewal. Newly licensed educators have recently gone through a criminal background check through their educator training programs, but educators with expired licenses are not required to undergo a background check when renewing their license. If that educator has committed a criminal offense since their last background check, OEL would be unaware of any disqualifying criminal information since the law does not require background checks for educator licenses. The applicant's criminal background history should be uncovered once a hiring district completes the background check process; however, districts do not complete this process until after they have already interviewed applicants and extended an employment offer.

Additionally, districts are not required to report to either SBE or OEL if they get a negative result on a background check for a potential applicant. Lack of required reporting in such cases could leave an applicant free to apply to other school districts instead of alerting state education officials that a licensure investigation may be needed.

Other states, as well as some Tennessee districts have developed procedures to ensure more up-to-date information about existing school employees.

Because the information in a background check can change over time, some Tennessee school districts reserve the right in their policies to conduct periodic background checks on existing employees, including Shelby County Schools and Metro Nashville Public Schools.[11] Similarly, some states require employees to be cleared through updated background checks periodically to continue working in schools. Missouri requires annual background checks of employees with active teaching certificates against state criminal history records, the sexual offender registry, and the child abuse registry.[12] Pennsylvania requires any employee who works with children to renew their background checks every five years.[13]

RAP:
RECORD of ARREST
and PROSECUTION

To address the concern that background checks provide only a "snapshot in time" of a person's criminal record, the education departments in some states, including Texas, Missouri, and Ohio, have started using "rap back" programs to get continuous updates for employees who work in positions of trust with children. Rather than requiring districts or the state to conduct periodic and repeated

background checks, in 2007, Ohio passed legislation to create the Rapback Program, a service that provides updates to employers on certain employees' criminal history.[14] Developed from the FBI's Rap Back service, the Ohio Department of Education receives notifications of any criminal history reported to the FBI after an employee is hired.[15] The department receives notifications from the Rap Back service about criminal arrests or convictions of licensed educators and pupil transportation workers, and notifies their employing school districts. The department also uses the information to inform investigations concerning an educator's license.[16]

Tennessee's requirements for contractors working in schools and for school volunteers may contain potential risks, unless school districts are diligent.

Contractors: Tennessee law requires background checks on all individuals who work in schools under contract through another company and who have direct contact with children or who are on school grounds when children are present.[17] Currently, there is no process requiring districts to audit contractors and vendors to ensure that they are conducting background checks on all their employees working in schools. TDOE recommends that districts require in contract that the background checks for contracted employees will be conducted by the district, if the contract is to provide direct services to students. The district may choose to audit background checks conducted by the private company if the contracted employees will not be in direct contact with students. Contractors in schools can include several types of employees, such as food service employees and speech therapists.

Districts have the option to either run the background checks for contracted employees themselves or let the companies that employ individuals who work in the schools conduct the background checks. If the contractor handles the background checks of its employees, districts receive what is known as a "red light/green light" letter from TBI, which provides information regarding only specific offenses listed in the law (including statutory rape by an authority figure, murder, kidnapping, rape, rape of a child, sexual battery, sexual exploitation of a minor, among other serious offenses) that exclude an applicant from hire.[18] Without a full "rap [record of arrests and prosecutions] sheet" from an individual's background check – which contains any contact a person has had with the criminal justice system – it may be difficult for districts to know if someone should or should not be disqualified from a position.[19] This is especially important for persons providing direct services to students.

Volunteers: State law requires school-administered child care centers and child care programs to conduct background checks to exclude anyone from volunteering in a program if they have

a criminal history or history of abuse or neglect.[20] The law does not require background checks for volunteers in K-12 public schools. Many districts' (about 44 percent) volunteer policies do not refer to any requirement for background checks.[21]

Based on a review of their policies, about one third of districts require or may require, depending on the level of interaction with students, background checks for volunteers, or indicate that directors of schools will develop procedures for volunteer background checks.[A] Shelby County Schools requires all volunteers who work alone with children to receive a fingerprint criminal background check through the FBI/TBI; those volunteers who work under the supervision of a district employee must receive at least a non-fingerprint criminal background check. The district assumes the cost of all background checks for its volunteers.[22] Metro Nashville Public Schools requires most school volunteers to undergo the same background checks that it requires of school personnel. Volunteers may be responsible for the cost of the checks. A local nonprofit pays for the checks for volunteers who are not associated with an organization.[23]

Tennessee contributes to and accesses information from other states in a national clearinghouse of actions taken against educator licenses.

Tennessee and 48 other states or jurisdictions have entered into an interstate agreement to share information in a national clearinghouse about individuals who have had actions taken against their professional educator certificates or licenses.[24] Administered by the National Association of State Directors of Teacher Education and Certification (NASDTEC), the clearinghouse allows states to upload information about educators who have had their licenses suspended, revoked, or otherwise invalidated; in turn, other states can look up the license statuses of out-of-state job applicants to determine if more information about their license is necessary. NASDTEC encourages states to obtain more information if a match occurs, as being listed in the clearinghouse does not preclude an individual from being appropriate for hire.[25]

OEL routinely downloads updated information from the clearinghouse into TN Compass, and

[A] Based on OREA's review of district policies, about 44 percent of districts do not mention any requirement for background checks in their volunteer policies, 21 percent either require or may require background checks for volunteers, 18 percent say that directors of schools will develop procedures for volunteer background checks but contain no other directive, and 15 percent either appeared to have no volunteer policy in place or did not have their policies available online.

consults the clearinghouse when an out-of-state individual applies for a license to teach in Tennessee. SBE has denied applications for those found, through information obtained initially through the clearinghouse and follow-up information with specific states, to have had their licenses revoked in other states for incidents of sexual misconduct involving students that did not result in criminal convictions.[26]

In 2016, NASDTEC approved read-only access to the clearinghouse to school districts, both public and private, for a fee.[27] Because this process is new, it is unlikely that most districts in Tennessee have access.

In theory, a teacher from another state who had their license suspended could apply for a non-licensed position (such as a teacher's aide) in Tennessee; because such a position does not require a license, the district would not be prompted to check TN Compass, which is linked to NASDTEC and receives monthly updates regarding actions against teachers' licenses from other states. If the school district has access to the NASDTEC database, it can check every applicant as soon as they apply as opposed to only those who are applying for licensed positions.

Tennessee private schools and teacher misconduct

Records of disciplinary actions against private school teachers are not public, making it more difficult to track teachers with a history of misconduct. Educators who have been fired or have resigned from a public school system may seek employment in private schools, where laws concerning background checks and licensure are less stringent.

Neither Tennessee law nor rule require that criminal background checks be conducted prior to hiring faculty and personnel for most private schools.

Some other states have made laws pertaining to the hiring of school personnel applicable to all types of schools, including private schools. Such laws include the requirement to conduct criminal background checks on applicants and the requirement to disclose, upon request from another school or district, details concerning former employees' personnel records, which include information about incidents of misconduct.[28]

Michigan, Nevada, and Oregon have similar requirements that apply to private schools, as well as public schools:

- Individuals applying to work in schools must authorize former employers to provide any information to a requesting school concerning acts of misconduct involving a minor regardless of whether the act resulted in a criminal conviction; applicants who refuse to make the authorization are not eligible for hire.
- Schools are required to disclose incidents of misconduct in former employees' personnel files and provide copies of related documents to a requesting school.
- Schools are prohibited from entering into collective bargaining agreements with former employees that would suppress this information.

Michigan requires that all employees of private schools must have criminal background checks. In Nevada, applicants for licensure must have criminal background checks; the state requires licensure for teachers in private schools with some exceptions. Oregon requires private schools receiving public funds to conduct criminal background checks for employees.

Like public schools, private schools in Tennessee are required by State Board of Education rules to inform the Office of Educator Licensure within the Tennessee Department of Education (TDOE) of licensed educators who have been suspended, terminated, or who have resigned following allegations of conduct that could result in an action against their license.[29] One category (out of five) of private schools requires that teachers be licensed by the state. OEL staff indicate they have never received such a report from a private school.[30]

Generally, private schools receive limited oversight from the state and do not follow the same laws and policies concerning the hiring and firing of personnel as public schools. The State Board of Education (SBE) regulates the nonpublic (or private) schools in the state under five categories of operation. State requirements among those categories vary, and some categories require that schools meet standards of various accrediting bodies or school associations.

Of the five categories of private schools authorized to operate by the SBE, both categories 1 and 2 must employ teachers with some form of a teaching credential, but only Category 1 schools are required to conduct background checks on applicants and employ teachers licensed by the state.[31] (Category 1 and 1-SP schools represent 123 of the 599 total private schools in the state.)[32] Category 2 schools, which are approved by private school accrediting agencies, must submit their procedures for licensing teachers, which may be done either through TDOE or a comparable system. Some accrediting agencies may require a teaching license approved under their own internal policies rather than a Tennessee license.[33]

The administrators of category 1 schools, and those category 2 schools that have chosen to require their teachers to be licensed by the state, may be unaware of the requirement to report incidents of teacher misconduct to the Office of Educator Licensure. Like public schools, private schools are required by law to report alleged incidents of child abuse, child sexual abuse, and neglect to law enforcement and the Department of Children's Services.[34] The rule that requires private schools with state-licensed educators to report incidents of teacher misconduct is located in the portion of the SBE rule that governs educator licensure, but it does not appear in the rules that govern non-public schools.

Policy Options

The General Assembly may wish to consider the following questions when examining the issue:

- Should local boards of education be required to adopt policies mandating that school districts obtain personnel files from previous employers for job candidates?
- Should job applicants complete criminal background checks prior to applying for a position in a school district, rather than holding school districts responsible for initiating these checks? This approach is common to many other states, including, for example, Alabama, Arizona, Florida, South Carolina, Ohio, and Pennsylvania.
- Should school districts be required to conduct periodic background checks of all school employees or adopt a "rap back" service that provides districts with ongoing reports of employees' criminal histories? At least two school districts in Tennessee (Metro

Nashville and Shelby County Schools) indicate in their policies that they may conduct periodic background checks of existing employees at any time. Ohio provides a rap back service for school districts. Pennsylvania requires background checks to be conducted every five years for licensed school and district employees.

- Should the state require criminal background checks of educators during the license renewal process, as, for example, Georgia and Pennsylvania require?
- Should school districts be required to notify the Office of Educator Licensure within TDOE if a licensed applicant is legally prohibited by Tennessee law from being hired?
- Should school districts be required to conduct periodic audits of all school district vendors that are responsible for initiating background checks of contracted employees to ensure that background checks are being properly conducted on all employees?
- Should school districts require that all vendors providing direct services to students use the district's identification number to ensure that districts receive the full rap sheet for potential contract employees?
- Should background checks be required for school volunteers?

Registries that Tennessee school districts must consult during the hiring process

In addition to ensuring that the required fingerprint sample and criminal history check conducted by the Tennessee Bureau of Investigation is completed for potential applicants for hire, Tennessee school districts are required to ensure that the names of applicants also do not appear on three state registries: the Department of Children's Services (DCS) Child Abuse Registry, the Department of Health's Vulnerable Persons Registry, and the Sex Offender Registry maintained by the Tennessee Bureau of Investigation.

The Child Abuse Registry is a confidential list maintained by the Department of Children's Services (DCS) that includes the names of people who its investigators have substantiated as perpetrators of child abuse or neglect. Once a person has been substantiated for child abuse or neglect, they have the right to challenge that decision. If the decision is upheld through due process, the person's name will remain on the registry. The requirement for school districts to check applicant names against this registry began in 2007 with the passage of Public Chapter 598. In 2013, with the passage of Public Chapter 381, school districts were required to confirm that any individual currently employed did not appear on the child abuse registry. The general public does not have access to the Child Abuse Registry, but state law requires DCS to release the names of persons listed on the registry to certain state agencies or organizations, including school districts, due to the nature of the employment or licensing of the person.

The Abuse of Vulnerable Person's Registry managed by the Department of Health contains the names of any persons who have been determined by Tennessee government agencies, any state or federal court, or any administrative bodies to have abused, neglected, misappropriated, or exploited the property of vulnerable individuals. The definition of vulnerable person in this section of law includes any one person under the age of 18. Members of the public may search this registry by name or social security number. The requirement for school districts to check applicant names against this registry began in 2013 with the passage of Public Chapter 381.

The Sex Offender Registry is managed by the Tennessee Bureau of Investigation, which also maintains

the electronic sex offender database and sex offender files. (TBI checks this registry as part of the criminal background check it conducts at the request of school districts.) Sex offenders have different reporting requirements (i.e., how often they must report and to which agencies) depending on their specific offenses and whether they fall into the “violent sexual offender” category. Violent sexual offenders are required to register for life. Sexual offenders and violent sexual offenders are required to report in person within 48 hours of changing their address, employment status, or school information between reporting dates. Sexual offenders may file a request for termination of registration requirements with TBI Headquarters in Nashville ten years after the date the offender’s sentence expires. If it is determined that the sexual offender has not been convicted of any additional sexual offenses during the ten-year period, and has substantially complied with the registration requirements, the TBI shall remove the offender’s name from the registry. Members of the public may search this registry by name, partial name, and/or city, county, or zip code.

Endnotes: Section 1

[1] U.S. Government Accountability Office, *Selected Cases of Public and Private Schools That Hired or Retained Individuals with Histories of Sexual Misconduct*, Dec. 2010, p. 2, http://www.gao.gov/new.items/d11200.pdf (accessed July 28, 2017).

[2] *Tennessee Code Annotated* 49-5-413.

[3] *Tennessee Code Annotated* 49-5-101.

[4] See https://tdoe.tncompass.org/Public/Search.

[5] *Tennessee Code Annotated* 49-5-413(a). It is up to districts whether applicants pay for the criminal background checks or if the district will reimburse the employee, perhaps after he or she has been hired for a position.

[6] *Tennessee Code Annotated* 49-5-413(e)(1) and (7). Also, *Tennessee Code Annotated* 49-5-417 requires the automatic revocation of licenses for individuals convicted of statutory rape by an authority figure (*TCA* 39-13-532), offenses concerning controlled substances (*TCA* 39-17-417), and offenses listed in *TCA* 40-35-501(i)(2), including murder, kidnapping, rape, rape of a child, sexual battery, and sexual exploitation of a minor.

[7] *Tennessee Code Annotated* 49-5-406, 49-2-203, and 49-5-511.

[8] Tennessee Department of Education, Internal Audit Report, 2013-14.

[9] *Tennessee Code Annotated* 49-5-413(a)(2).

[10] *Tennessee Code Annotated* 49-5-413(e).

[11] Metro Nashville Public Schools, Criminal History Record Check, HC 5.111, updated March 2015. Shelby County Board of Education, *Background checks*, Revised June 11, 2013. Note that school districts choosing to implement periodic background checks must also determine whether the district or the employee will pay for the checks. Shelby County's policy states that the district bears the cost.

[12] Missouri, Senate Bill 54, 2011, Section168.133, p. 24.

[13] Pennsylvania Department of Education, Background Checks, http://www.education.pa.gov/Teachers%20-%20Administrators/Background%20checks/Pages/default.aspx#tab-1 (accessed Aug. 4, 2017).

[14] Ohio Department of Education, FAQs about Rapback, http://education.ohio.gov/Topics/Teaching/Educator-Conduct/Rapback-System/Frequently-Asked-Questions-about-Rapback (accessed Aug. 4, 2017).

[15] Federal Bureau of Investigation, FBI Rapback Service, https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi (accessed Aug. 4, 2017).

[16] Ohio Department of Education, FAQs about Rapback, http://education.ohio.gov/Topics/Teaching/Educator-Conduct/Rapback-System/Frequently-Asked-Questions-about-Rapback (accessed Aug. 4, 2017).

[17] *Tennessee Code Annotated* 49-5-413 (d).

[18] Tennessee Department of Education, Memo, Subject: Background Check Requirements, Nov. 29, 2016; Tennessee Department of Education, General Counsel, interview, May 1, 2017; *Tennessee Code Annotated* 49-5-413(e)(1) and (7). Also, *Tennessee Code Annotated* 49-5-417 requires the automatic revocation of licenses for individuals convicted of statutory rape by an authority figure (*TCA* 39-13-532), offenses concerning controlled substances (*TCA* 39-17-417), and offenses listed in *TCA* 40-35-501(i)(2), including murder, kidnapping, rape, rape of a child, sexual battery, and sexual exploitation of a minor.

[19] Tennessee Department of Education, General Counsel, interview, May 1, 2017.

[20] *Tennessee Code Annotated* 71-3-507(e)(1)(A)(i) and (C); Rules of Tennessee Department of Human Services, Adult and Family Services Division, Chapter 1240-04-01, Standards for Group Child Care Homes, p.14, http://publications.tnsosfiles.com/rules/1240/1240-04/1240-04-01.20161227.pdf (accessed Sept. 18, 2017).

[21] OREA review of district policies.

[22] Shelby County Board of Education, Policy 4053: Background Checks, Revised Nov. 24, 2015.

[23] Metro Nashville Public Schools, HC 5.11: Criminal History Record Check, date updated: March 2015.

[24] 2015-2020 NASDTEC Interstate Agreement Signees (as of Nov. 19, 2015), http://www.nasdtec.net/?page=interstate. New Mexico, New York, South Dakota, and Wisconsin are not signatories.

[25] National Association of State Directors of Teacher Education and Certification, NASDTEC Clearinghouse, http://www.nasdtec.net/?page=Clearinghouse_FAQ (accessed Aug. 4, 2017).

[26] OREA analysis of State Board of Education records; Tennessee State Board of Education, License Denial, Formal Reprimand, Suspension, and Revocation, Policy 5.501, Revised Oct. 19, 2012.

[27] National Association of State Directors of Teacher Education and Certification, Schools and Districts Access to the Clearinghouse, http://www.nasdtec.net/page/ASSOC_CH_REG (accessed Aug. 4, 2017).

[28] U.S. Department of Education, State Regulation of Private and Home Schools, https://www2.ed.gov/about/offices/list/oii/nonpublic/regulation-map.html (accessed Nov. 3, 2017). All information in this section about other states was taken from this source.

[29] See Appendix C.

[30] Tennessee Department of Education, Office of Educator Licensure, and State Board of Education, interview, Oct. 11, 2017.

[31] Rules of the State Board of Education, Chapter 0520-07-02-.02 (2)(c), Non-Public School Approval Process, Category 1.

[32] Tennessee Department of Education, Non-Public Schools, list as of Oct. 25, 2017, https://www.tn.gov/education/school-options/non-public-schools.html (accessed Dec. 14. 2017).

[33] Rules of the State Board of Education, Chapter 0520-07-02-.03 (6)(c)9(iii)(I), Non-Public School Approval Process, Category 2.

[34] *Tennessee Code Annotated* 37-1-605.

Section 2: State Recordkeeping of Educator Misconduct Cases

To understand the status of cases of educator misconduct in Tennessee, OREA requested records from the Office of Educator Licensure (OEL) within the Tennessee Department of Education (TDOE), the division responsible for issuing and renewing educators' licenses in the state, and the State Board of Education (SBE or the board), the entity responsible for reviewing cases of educator misconduct and taking possible actions on educators' teaching licenses. OREA requested all license records within TN Compass, the online database of Tennessee teacher licenses, as of summer 2017, and all records and correspondence related to cases of misconduct that had been reviewed or were pending review by SBE. From this analysis, OREA determined that the board's limited staff capacity and turnover within the roles responsible for reviewing misconduct cases, as well as the method of recordkeeping used by SBE and OEL, negatively impacts the accuracy and completeness of the records within TN Compass, which districts use to verify the license status of teachers and other certified staff, as well as the timeliness in which the board can act against a teacher's license.

The State Board of Education is responsible for reviewing cases of educator misconduct and taking possible actions on educators' licenses.

The Office of Educator Licensure in the Tennessee Department of Education is responsible for issuing and renewing educators' licenses.

While TDOE plays no role in hiring district personnel, districts interact with teacher licensure data maintained by OEL and SBE. State law requires all teachers, principals, and supervisors to hold valid licenses to teach in the classroom.[1] OEL maintains records for all active and inactive licensed teachers in the state within TN Compass.[2]

EMPLOYMENT ACTION

The school district may reprimand the educator, or suspend or terminate the educator's employment.

LICENSE ACTION

The State Board of Education may reprimand, suspend, or revoke the educator's license to teach in Tennessee.

When an alleged case of sexual misconduct by an educator occurs in a school district, Directors of Schools are required to notify OEL within 30 days if the district has suspended or terminated an employee, or if the teacher resigns following allegations of conduct that could result in an action against their license.[A] OEL flags the license (i.e., changes its online status to "SBE

[A] Rules of the State Board of Education, Chapter 0520-02-03-.09 (2), Educator Licensure: Denial, Formal Reprimand, Suspension, and Revocation, adopted as an emergency rule July 28, 2017. This was also required in the previous form of this rule. See Appendix C for the current version of the rule in emergency status, Appendix D for the version that is scheduled to become effective March 5, 2018, and Appendix E for the rule that preceded these versions.

Review") and forwards the Director's report to SBE for review to determine whether the misconduct warrants state-level action (e.g., formal reprimand, suspension, revocation) against the educator's license.[3] In cases that involve law enforcement and/or DCS investigations, SBE may wait to act on an educator's license until a final court outcome. SBE estimates that it receives approximately 30 new cases of educator misconduct for review each month. (Not all the cases concern *sexual* misconduct.)[4]

Because of inconsistencies in the recording of state records, it is difficult to determine the status of some pending cases of educator misconduct.

OREA reviewed the minutes from State Board meetings to determine the actions taken against educators' licenses from 2011 to 2017.[B] Staff then compared the board actions with TN Compass and a national clearinghouse maintained by the National Association of State Directors of Teacher Education and Certification (NASDTEC) to determine if the records were consistent among all three sources. The review found several issues, including:

- records in TN Compass that do not indicate a past revocation or suspension of an educator's license by the State Board;
- Tennessee records that have no corresponding record in the national clearinghouse;
- reports to the national clearinghouse for formal reprimands for some educators but not for others; and
- records that do not match between TN Compass and the national clearinghouse.

SBE does not currently publish a comprehensive list of final resolutions on educators' licenses brought before the board. It is not uncommon for a board member to request that an individual's case be removed from the board's agenda pending further review. However, it was difficult for OREA staff to determine if the case was dismissed, if the educator appealed to the administrative courts for a hearing, or if the staff did not complete its review for a decision at a later date. Additionally, OEL cannot update an educator's license status in TN Compass until it receives documentation of a final decision by SBE. OEL and SBE acknowledged that it is possible that board decisions were made but never communicated to OEL to update TN Compass and/or the national clearinghouse.[5]

[B] OREA review of State Board of Education meeting minutes. The number of educators whose licenses State Board of Education took action against for the period reviewed are: 2011 – 47; 2012 – 55; 2013 – 60; 2014 – 77; 2015 – 56; 2016 – 21; 2017 (through July 28) – 18.

The State Board of Education's capacity to investigate cases of educator misconduct is limited compared to some other states' capacity.

Over the past several years, SBE's role within K-12 education in the state has expanded. In addition to reviewing, hearing, and ruling on cases of teacher misconduct, the board's 11 members, with the support of the Executive Director and 10 staff members, are responsible for:

- setting and approving academic standards every six years though the standards review process;
- setting and approving all rules, policies, and guidance in partnership with the Tennessee Department of Education;
- publishing the teacher preparation program report card;
- acting as the appellate body for charter school appeals;
- authorizing and acting as the school district of record for charter schools approved on appeal; and
- coordinating the BEP Review Committee.

Currently, SBE has one full-time staff attorney dedicated to reviewing educator misconduct cases; the general counsel also works with these cases, but has several other duties.[6] Since spring 2017, SBE has reviewed approximately 200 cases from previous years.[7] On average, SBE estimates that it receives approximately 30 new cases for review each month, not all of which concern sexual misconduct. As of fall 2017, the board has a backlog of approximately six to eight months of outstanding cases from 2016-17 to review.[8]

The State Board of Education receives approximately 30 new cases of educator misconduct each month.

SBE does not conduct its own investigations for each case brought to it for licensure action. Instead, board staff follow up with the various agencies involved in the incident – school districts, DCS, law enforcement – and obtain copies of the pertinent case materials, such as employment actions by the district, any video or audio recordings of the incident, interviews with witnesses, and court documents.[9]

OREA's case review found some flagged licenses have been under SBE Review status for multiple years.[10] OREA was unable to determine whether SBE never received files from OEL on some cases to prompt a review, or whether it received files for which it never initiated a review. It is also possible that actions were taken against some educators' licenses during past board meetings, but OEL did not receive the final order to update the license status in TN Compass. Although there is no law or rule prohibiting a district from hiring a teacher with an active

hold on their license, the district cannot enter them into the performance evaluation system as a staffed employee until the flag is removed. The district must be prepared to remove the educator from the classroom if an action is taken against the employee's license.[11] If a teacher resigns from a school district during a district's investigation of misconduct, and the board does not initiate a review at that time, it may be difficult for SBE staff to collect the appropriate information months or years later to make a determination about any action that should be taken on the teacher's license.

The delayed ability to review misconduct cases could impact the accuracy and completeness of educators' records as well as the ability to communicate the current disposition of some licenses with districts or other states. For example, OREA found, through an online search, a case involving a middle school teacher convicted in June 2016 of sexual battery by an authority figure. The only record OREA found in SBE's electronic files concerning this educator was an email containing an attachment with the Director's Report notifying OEL of the employee's resignation for undisclosed reasons in July 2015. As of September 2017, the educator's license in TN Compass indicates it is flagged for SBE Review. The national clearinghouse has no record for the educator's license, presumably because SBE has not completed its review process or OEL has not received a notice of final action from the board.[12]

At times, the information that districts provide to SBE is limited. For example, a school district may be unlikely to pursue a case further if a teacher resigns amid allegations of misconduct. Both SBE and TDOE emphasize to districts the importance of thorough reporting, and superintendents who fail to report incidents of misconduct to OEL within 30 days could be at risk of losing their license. However, superintendents are not required to hold a teaching license in Tennessee. If they do not have an active professional or administrative license, there is no action the state can take if they fail to report.[13]

Some other states have boards or commissions with divisions that are responsible for the investigation of cases of educator misconduct, and some of these entities employ dedicated staff to investigate cases of educator misconduct. For example:

- Iowa's Board of Educational Examiners employs one full-time investigator and one

full-time attorney/investigator for ethics complaints. The board investigated 130 cases of misconduct in 2016.[14]

- Oregon's Professional Practices unit within its Teacher Standards and Practices Commission is responsible for investigating complaints of educator misconduct. The unit employs three full-time investigators, two investigative support specialists, and one legal liaison.[15] In 2015, the commission considered 363 cases.[16]
- The Division of Legal Services within Kentucky's Education Professional Standards Board reviews approximately 300 disciplinary cases each year and employs seven full-time staff.[17]

Additionally, Kentucky's Standards Board has a procedures manual that outlines:

- the types of actions possible to take against a teacher's license,
- the process for the intake and review of reports and complaints,
- the board's action on reports and complaints,
- the pre-hearing phase,
- hearing phase,
- post-hearing phase,
- procedures for the suspension, surrender, or revocation of a teaching certificate,
- procedures for the reinstatement of a suspended teaching certificate, and
- procedures for the reissuance of a certificate after surrender or revocation.[18]

Georgia provides similar information on its commission website, outlining in clear terms the various sanctions that the state can place on educators' licenses and providing training resources concerning the state's code of ethics for teachers.[19]

The Iowa Board of Educational Examiners, responsible for reviewing complaints of alleged violations of the Code of Professional Conduct and Ethics, publishes an online search tool for the public to review disciplinary actions dating back to 1974.[20]

TN Compass includes all current and past licenses held by a teacher or administrator, when the licenses were obtained and when they expire, and the status of the licenses. Districts cannot see any details of why a teacher was suspended, revoked, or reprimanded – this kind of information is publicly available in some other states, including Iowa.

Status of new SBE rule concerning discipline against educator licenses

In 2016, the State Board of Education formed a Teacher Discipline Subcommittee to consider revisions to the existing educator licensure rule. Part of the impetus for the revisions came from concerns raised by the *USA Today* series of articles about states' handling of teacher discipline issues, particularly those related to sexual misconduct with students. Subcommittee members expressed a common desire to include more descriptive language in the rules, including specific examples of behavior and actions that constitute teacher misconduct – the discussion included any type of misconduct that could lead to some type of action against an educator's license. See Appendices C and D.

The subcommittee presented a new rule to the full State Board that provides, for the first time, definitions and examples for certain inappropriate behaviors and actions – some of a sexual nature targeting students – for which educators can be disciplined. The new rule provides a range of disciplinary actions the board can take against the licenses of educators who commit certain acts, from issuing a letter of formal reprimand to permanent license revocation. SBE adopted the rule at its public meeting on October 20, 2016.

The rule was scheduled to be effective 90 days from the date the state promulgation process (which includes review and approval for legality and constitutionality by the Attorney General and subsequent filing with the Secretary of State) was completed, which would have been July 19, 2017.[21] On July 10, 2017, prior to the end of the 90-day period, the Tennessee Education Association (TEA) filed a request for a public hearing on the rule. The request for the public hearing re-set the promulgation process.[22]

On July 28, 2017, the State Board of Education adopted the new rule as an emergency (or temporary) rule, which is permissible under state law for one of five specific reasons, including an immediate danger to public health, safety, or welfare.[23] SBE found it necessary to adopt the rule as an emergency rule, the general counsel said, because a December 2016 chancery court order concerning a former educator who had been convicted of statutory rape, and whose record was subsequently expunged, held that the state board may not consider an applicant's prior convictions that had been expunged or rely on the "other good cause" category in the previous rule. SBE had previously relied on the "other good cause" category to take action against educator licenses. The board believed the precedent set by this court order, which resulted in SBE having to reinstate the license of a teacher who had years before admitted to statutory rape, posed an immediate danger to the public health, safety, or welfare of the children of Tennessee.[24]

The rulemaking hearing was held on September 19, 2017. TEA expressed concerns with SBE's authority to promulgate rules concerning the revocation, suspension, and formal reprimand of license holders as well as inconsistent terms, language, and definitions within the rules.[25] In response, SBE updated and clarified definitions to address TEA's more substantive concerns with the rules.[26]

The Joint Government Operations Committee asked SBE to appear at the November 15, 2017, meeting. The committee heard from four representatives of education-related groups who had requested to speak about the new rule. Those who spoke in favor of the rule were associated with the Professional Educators of Tennessee and the Tennessee Organization of School Superintendents. Two individuals from the Tennessee Education Association spoke against the new rule.[27]

As of December 2017, the emergency rule is in effect until March 4, 2018. A revised version of the emergency rule has been approved by the Attorney General and is scheduled to become effective March 5, 2018. The rule will go before the Government Operations committee in early 2018, which has the option to vote to approve the rule or deny it. If the committee were to deny the rule, it would be set to expire June 30, 2019. If it were to approve the rule, it would not expire.[28] (See Appendices C and D for the newest iterations of the rule. See Appendix E for the previous version of the rule.)

The State Board of Education does not have a clear method for organizing files related to educator misconduct cases, which may negatively affect the accuracy of data in TN Compass, as well as in the national clearinghouse to which Tennessee reports.

OREA's review of SBE's files determined that the board does not have a clear method or system for organizing files related to educator misconduct. Little or no documentation exists in SBE's electronic records for approximately 400 of the 800 educators with licenses flagged for SBE Review.[29] A lack of consistent recordkeeping over time has resulted in a scattering of files between OEL and SBE across several possible sources, both paper and electronic.

SBE maintains paper files for some cases dating back to 2004; however, the files obtained by OREA appeared to have no discernable system for organization, were incomplete, or were unable to be identified. The electronic files for more recent years' cases are contained in individual folders by educator name within the board's network; however, not all cases have a dedicated folder, and some electronic files were saved only within the email archives of a previous SBE employee, making it difficult to determine if case files existed at all for some individuals. This lack of organized recordkeeping prevents the board from being able to maintain an efficient process for searching for records on individual educators, running reports, or maintaining accurate statistics on the cases it handles.

The spreadsheet used by SBE to track investigations and license dispositions has not been kept up to date; as a result, SBE cannot confirm the status for many cases still pending review. The general counsel and an additional staff attorney hired for this purpose are in the process of reviewing all outstanding cases to determine what action, if any, is necessary to take on these educators' licenses. As of fall 2017, SBE has a backlog of approximately six to eight months of outstanding cases from 2016-17 to review.[30]

Administrative Recommendations

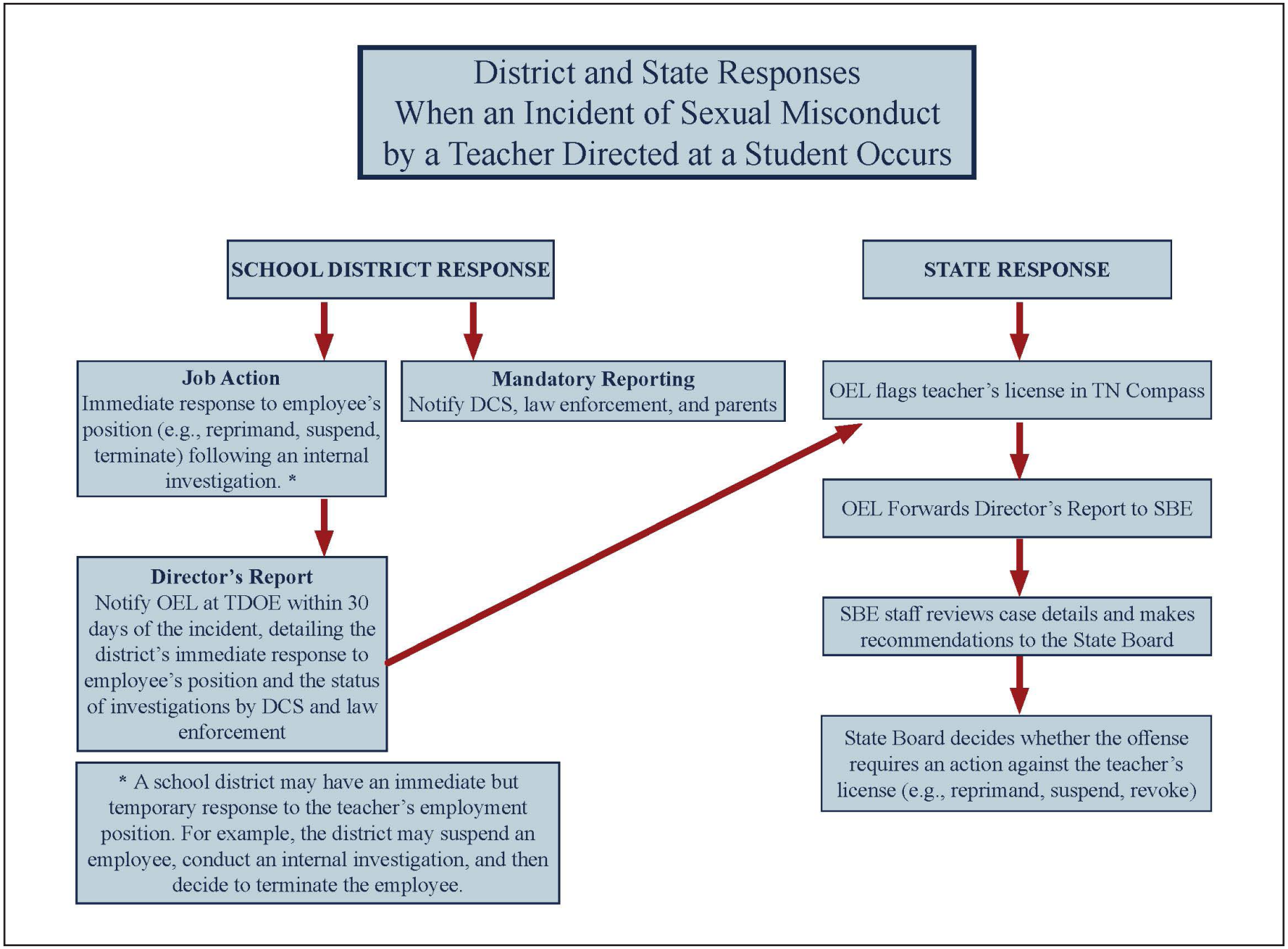
The State Board of Education should consider publishing the final dispositions for all actions taken by the board against educators' licenses. An online database of case histories outlining board actions would allow school districts, as well as out-of-state entities responsible for the licensing and hiring of Tennessee educators, access to information regarding the circumstances of an individual's license case. Other states, such as Iowa's Board of Education Examiners, publishes an online database for all disciplinary actions taken against licensed educators dating back to 1974, searchable by type of allegation and sanction.[31] This can also be compared to the

online database of actions taken against the licenses of Tennessee attorneys.

The State Board of Education or the Office of Educator Licensure should notify local boards of education when a director of schools fails to report incidents of misconduct to TDOE within 30 days.

The State Board of Education should conduct further research into the best practices of other states' staffing, technology, and processes to determine how it may wish to address issues related to capacity. Currently, along with its general counsel, SBE has one full-time staff attorney solely responsible for reviewing cases of educator misconduct. By comparison, some other states have several staff members dedicated to investigating and reviewing cases concerning license actions. SBE receives, on average, 30 new cases of educator misconduct to review each month and is in the process of reviewing a backlog of approximately six to eight months of outstanding cases from 2016-17.

The State Board of Education should adopt a better process of file transmission and workflow process with OEL, possibly through the existing TN Compass interface. Currently, SBE and OEL manually transmit files via email, but TDOE is exploring options to enhance TN Compass to contain more workflow processes, including the secure transmission of files. Alongside its analysis of staffing and capacity, SBE should consider the adoption of a case management system to organize its internal files.


District and State Responses
When an Incident of Sexual Misconduct
by a Teacher Directed at a Student Occurs
SCHOOL DISTRICT RESPONSE
STATE RESPONSE
Job Action
Immediate response to employee's position (e.g., reprimand, suspend, terminate) following an internal investigation. *
Mandatory Reporting
Notify DCS, law enforcement, and parents
Director's Report
Notify OEL at TDOE within 30 days of the incident, detailing the district's immediate response to employee's position and the status of investigations by DCS and law enforcement
* A school district may have an immediate but temporary response to the teacher's employment position. For example, the district may suspend an employee, conduct an internal investigation, and then decide to terminate the employee.
OEL flags teacher's license in TN Compass
OEL Forwards Director's Report to SBE
SBE staff reviews case details and makes recommendations to the State Board
State Board decides whether the offense requires an action against the teacher's license (e.g., reprimand, suspend, revoke)

Endnotes: Section 2

[1] *Tennessee Code Annotated* 49-5-101.

[2] See https://tdoe.tncompass.org/Public/Search.

[3] Tennessee Department of Education, Office of Educator Licensure, interview, April 27, 2017.

[4] Tennessee Department of Education, Office of Educator Licensure, and State Board of Education, interview, Oct. 11, 2017.

[5] Ibid.

[6] Tennessee State Board of Education, interview, March 30, 2017.

[7] Tennessee State Board of Education, email, Oct. 16, 2017.

[8] Tennessee Department of Education, Office of Educator Licensure, and State Board of Education, interview, Oct. 11, 2017.

[9] Ibid.

[10] OREA analysis.

[11] Tennessee Department of Education, Office of Educator Licensure, and State Board of Education, interview, Oct. 11, 2017.

[12] OREA analysis.

[13] Tennessee Department of Education, Office of Educator Licensure, and State Board of Education, interview, Oct. 11, 2017.

[14] Iowa Board of Educational Examiners Staff Directory, http://www.boee.iowa.gov/contacts.html (accessed Dec. 4, 2017).

[15] Oregon Teacher Standards and Practices Commission, Professional Practices/Discipline, http://www.oregon.gov/tspc/Pages/Professional-practices-Main-Page.aspx (accessed Dec. 4, 2017).

[16] Oregon Teacher Standards and Practices Commission, Annual Performance Progress Report, Reporting Year 2016, p. 5, http://www.oregon.gov/transparency/docs/2016/APPR%27s%20for%20Fiscal%20Year%202016/APPR_TSPC_2016-09-02.pdf (accessed Dec. 4, 2017).

[17] Kentucky Education Professional Standards Board, http://www.epsb.ky.gov/mod/page/view.php?id=57; Kentucky Education Professional Standards Board, Ethics, http://www.epsb.ky.gov/course/view.php?id=5 (accessed Dec. 4, 2017).

[18] Kentucky Educator Professional Standards Board, Procedures Relating to Board Action on an Educator's Certification, Approved April 10, 2017, http://www.epsb.ky.gov/mod/book/view.php?id=61&chapterid=5 (accessed Dec. 4, 2017).

[19] Georgia Professional Standards Commission, Ethics, https://www.gapsc.com/Ethics/Home.aspx (accessed Dec. 4, 2017).

[20] Iowa Board of Educational Examiners, Disciplinary Action Search, https://www.iowaonline.state.ia.us/ppd/SearchBoardOrders.aspx (accessed Dec. 4, 2017).

[21] The promulgation process requires filing the rules with the Attorney General and Reporter for a review of the rules' legality and constitutionality. (*TCA* 4-5-211) Following approval by the Attorney General, rules do not become effective until 90 days after being filed with the Secretary of State. (*TCA* 4-5-207). Statement made by State Board of Education General Counsel at Tennessee Joint Government Operations Committee, Nov. 15, 2017.

[22] Tennessee General Assembly, Joint Government Operations Committee meeting, Nov. 15, 2017.

[23] T*ennessee Code Annotated* 4-5-2008.

[24] Jason Gonzales, "Tennessee passes emergency rules to keep teachers who misbehave out of the classroom," *The Tennessean*, July 28, 2017, http://www.tennessean.com/story/news/education/2017/07/28/tennessee-passes-emergency-rules-keep-teachers-who-misbehave-out-classroom/519006001/ (accessed Nov. 30, 2017). Testimony of the General Counsel, State Board of Education, Tennessee Joint Government Operations Committee, Nov. 15, 2017.

[25] Tennessee Education Association, "Reply to October 5, 2017 Letter from the Tennessee State Board of Education," October 19, 2017.

[26] Ibid.

[27] Tennessee General Assembly, Joint Government Operations Committee meeting, Nov. 15, 2017.

[28] State Board of Education, General Counsel, telephone interview, Dec. 1, 2017.

[29] OREA analysis.

[30] Tennessee Department of Education, Office of Educator Licensure, and State Board of Education, interview, Oct. 11, 2017.

[31] Iowa Board of Educational Examiners, Disciplinary Action Search, https://www.iowaonline.state.ia.us/ppd/SearchBoardOrders.aspx (accessed Dec. 4, 2017).

Section 3: Federal Requirements for the Hiring of School Personnel

In December 2015, Congress passed the Every Student Succeeds Act (ESSA), the newest version of the nation's primary K-12 federal education law, which contains a new provision meant to address a long-time problem in the hiring of teachers: the unofficial practice of passing along, from one district to another, employees who had committed some kind of sexual misconduct involving students (informally referred to as "passing the trash"), thus continuing the risk of harm to students.[1] See Appendix F: Federal Law Affecting Hiring Practices by School Districts. This practice was commonly carried out by quietly dismissing an unacceptable employee – for example, an employee who had an inappropriate relationship with a student that was not necessarily criminal in nature – and providing the employee with a neutral or good recommendation.[2]

OREA analysts consulted the National Conference of State Legislatures and the Education Commission of the States to identify states that had implemented or adopted the ESSA provision. The review concluded that most states, including Tennessee, have not addressed the provision as of August 2017. Several states have addressed the issue, both before and after the passage of ESSA – of these, some have adopted provisions that go further than the federal law requires.

Parts of other states' laws are summarized below and, in some cases, are compared to existing Tennessee requirements.

Tennessee, like most states, has not yet addressed the federal ESSA provision that requires action by states or districts to prevent teachers who have committed sexual misconduct involving students from obtaining employment in other school districts.

The federal provision is intended to prevent school districts from entering into a confidentiality agreement with an employee who has committed sexual misconduct with a student, which was not necessarily criminal in nature, to provide them a neutral or good recommendation. Specifically, the provision requires that:

> 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.[3]

The ESSA language is broad and leaves implementation decisions wholly to state policymakers, state departments of education, and local school districts. The U.S. Department of Education has not issued guidance to define terms used in this provision, such as "assisting" and "probable cause," and the law provides no timeline or enforcement mechanism. States do not necessarily have to pass laws or rules to fulfill the requirement: instead, districts can pass board policies that align with ESSA. States must decide how they want to comply with the provision, or determine whether they have existing laws or policies that may fulfill its intent.

Tennessee's state plan for implementing ESSA does not include any language addressing this particular federal provision nor has the General Assembly passed any laws in the past several years to explicitly address the issue. In light of the ESSA provision, the Tennessee School Board Association (TSBA) has created a new model policy, "Recommendations and File Transfers," for school districts, which would put districts, if they choose to adopt a similar policy, in compliance with the federal requirement. The model policy's language closely mirrors the federal language.[4] At least one Tennessee school district, Bedford County, has passed the model policy language.[5]

Some other states have passed legislation to more clearly address educator sexual misconduct, both before and after the federal requirements under ESSA. As of 2017, 10 states – Connecticut, Michigan, Missouri, Nevada, Oklahoma, Oregon, Pennsylvania, Texas, Washington State, and West Virginia – have passed legislation addressing the intent of the ESSA provision, though many of these states' laws go further than ESSA requires.

Some elements of these states' laws include:

- a prohibition against school districts' suppressing of information about the investigation of reported suspected abuse, neglect, or sexual misconduct against a student by a current or former employee.[6]
- requirements for school districts to disclose information at the request of other school districts about a finding of abuse, neglect, or sexual misconduct regarding a former employee.[7]
- a release from liability for school districts and school district employees that may arise

from the disclosure of information about current and former employees.[8]

- training requirements for teachers and other school personnel (and, in one state, through teacher preparation programs) that include the maintenance of professional and appropriate relationships with students.[9]
- requirements for school district policies concerning electronic communications between staff and students.[10]

In addition, some states have made their laws in this area applicable not only to traditional public schools and contractors, but also to other kinds of schools, including charter schools, private schools, and/or parochial schools.[11]

Tennessee does not have similar laws though some school districts reportedly have provided training concerning appropriate boundaries between staff and students, and some have policies concerning staff-student relationships and electronic communication (including use of social media) between staff and students.[12] (See also "Clarity in Policies and Law.")

Examples from select states compared to Tennessee requirements provide policymakers some options for consideration.

Michigan's 1976 law may pre-date all other states' laws in this area. The law prohibits a school district from helping an employee with a known record of unprofessional conduct gain employment elsewhere. The law authorizes an applicant's current or former employer to disclose to the hiring school district any unprofessional conduct by the applicant and to make available copies of all documents in the employee's personnel record maintained by the current or former employer relating to that unprofessional conduct. The law defines "unprofessional conduct" as:

> One or more acts of misconduct; one or more acts of immorality, moral turpitude, or inappropriate behavior involving a minor; or commission of a crime involving a minor. A criminal conviction is not an essential element of determining whether or not a particular act constitutes unprofessional conduct.[13]

In 2004, the **Washington** state legislature acknowledged the limitations of background checks when screening applicants for hire, and passed a law requiring school districts to provide known information regarding employees' sexual misconduct when the employee attempts to transfer to another school district.[14]

In Tennessee, a public-school employee's personnel file is a public record, with a few exceptions, such as individual teacher evaluations, healthcare information, and personal data (e.g., social security number, home address, driver license information).[15] Employee files should contain any disciplinary actions taken against the employee, as well as details of any investigations undertaken concerning allegations of misconduct. It is not clear whether districts typically request a candidate's complete employee file from their previous employing school district, in Tennessee or in another state, prior to hiring them – there is no state law requiring or encouraging them to do so.[16]

In **Texas**, state law emphasizes school and district administrators' reporting of incidents to a state agency rather than requiring districts to disclose information to each other. The law authorizes the State Board of Educator Certification to impose a range of sanctions (i.e., administrative penalties from $500 to $10,000) against a director of schools who fails to report to the board, within a specified period of time, an educator's termination of employment or resignation after an alleged incident of misconduct (as defined in law). Principals are also required to make these reports to directors of schools within a specified period of time. Failure to report by a director of schools or a principal with the intent to conceal an educator's criminal record or alleged incident of misconduct, constitutes a state jail felony under the law.[17]

Three states – **Connecticut, Pennsylvania, and Texas** – have laws requiring applicants to sign a written statement or affidavit about whether they have been the subject of an abuse, neglect, or sexual misconduct investigation, or if they have ever been charged with, adjudicated for, or convicted of having an inappropriate relation with a minor, and to provide all relevant facts pertaining to the incident.

Pennsylvania is considered a model state for the legislation it passed in both 2012 and 2014. The 2012 law mandates training and reporting, and the 2014 law added new requirements for the hiring of all positions at school entities and independent contractors of school entities that involve direct contact with children.[18] Pennsylvania law requires the hiring district to conduct a review of employers listed by an applicant and request certain specific information from them to confirm whether the applicant was the subject of an abuse or sexual misconduct investigation. Additionally, the law requires current and former employers of the applicant to disclose the requested information within 20 days from receiving the request. If the information indicates that there was an allegation or investigation, the school entity or contractor must request that the employer provide additional information and disclose all related records. The employers have 60 days from the request to respond.[19]

Tennessee requires applicants to self-report on their licensure application if they have:

- *been convicted of a felony, including conviction on a plea of guilty, a plea of non contendere or granting pre-trial diversion;*
- *been convicted of the illegal possession of drugs, including conviction on a plea of guilty, a plea of non contendere or granting pre-trial diversion;*
- *had a teacher's certificate or license revoked, suspended or denied, or have voluntarily relinquished a certificate or license;*
- *any action pending against their certification or license in another state.*
- *been dismissed for any reason including incompetence, inefficiency, neglect of duty, unprofessional conduct, and insubordination.*[20]

Tennessee law also requires applicants to provide a copy of a written resignation to the most recent local board of education, but the law puts the burden on the applicant to be forthcoming and does not outline a process for a district to confirm or obtain this information on behalf of an applicant.[22]

In **Missouri**, a school district that fails to disclose to another district allegations of sexual misconduct by a former employee will become directly liable for damages to a student who is found by a court to be a victim of the former employee's sexual misconduct. The law further provides that the district will bear third-party liability to the employing district for any legal liability, legal fees, costs, and expenses incurred as the result of the failure to disclose the information.[21]

In **Oklahoma**, school districts are required to inform the State Board of Education in writing when a teacher is terminated for grounds that could form the basis of criminal charges related to sexual misconduct that would result in license revocation. School districts must report any teacher recommended for dismissal regardless of whether they were charged with one of the included crimes. When a new applicant for a teaching position is being considered for employment, the hiring school district can request information from the State Board as to whether the individual had been fired from another school district in the state. The information maintained by the State Board of Education is otherwise confidential and not subject to the state's open record law.[23]

In Tennessee, the previous and revised educator licensure rule requires Directors of Schools to inform the Office of Educator Licensure of licensed educators "who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation" for reasons given in the policy, including inappropriate physical contact with a student. The Director of Schools is also required to report felony convictions of licensed educators within 30 days of learning about the conviction. The current rule (in emergency status) and the proposed permanent rule also indicate that "school systems have a duty to respond to State Board inquiries and provide to the State Board any available documentation requested concerning the allegations contained in the notice."[A]

Policy Option

The General Assembly may wish to consider the following question when examining the issue:

How is Tennessee planning to meet the ESSA requirement to pass laws, rules, or state and /or local policies to prevent teachers who have committed sexual misconduct involving students from obtaining employment in other school districts?

[A] Rules of the State Board of Education, Chapter 0520-02-03-.09 (2), Educator Licensure: Denial, Formal Reprimand, Suspension, and Revocation, adopted as an emergency rule July 28, 2017. This was also required in the previous form of this rule. See Appendix C for the current version of the rule in emergency status, Appendix D for the version that is scheduled to become effective March 5, 2018, and Appendix E for the rule that preceded these versions.

Endnotes: Section 3

[1] 20 U.S. Code § 7926 - Prohibition on aiding and abetting sexual abuse, https://www.law.cornell.edu/uscode/text/20/7926?qt-us_code_temp_noupdates=0#qt-us_code_temp_noupdates (accessed Sept. 19, 2017).

[2] Mary C. Tillerson, U.S. House passes bill to prevent 'passing the trash,' Education Watchdog, http://watchdog.org/113092/u-s-house-passes-bill-prevent-passing-trash/ (accessed Sept. 19, 2017).

[3] 20 U.S. Code § 7926 - Prohibition on aiding and abetting sexual abuse, https://www.law.cornell.edu/uscode/text/20/7926?qt-us_code_temp_noupdates=0#qt-us_code_temp_noupdates (accessed Sept. 19, 2017).

[4] Tennessee School Boards Association, Director of Government Relations, email and attachment, July 25, 2017. Districts that subscribe to TSBA's policy services received a copy of the model policy; TSBA urged non-subscribing districts to create or adopt their own policy to fulfill the ESSA requirement but such districts can request to use TSBA's model policy as well.

[5] Jason Reynolds, "Enrollment in schools passes 8,500," *Times-Gazette*, Aug. 23, 2017, http://www.t-g.com/story/2437814.html?utm_source=Chalkbeat+Tennessee&utm_campaign=c7c8d5e952-EMAIL_CAMPAIGN_2017_08_24&utm_medium=email&utm_term=0_fb08595b26-c7c8d5e952-225474849 (accessed Sept. 13, 2017).

[6] Connecticut, Public Act No. 16-17, effective July 1, 2016; Michigan, Act 451 of 1976; Nevada, Assembly Bill 362, 2017; Oregon, Enrolled House Bill 2062, 2009; Pennsylvania, 2014, Act 168; Washington, SB5533, 2004.

[7] Connecticut, Public Act No. 16-17, effective July 1, 2016; Michigan, Act 451 of 1976; Missouri, SB54, 2011; Oregon, Enrolled House Bill 2062, 2009; Pennsylvania, 2014, Act 168; Washington, SB5533, 2004.

[8] Connecticut, Public Act No. 16-17, effective July 1, 2016; Michigan, Act 451 of 1976; Missouri, SB54, 2011; Pennsylvania, 2014 Act 168; Texas, 2017, SB7 Enrolled; Washington, SB5533, 2004.

[9] Missouri, SB54, 2011; Oregon, Enrolled House Bill 2062, 2009; Pennsylvania, 2012, Act 126; Texas, 2017, SB7 Enrolled.

[10] Missouri, SB 1, 2011; Texas, 2017, SB7 Enrolled.

[11] Connecticut, Public Act No. 16-17, effective July 1, 2016 (charter schools); Michigan, Act 451 of 1976 (nonpublic schools); Nevada, Assembly Bill 362, 2017 (private and charter schools); Oregon, Enrolled House Bill 2062, 2009 (charter and private schools); Pennsylvania, 2014, Act 168 (private and parochial schools); Texas, 2017, SB7 Enrolled (private schools).

[12] OREA analysis of school district policies.

[13] Michigan, Act 451 of 1976.

[14] Washington, SB 5533, 2004.

[15] *Tennessee Code Annotated* 10-7-504(f)(1) and (a)(23).

[16] Tennessee Department of Education, General Counsel, email, June 8, 2017.

[17] Texas, 2017, SB7 Enrolled.

[18] Pennsylvania, Act 126 of 2012 and Act 168 of 2014.

[19] Pennsylvania, Act 168 of 2014.

[20] *Tennessee Code Annotated* 49-5-406(a)(1)(B) and 49-5-511(a)(2).

[21] *Tennessee Code Annotated* 49-5-406(a)(1)(C).

[22] Missouri Senate Bill 54, 2011.

[23] Oklahoma, SB711, 2015.

Section 4: Clarity in Law and Policies

In mid-2016, the Tennessee State Board of Education (SBE) developed a new educator licensure rule, which provides, for the first time, definitions and examples for certain inappropriate behaviors and actions – some of a sexual nature targeting students – for which educators can be disciplined. The new rule, which went into effect as an emergency rule in late July 2017, provides a range of disciplinary actions the board can take against the licenses of educators who commit certain acts affecting students, from issuing a letter of formal reprimand to permanent license revocation.[A] (See Appendix C for a copy of the rule as it exists in emergency status. See Appendix D for the version of the rule that the State Board of Education plans to adopt as a permanent rule once it completes the promulgation process. See Appendix E for the rule as it existed prior to these revisions. See also "Status of new SBE rule concerning discipline against educator licenses.")

By comparison, Tennessee state law contains only broad language concerning educator misconduct. One of the reasons a Tennessee educator can be fired is referred to in state law as "conduct unbecoming to a member of the teaching profession," which includes "immorality" and "conviction of a felony or a crime involving moral turpitude."[1] State law contains no specific definition of educator misconduct, although it does use the phrase to refer to situations that require reporting of incidences of child sexual abuse to the Department of Children's Services (DCS), law enforcement, or juvenile court.[2] Several other states have defined educator misconduct to also include behavior of a sexual nature that does not rise to a criminal level, but is inappropriate for a person working with children.

Because Tennessee local school district policies pertaining to the safety of children in public schools are written to follow Tennessee state law, most are also not specific about what constitutes sexual misconduct between school personnel and students. OREA found that few district policies concerning child abuse and neglect also refer to "child sexual abuse" in the context of school employee misconduct. State law requires that school officials, personnel, and local board of education members report any allegations, incidents, or investigations of child abuse, including child sexual abuse, to DCS, law enforcement, or a juvenile court. Two separate district policies – one concerning "child abuse and neglect" and the other "student harassment and discrimination" – may apply to some of the same offenses committed by

[A] Rules of the State Board of Education, Chapter 0520-02-03-.09 (2), Educator Licensure: Denial, Formal Reprimand, Suspension, and Revocation, adopted as an emergency rule July 28, 2017. See Appendix C for the current version of the rule in emergency status, Appendix D for the version that is scheduled to become effective March 5, 2018, and Appendix E for the rule that preceded these versions.

educators who have inappropriate contact with students, but, in most districts, the two policies contain different reporting requirements. School officials and personnel may find it difficult to determine what kind of incidents should be reported under which policy.

In addition, state law contains the Tennessee Educator Code of Ethics, a violation of which can result in the termination of an educator's contract, but the code does not explicitly address appropriate relationships and boundaries between educators and students. (See Appendix G: Tennessee Teacher Code of Ethics.)

Lack of clarity in law and in school district policies about what constitutes educator misconduct may perpetuate educators' lack of understanding and reflection about what is and is not appropriate or ethical – ethics being a higher standard than the law – in creating healthy relationships with students.[3] Lack of understanding of educators' responsibilities and expectations from the state level down to districts and schools may affect educators' willingness to report a colleague, and failure to report could result in harm to a student.[4] The impact of districts having disparate policies means that when teachers and principals transfer between districts, they might not fully understand what is required by law.

The definition of educator misconduct in Tennessee law is broad compared to definitions in some other states.

Tennessee *criminal* law defines sexual offenses against minors, such as statutory rape, rape of a child, and solicitation of a minor; some subsections of the law specifically define sexual offenses against minors by authority figures, including teachers.[5] Tennessee *education* law refers to "conduct unbecoming to a member of the teaching profession" as one of the reasons an educator can be fired, and the term's definition, which is broad, includes "immorality" and "conviction of a felony or crime involving moral turpitude."[6]

State law contains no specific definition of educator misconduct, although it does use the phrase in both the criminal and education sections to refer to situations that require reporting of incidences of child sexual abuse to DCS.[7] SBE, however, recently revised and adopted a new educator licensure rule that provides definitions and examples for certain categories of inappropriate behaviors and actions, as well as revising disciplinary actions the board can take against educators' licenses.[8] (See Appendices C, D, and E for previous, current, and pending versions of the rule.) The State Board subcommittee that developed the rule included more descriptive language, including specific examples and more information about behaviors

that could lead to actions against an educator's license, including suspension or revocation.[9] Definitions are included for:[10]

> Inappropriate Communication (Explicit) — Any communication between an educator and a student that describes, represents, or alludes to sexual activity or any other illicit activity. This shall not be construed to prevent an educator from communication regarding sexual or illicit activities for educational purposes such as in teaching family-life curriculum pursuant to T.C.A. § 49-6-1307 et seq. or drug abuse resistance education pursuant to T.C.A. § 49-1-402.

> Inappropriate Communication (Non-Explicit) – Any communication between an educator and a student that is beyond the scope of the educator's professional responsibilities. Examples of such non-explicit inappropriate communications include, but are not limited to, those communications that discuss the teaching staff member's or student's past or current romantic relationships; those that include the use of profanities or obscene language; those that are harassing, intimidating, or bullying; those that attempt to establish an inappropriate personal relationship with a student ; and those that are related to personal or confidential information regarding another school staff member or student.

> Inappropriate Physical Contact – Unlawful, unnecessary, and unjustified physical contact with a student. Examples of such unnecessary and unjustified contact include, but are not limited to, sexual contact, physical altercations, horseplay, tickling, improper use of corporal punishment, and rough housing.

> Inappropriate Physical Contact with Harm – Inappropriate physical contact [as described above] that results in physical or mental harm or the potential of physical or mental harm to a student.

The new rule allows the State Board to administer varying levels of disciplinary action against educators who have engaged in these behaviors – depending on the facts surrounding the incidents, disciplinary action could range from a letter of formal reprimand to permanent license revocation.[11] See box on page 2-6: Status of new SBE rule concerning discipline against educator licenses.

Several other states have added definitions of educator misconduct (sometimes called educator sexual misconduct or educator conduct) to state education law to identify inappropriate behavior and actions that could lead to a disciplinary response, such as suspension, or to an educator's termination of employment. See Exhibit A for examples from a few select states.

Exhibit A: Select states with definitions of "sexual misconduct" (or a similar term) in relation to a school employee

State	Definition
CT	"Sexual misconduct" means any verbal, nonverbal, written or electronic communication, or any other act directed toward or with a student that is designed to establish a sexual relationship with the student, including a sexual invitation, dating or soliciting a date, engaging in sexual dialog, making sexually suggestive comments, self-disclosure or physical exposure of a sexual or erotic nature and any other sexual, indecent or erotic contact with a student.
MI	"Unprofessional conduct" means one or more acts of misconduct; one or more acts of immorality, moral turpitude, or inappropriate behavior involving a minor; or commission of a crime involving a minor. A criminal conviction is not an essential element of determining whether or not a particular act constitutes unprofessional conduct.
NV	"Sexual misconduct" means any act, including, without limitation, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child, regardless of the age of the child, that is designed to establish a romantic or sexual relationship with the child.
OR	"Sexual conduct" means any verbal or physical conduct by a school employee that: (A) Is sexual in nature; (B) Is directed toward a kindergarten through grade 12 student; (C) Has the effect of unreasonably interfering with a student's educational performance; and (D) Creates an intimidating, hostile or offensive educational environment.
PA	"Sexual misconduct" means any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such acts include, but are not limited to: (1) Sexual or romantic invitation. (2) Dating or soliciting dates. (3) Engaging in sexualized or romantic dialog. (4) Making sexually suggestive comments. (5) Self disclosure or physical exposure of a sexual, romantic or erotic nature. (6) Any sexual, indecent, romantic or erotic contact with the child or student.
TX*	"Misconduct" means abused or otherwise committed an unlawful act with a student or minor; was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor.
WA**	Unprofessional conduct includes the commission by an education practitioner of any sexually exploitive act with or to a student including, but not limited to, the following: (1) Any sexual advance, verbal or physical; (2) Sexual intercourse as defined in RCW 9A.44.010; (3) Indecent exposure as defined in RCW 9A.88.010; (4) Sexual contact, i.e., the intentional touching of the sexual or other intimate parts of a student except to the extent necessary and appropriate to attend to the hygienic or health needs of the student.

Note: This list is not exhaustive – other states may have adopted similar definitions.
* The definition from the Texas law shown is a partial list of items that may constitute "misconduct." See S.B. No. 7, 2017, Section 5.
** Washington State's definition appears in rules adopted by the State Board of Education at the directive of the state legislature in RCW 28A.400.
Sources: Connecticut, Public Act No 16-67, effective July 1, 2016; Michigan, Act 451 of 1976; Nevada, Assembly Bill 362, 2017; Oregon, House Bill 2062, 2009; Pennsylvania, 2014, Act 168; Texas, 2017, Senate Bill 7 Enrolled – see also note at * below the table; Washington, State Education Code of Conduct – see also note at **.

Tennessee school district policies lack clarity about what constitutes educator sexual misconduct that involves students.

School district policies are generally not specific about what constitutes sexual misconduct between school personnel and students. All Tennessee school districts have policies, based on state and federal laws requiring them, that address issues related to the physical safety of students, which include required background checks for applicants seeking school jobs, required reporting of suspected child abuse and neglect, and documented instances of discrimination and harassment, involving both students or employees.

Although state law does not require it, most Tennessee districts have adopted policies concerning staff-student relations – in general, these contain more direct language concerning boundaries between school personnel and students.[B] Typical policy language includes:

> Staff members shall use good judgment in their relationships with students beyond their work responsibilities and/or outside the school setting and shall avoid excessive informal and social involvement with individual students. Any appearance of impropriety shall be avoided. Sexual relationships between employees and students shall be prohibited.

Although these policies contain more direct language, of the districts that have staff-student relation policies, few provide specific examples of inappropriate behavior. The policies for both Bristol City and Knox County are exceptions and contain similar language:

How Tennessee law defines "child sexual abuse"

Tennessee law defines child sexual abuse as the commission of any act involving the sexual abuse, molestation, fondling, or carnal knowledge of a child that constitutes certain specific criminal offenses or attempted offenses, including aggravated rape, aggravated sexual battery, and aggravated sexual exploitation of a minor. Child sexual abuse also includes several acts, the descriptions of which in the law are quite graphic and could be applied to instances of inappropriate relationships between educators and students in which sexual intercourse has occurred.

For the full definition of child sexual abuse, see TCA 37-1-602. Note that one portion of this section of law describes offenses committed against children under 13 and another portion describes the same offenses against children between ages 13 and 17 – both sections describe offenses that constitute child sexual abuse. For the children between 13 and 17, the difference in statute is whether the act is committed by a parent, guardian, relative, person residing in the child's home, or other person responsible for the care and custody of the child. The law defines "other person responsible for a child's care or welfare" to include an employee of a public or private school.

Source: *Tennessee Code Annotated* 37-1-602.

[B] Based on OREA's review of district staff-student relations policies, about 78 percent have a staff-student relations policy that incorporates the language shown above, 4 percent have a policy that provides specific examples of inappropriate behavior and may go further in describing expectations, 13 percent appeared to have no staff-student relations policy, and 5 percent do not have their policies available online.

Examples of unprofessional and inappropriate communications include, but are not limited to:

1. employees fraternizing or communicating with students in a peer to peer or unduly familiar manner;
2. writing personal letters, emailing, texting, contacting through social media, or calling student on their cell phones about subject matter that is beyond the scope of their professional relationship;
3. sending suggestive, lewd or indecent pictures or images to students;
4. discussing or revealing to students inappropriate aspects of private lives or inviting students to do the same; being overly familiar, and
5. engaging in unnecessary and/or non-curricular dialogue concerning topics of a sexual nature.[12]

Both districts' policies also include a requirement that staff who are aware of or suspect that a colleague is involved in an inappropriate relationship with a student are obligated to report that information to the principal, director of schools, or human resources director.[13]

The increased use of personal electronic communication devices and social media has permeated schools as well as the broader society. Some districts (OREA identified 11) have adopted policies related to employee use of personal communication devices, which include guidelines or directives about interacting with students through social media[C] – for example,

- Arlington Community Schools' policy prohibits employees from contacting students via their personal communication devices except regarding classwork or school-sanctioned extracurricular activities. Employees violating the policy are subject to disciplinary action and may be terminated.
- Bristol City Schools' policy prohibits "romantic, amorous or sexual relationships, comments, or communications in any form between employees and students. This includes unprofessional and inappropriate communication on social media sites or other online communications."
- Jackson, Maury, Morgan, Putnam, Sumner, and White Counties' policies discourage employees from socializing with students on social networking websites. Metro Nashville has a similar policy that includes the statement "Employees' online behavior

[C] In a review of districts' online policies, OREA found 11 districts that had policies concerning employee use of social media that also referred to communication with students – other districts may have policies that were missed (Arlington, Bristol, Jackson County, Maury County, Metro Nashville, Morgan County, Murfreesboro City, Putnam, Sumner, Washington, and White). Note that TCA 49-1-221 requires districts to have policies concerning internet access and TCA 10-7-512 requires policies concerning the monitoring of email communications – but neither of these contain language that specifically concerns communications between staff and students.

should not call into question their suitability to work with children."

- Murfreesboro City Schools has a policy that allows faculty members to communicate electronically with students via email only, an action which must first be approved by the Director of Schools; each message must also include the principal or designee.
- Washington County's policy states that "employees are expected to maintain professional and appropriate relationships with their students, colleagues, and the community. This expectation extends to internet activity and the use of social media. Failure to maintain professional and appropriate relationships may result in disciplinary action up to and including termination."

An OREA review of district policies concerning child abuse and neglect policies found that:

- 118 districts' policies provide information on how to report child abuse and neglect but do not refer to child sexual abuse
  - Six of the 118 incorrectly name the Department of Human Services instead of the Department of Children's Services as the agency to which reports should be made
- Nine districts' policies refer to or define child sexual abuse and/or include more detailed information about reporting when school personnel are suspected of abuse of a student
- Six districts' policies were extremely abbreviated and contained no reporting information
- One district's policy contained incorrect information about what is permissible during a DCS investigation

Source: OREA analysis of school district policies.

The Tennessee School Boards Association (TSBA), which provides model school district policies based on Tennessee law to member districts, has an "optional" model policy (i.e., not currently required by state law) called Social Media that strongly discourages employees from including current, minor students as "friends," "followers," or any other similar terminology used by various sites without written permission from the student's parent.

School district policies may not be clear concerning the statutory directive to report allegations of teacher misconduct involving students as child sexual abuse to DCS, law enforcement, or juvenile court officials.

Tennessee law lists school officials and personnel as mandatory reporters of child abuse, including child sexual abuse. (See "How Tennessee law defines "child sexual abuse.") Any allegation that such an offense has been committed is to be reported to the Department of Children's Services (DCS), law enforcement, or a juvenile court.[14] A separate section of the

law requires all school personnel or local board of education members to notify DCS, law enforcement, or a juvenile court of any incident or investigation of

> employee misconduct on the part of any employee of the school system that in any way involves known or alleged child abuse, including . . . sexual abuse.[15]

A related law in the education code requires school personnel who have reasonable cause to suspect child sexual abuse may have occurred on school grounds or while a child was under the supervision of the school to report to DCS, law enforcement, or a juvenile court.[16]

The two standard district policies concerning the reporting of incidents concerning child sexual abuse are (1) Child Abuse and Neglect and (2) Student Discrimination, Harassment, Bullying, Cyber-bullying, and Intimidation. Three points stood out in OREA's review of these two policies in districts:

The disciplinary actions that schools and districts take regarding an educator's alleged misconduct, and the investigations that schools must conduct to make those determinations, are separate from Department of Children's Services investigations of alleged wrongdoing.

(1) In most districts, neither of the two policies referred to the part of criminal law quoted above concerning employee misconduct in the context of child sexual abuse or the similar section of law that is part of the state's education code.[17]

(2) In addition, in most districts the two policies contain different reporting requirements based on state law. Most districts do not cross-reference these two policies although both may address some similar types of incidents concerning sexual abuse – an example might be an alleged relationship between a teacher and a student. For child abuse and neglect incidents, including child sexual abuse, the law and policies require reporting to DCS, law enforcement, or juvenile court, as set out in the mandatory reporting provisions in *Tennessee Code Annotated*.

For discrimination and harassment policies, the law and policies require reporting to the school principal, designee, teacher, or counselor. The discrimination and harassment policies, and the state law that requires them, are based on federal requirements under Title IX of the Education Amendments of 1972 that sets up procedures for schools' prompt investigations of such cases. A 2014 U.S. Department of Education guidance document indicates that violations of Title IX that involve employee sexual harassment of students may overlap provisions under other state laws, such as those concerning child sexual abuse. In such cases, the guidance

document explains that states should satisfy their state and local reporting obligations, in addition to Title IX reporting requirements.[18]

(3) Finally, few districts' policies concerning child abuse and neglect refer to "child sexual abuse" at all, though state law requires school personnel to report such incidents.[19]

OREA found exceptions among some districts that incorporate references to "child sexual abuse" and clarify reporting requirements in their policies.

- Arlington Community Schools' policy includes a definition for "child sexual abuse" referencing the definition provided in *TCA* 37-1-602 and requires allegations of such an incident to be reported to both DCS and the school principal.[20]
- Clarksville-Montgomery County Schools' policy includes "child sexual abuse" and is notable for its clear, easily understandable language, and its accompanying procedures and training guidelines. The policy also references other related documents, including a policy and procedure for accommodating DCS investigations. The policy requires reporting to DCS for all suspected cases of child abuse and child sexual abuse, and specifies required internal reporting in addition to DCS in cases where the suspected abuser is a district employee, volunteer, or contractor.[21] (See Appendix H for Clarksville-Montgomery County Schools' policies, procedures, and training guidelines concerning child abuse and child sexual abuse.)
- Hamilton County's policy specifically includes "child sexual abuse" in the duty to report child abuse that is shared by all school system employees, and indicates that this report must be made "regardless of whether the child has suffered a physical injury from the suspected abuse [which would more likely be covered under a report of "child abuse" or "neglect"] and regardless of whom the perpetrator of the abuse may have been." Reports, the policy indicates, must be made to DCS, law enforcement agencies in Hamilton County, or the Hamilton County Juvenile Court.
- Hamilton County's policy further advises school employees who report such suspected instances to notify the school principal or supervisor. "The Board of Education advises administrators that it may be necessary and appropriate for them to direct their employees to contact several agencies in order to ensure that the allegations of abuse will be investigated promptly and that the child in question will be protected."[22]

It is important that school personnel understand to whom they should report concerning any suspicions of child abuse or child sexual abuse. If policies are unclear, reports may be made to

school officials rather than DCS, law enforcement, or juvenile court, as required by law. When a Tennessee school district reports a case of child abuse or child sexual abuse to DCS, and DCS finds an allegation to be credible, its staff conduct forensic investigations. DCS officials say information can be compromised if school or district personnel, who are not trained to conduct forensic investigations, undertake an investigation prior to DCS.[D] Although school and district officials are necessarily concerned about actions they need to take concerning an employee in such cases, the disciplinary actions that schools and/or districts take regarding an educator's alleged misconduct and the investigations that schools must conduct to make those determinations, are separate from DCS investigations of alleged wrongdoing.

Lack of understanding about what kinds of incidents and allegations school personnel should report and to whom has been noted in other states. In a 2014 report about state efforts to prevent and respond to sexual abuse by school personnel, the Government Accountability Office (GAO) found "challenges with ensuring that school personnel comply with the policies on reporting suspected sexual abuse by school personnel."[23] The report includes descriptions of case studies in which school officials had not followed appropriate reporting procedures. GAO researchers noted that

> mandatory reporters may have difficulty deciding whether to report those behaviors that are not criminal in nature, but otherwise may be questionable — the gray area. Officials in four of the school districts we visited noted that school personnel have asked if such gray area behaviors warrant reporting to CPS [child protective services] or law enforcement. To ensure that reports are made, three school districts we visited specified in policy the types of behaviors that warrant reporting.[24]

Tennessee's Teacher Code of Ethics does not refer to appropriate boundaries between educators and students.

Tennessee law contains the Teacher Code of Ethics, disregard of which can result in an educator's dismissal.[25] The code, however, does not explicitly refer to inappropriate relationships between teachers and students.[26] (See Appendix G for a copy of the code.) Some other states have adopted ethics codes for educators that are detailed and straightforward about teacher-student relationships – a few relevant excerpts from select states follow.

[D] Tennessee Department of Children's Services, Special Investigations Unit, interview, May 22, 2017. DCS sometimes works with law enforcement on investigations. At times, law enforcement will conduct the initial investigation. Tennessee Department of Children's Services, Work Aid 3 – Child Protective Services Investigative Tasks and Activities, Supplemental to DCS Policy 14.7 Child Protective Services Investigation Track.

GEORGIA

Conduct with Students - An educator shall always maintain a professional relationship with all students, both in and outside the classroom. Unethical conduct includes but is not limited to:

1. committing any act of child abuse, including physical and verbal abuse;
2. committing any act of cruelty to children or any act of child endangerment;
3. committing any sexual act with a student or soliciting such from a student;
4. engaging in or permitting harassment of or misconduct toward a student that would violate a state or federal law;
5. soliciting, encouraging, or consummating an inappropriate written, verbal, electronic, or physical relationship with a student.[27]

OHIO

Professional Relationship with Students – Educators shall maintain a professional relationship with all students at all times, both in and out of the classroom. . .

Conduct unbecoming includes, but is not limited to, the following actions:

a) Committing any act of sexual abuse of a student or minor or engaging in inappropriate sexual conduct with a student or minor.
b) Committing an act of cruelty to children or an act of child endangerment (e.g., physical abuse, mental injury, or emotional abuse).
c) Soliciting, encouraging, engaging or consummating an inappropriate relationship with a student or minor. . .[28]

PENNSYLVANIA Code of Professional Practice and Conduct for Educators

The professional educator may not:

. . . Sexually harass or engage in sexual relationships with students.[29]

In addition, the National Association of State Directors of Teacher Education and Certification (NASDTEC) has developed a model code of ethics for educators, which includes the following language concerning appropriate boundaries between educators and students:

The professional educator respects the rights and dignity of students by:

. . . Interacting with students with transparency and in appropriate settings;

. . . Engaging in physical contact with students only when there is a clearly defined purpose that benefits the student and continually keeps the safety and well-being of the student in mind;

. . . Acknowledging that there are no circumstances that allow for educators to engage in romantic or sexual

relationships with students;

. . . Considering the ramifications of entering into an adult relationship of any kind with a former student, including but not limited to, any potential harm to the former student, public perception, and the possible impact on the educator's career. The professional educator ensures that the adult relationship was not started while the former student was in school.[30]

Though some districts may conduct training for educators and/or other employees regarding appropriate boundaries between school personnel and students, Tennessee does not require it.

Some districts have indicated to OREA that they provide some training to school personnel about appropriate relationships, boundaries, and communications between staff and students, but it is not clear what the training covers, and how often it is provided and to which employees.[31] Some states require training for teachers that includes information about maintaining appropriate relationships with students. A few examples follow:

Missouri state law requires that every school district include, in teacher and employee training, a component on identifying signs of sexual abuse in children and danger signals of potentially abusive relationships between children and adults. The training must emphasize the importance of mandatory reporting of abuse, including the obligation of mandated reporters to report suspected abuse by other mandated reporters, and how to establish an atmosphere of trust so that students feel their school has concerned adults with whom they feel comfortable discussing matters related to abuse.[32]

Oregon requires school districts to provide training to school employees each school year on the prevention and identification of child abuse and sexual conduct, and on the obligations of school employees under state law and under policies adopted by the school board to report child abuse and sexual conduct.[33]

Pennsylvania requires that all school entities and independent contractors of school entities provide a minimum of three hours of training every five years to all employees, including contracted substitute teachers, who have direct contact with children. The mandated training addresses child abuse and sexual misconduct recognition and reporting and must include training on the following specific topics: recognition of the signs of abuse, recognition of the signs of sexual misconduct, reporting requirements for suspected abuse and sexual misconduct; school policies related to reporting of suspected abuse and

sexual misconduct; and maintenance of professional and appropriate relationships with students.[34] (See also "Pennsylvania and Educator Ethics.")

Texas requires that teacher preparation programs must provide information regarding appropriate relationships, boundaries, and communications between educators and students. It further requires that continuing education requirements for classroom teachers must provide information regarding understanding appropriate relationships, boundaries, and communications between educators and students, and that continuing education requirements for principals must include preventing, recognizing, and reporting any sexual conduct between an educator and student that is prohibited under state law or for which reporting is required under state law.[35]

Policy Options

The General Assembly may wish to consider the following questions when examining the issue:

- Should Tennessee define "educator sexual misconduct" more specifically in state law or rule?
- Should school districts adopt (or be required to adopt) board policies that address educators' and other school personnel's social media use and appropriate boundaries with students?
- Should local boards of education clarify existing policies related to reporting requirements for teachers and district officials concerning child sexual abuse and educator sexual misconduct?
- Should the statutory teacher code of ethics be revised to include more detailed expectations of teachers' conduct with students?
- Should local school districts be encouraged or required to provide periodic professional development training that focuses on appropriate boundaries between teachers and students?
- Should Tennessee develop online training concerning educator ethics?

Pennsylvania and Educator Ethics

Pennsylvania has developed, through its Professional Standards and Practices Commission, an online Educator Ethics and Conduct Toolkit with eight units, including Unit 3: Relationships with Students. The toolkit is available entirely online and can be incorporated in teacher education programs, as well as educator professional development programs. The purpose of the toolkit, which uses case studies and suggested reading material, is to help educators develop a framework for making ethical decisions in the course of their work with students. Specifically, the toolkit is meant to ensure that educators:

- understand the fiduciary nature of their relationship with students
- recognize the appropriate student-teacher boundaries
- internalize the values set forth in the Code of Professional Practice and Conduct
- accept the responsibilities associated with being a role model
- recognize ethical dilemmas
- appreciate the consequences of engaging in misconduct and
- understand the professional educator discipline system.

The language used is clear and direct – for example, from Unit 3:

> It has been our experience that when a teacher enters into an inappropriate relationship with a student, the teacher violates the recognized student-teacher boundary and thereby redefines the boundary inappropriately. While some teachers intentionally groom a student for the purpose of engaging in sexual misconduct, others fall prey to the "slippery slope" of misconduct. For example, the teacher-student relationship may initially be appropriate, but at some point the relationship shifts to serving the needs of the teacher and not the needs of the student. There may be an increase in the frequency of interaction as well as an increased level of intimacy, which ultimately may lead to a sexual relationship. In many cases, the teacher takes on a new role with a student, which causes the traditional relationship to become blurred. When teachers become confidants, friends or counselors of students, a dual relationship is created which creates an ambiguity in the student-teacher relationship where roles are less defined. This ambiguity helps to foster inappropriate actions and educator misconduct.

Source: The toolkit is a collaborative effort with Dr. Oliver Dreon, Assistant Professor and Coordinator of the Digital Learning Studio at Millersville University of Pennsylvania; Sandi Sheppeard, Director of GEAR UP and Special Projects in Academic and Student Affairs at the Pennsylvania State System of Higher Education; and the Professional Standards and Practices Commission. It is copyrighted by the Pennsylvania State System of Higher Education. See http://www.pspc.education.pa.gov/Promoting-Ethical-Practices-Resources/Ethics-Toolkit/Pages/default.aspx and http://www.pspc.education.pa.gov/Promoting-Ethical-Practices-Resources/Ethics-Toolkit/Unit3/Pages/The-Teacher---Student-Relationship.aspx.

Endnotes: Section 4

[1] *Tennessee Code Annotated* 49-5-501 and 49-5-511.

[2] *Tennessee Code Annotated* 37-1-403(i)(1) and 49-6-1601.

[3] Robert J. Shoop, Sexual Exploitation in Schools: How to Spot It and Stop It, Thousand Oaks, CA: Corwin Press, 2004, p. 26.

[4] Ibid., p. 50. Caroline Hendrie, "Cost is High When Schools Ignore Abuse," *Education Week*, Dec. 9, 1998.

[5] *Tennessee Code Annotated* 39-13-506 (statutory rape); *Tennessee Code Annotated* 39-13-522 (rape of a child); *Tennessee Code Annotated* 39-13-528 (solicitation of a minor); *Tennessee Code Annotated* 39-13-532 (statutory rape by an authority figure); *Tennessee Code Annotated* 39-13-509 (sexual contact by an authority figure); *Tennessee Code Annotated* 39-13-527 (sexual battery by an authority figure).

[6] *Tennessee Code Annotated* 49-5-501; *Tennessee Code Annotated* 49-5-511.

[7] *Tennessee Code Annotated* 37-1-403(i)(1) and 49-6-1601.

[8] Rules of the State Board of Education, Chapter 0520-02-03-.09 (2), Educator Licensure: Denial, Formal Reprimand, Suspension, and Revocation, adopted as an emergency rule July 28, 2017. See Appendix C for the current version of the rule in emergency status, Appendix D for the version that is scheduled to become effective March 5, 2018, and Appendix E for the rule that preceded these versions.

[9] Tennessee State Board of Education, Teacher Discipline Subcommittee, May 2016.

[10] Rules of the State Board of Education, Chapter 0520-02-03-.09, Educator Licensure: Denial, Formal Reprimand, Suspension, and Revocation, adopted as emergency rule July 28, 2017. See Appendix D, which contains the definitions as shown in this report. Appendix D is the version that has been approved by the Attorney General and will become effective March 5, 2018.

[11] Ibid.

[12] Bristol City Schools Board of Education Policy, Staff-Student Relations, 6.180, Effective: Oct. 13, 2014; Knox County Board of Education Policy, Staff-Student Relations, G-140, Revised: June 2017.

[13] Ibid.

[14] *Tennessee Code Annotated* 37-1-605(a)(4).

[15] *Tennessee Code Annotated* 37-1-403(i)(1).

[16] *Tennessee Code Annotated* 49-6-1601.

[17] OREA analysis of district policies.

[18] U.S. Department of Education, Questions and Answers on Title IX and Sexual Violence, April 2014, pp. 3-4, https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf.

[19] *Tennessee Code Annotated* 37-1-403(i)(1); 37-1-605; and 49-6-1601.

[20] Arlington Community Schools Board, Child Abuse and Child Sexual Abuse, 6.409, Last Issued: July 26, 2016, http://acsk-12.org/wp-content/uploads/2017/03/6.409.pdf.

[21] Clarksville-Montgomery County Schools, Reporting Suspected Child Abuse, Administrative Policy HUM-A009, Revised Feb. 13, 2017, http://www.cmcss.net/iso/masterdocs/HUM-A009.pdf (accessed Sept. 5, 2017).

[22] Hamilton County Board of Education, Child Abuse and Neglect, 6.409, Issued: May 19, 2016, http://images.pcmac.org/Uploads/HamiltonCountyDE/HamiltonCountyDE/Departments/DocumentsSubCategories/Documents/6.409_Child_Abuse_and_Neglect.pdf.

[23] U.S. Government Accountability Office, Child Welfare: Federal Agencies Can Better Support State Efforts to Prevent and Respond to Sexual Abuse by School Personnel, Jan. 2014, pp. 27-29, https://www.gao.gov/assets/670/660375.pdf (accessed July 28, 2017).

[24] Ibid.

[25] *Tennessee Code Annotated* 49-5-1001, et seq.; 49-5-511; and 49-5-501(3)(D).

[26] *Tennessee Code Annotated* 49-5-1001, et seq.

[27] Georgia, The Code of Ethics for Educators, effective June 15, 2015, p. 2, https://www.gapsc.com/Rules/Current/Ethics/505-6-.01.pdf.

[28] Ohio Department of Education, Licensure Code of Professional Conduct for Ohio Educators, adopted March 11, 2008, State Board of Education, http://education.ohio.gov/getattachment/Topics/Teaching/Educator-Conduct/Licensure-Code-of-Professional-Conduct-for-Ohio-Ed/Licensure-Code-of-Professional-Conduct.pdf.aspx.

[29] Pennsylvania, Code of Professional Conduct for Educators, http://www.pacode.com/secure/data/022/chapter235/022_0235.pdf.

[30] National Association of State Directors of Teacher Education and Certification, Model Code of Ethics for Educators, http://www.nasdtec.net/?page=MCEE_Doc.

[31] OREA collection of information from Tennessee school districts, July 2017.

[32] Missouri, Senate Bill 54, 2011, http://www.senate.mo.gov/11info/pdf-bill/tat/SB54.pdf.

[33] Oregon, Enrolled House Bill 2062, 2009 https://olis.leg.state.or.us/liz/2009R1/Downloads/MeasureDocument/HB2062.

[34] Pennsylvania, Act 126, 2012, http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2012&sessInd=0&act=126.

[35] Texas, SB 7, 2017, https://legiscan.com/TX/text/SB7/id/1616562/Texas-2017-SB7-Enrolled.html.

Section 5: Child Sexual Abuse Prevention Curriculums

According to health education experts, children should be taught about personal safety, appropriate relationships, and boundaries in a manner suitable to grade level and age.[1] In 2014, Tennessee updated its law that required the Tennessee Department of Education (TDOE) and the Department of Children's Services (DCS) to enhance or adopt curriculum materials related to child sexual abuse prevention for students in grades K-6 to include information on sexual abuse that may occur in the home and to expand the grade band to K-12.[2] Districts have the option, but are not required, to offer health education courses. Because health education is not included in the state's required tests, it is difficult to determine the extent to which it, and specifically the subject of sexual abuse prevention, is taught in schools.[3]

Although the health education standards adopted by the State Board of Education include standards on personal safety and appropriate relationships, it is up to local school districts to select the curriculum and instructional materials they use to teach the standards.[4]

Today, education materials related to personal safety, appropriate relationships, and boundaries – topics that would be most likely to coincide with discussions related to child sexual abuse – may be taught to Tennessee students through several different education standards or education programs. Districts can incorporate sexual abuse prevention in schools by offering health education courses in grades K-12, through various school counseling programs, or, if required by law, through family life education programming. They may choose to deliver targeted instruction on a certain topic using guest speakers or with the assistance of an outside professional agency.

Health Education Standards

Districts do not have to implement a health education curriculum, but if they choose to offer one, they must follow the state's health education standards.[5] The State Board of Education (SBE) approved updated health education standards for implementation in the 2018-19 school year for grades preK-12.[6] No specific courses for health education are required in elementary or middle school, but high school students are required to take one credit of Lifetime Wellness to graduate.[7] As of 2015-16, 38 percent of school districts reported that they were providing comprehensive health education for all students.[8]

The updated health education standards do not explicitly address sexual abuse, but include components on personal and physical safety that address topics in K-5 such as appropriate and inappropriate touching, recognizing situations that need to be reported to an adult, identifying refusal skills for when to say no, and identifying situations that require adult intervention. The standards for grades 6-8 include topics such as refusal and negotiation skills, comparing and contrasting the characteristics of healthy and unhealthy relationships, and analyzing the similarities and differences between friendships and romantic relationships. The lifetime wellness standards for high school broadly address positive relationships and appropriate refusal skills; classroom teachers have discretion in determining if or how to incorporate sexual abuse information based on the district's curriculum.[9]

School Counseling Standards

By law, every school district is required to employ or contract with school counselors for preK-12 to provide preventive and developmental counseling to students.[10] In April 2017, SBE adopted an updated model and standards policy for School Counseling that will go into effect for the 2018-19 school year with 2017-18 serving as the transition and planning year.[11] Among other standards related to academics and college and career readiness, the social and emotional standards for school counselors require students to be able to compare and contrast healthy and unhealthy behaviors, distinguish appropriate behaviors for a variety of settings and situations, and appropriately utilize social media to enhance learning, develop positive relationships, communicate, and engage in age appropriate entertainment.[12]

Family life education

State law requires that any school district in a county with a pregnancy rate higher than 19.5 pregnancies per 1,000 females aged 15-17 must adopt and implement a family life education program.[13] Among other things, the family life instruction must teach students:

- about the positive results of avoiding sexual activity;
- how to identify and form healthy and unhealthy relationships;
- how to communicate with a parent, guardian, or other trusted adult about sex or other risk behaviors; and
- how to practice refusal skills that will help them resist sexual activity.[14]

As of 2016, 18 districts are required by law to implement a family life curriculum.[15] In a 2013 report, OREA found it difficult to determine the level of school districts' compliance with family life education curriculum and instruction.[16]

School districts are not explicitly required to teach topics related to sexual abuse prevention. However, in 2014, the Tennessee General Assembly passed Erin's Law, encouraging schools to provide age-appropriate instruction to students in K-12 on personal body safety and how to report sexual abuse.

The original version of Tennessee's sexual abuse prevention law, passed in 1985, required the development of a state plan to address child sexual abuse. The law also required TDOE and SBE to develop ways to inform and instruct both students and appropriate school personnel in all public school districts about the detection, intervention, prevention, and treatment of child sexual abuse, as well as the proper action to take in a suspected case of abuse. TDOE and SBE were to create curriculum materials to assist instructional personnel in delivering the instruction.[17]

In 2014, the Tennessee General Assembly updated the sexual abuse education law as Erin's Law, Public Chapter 706, named after a childhood sexual assault survivor who has advocated for states to pass laws addressing sexual abuse prevention.[18] As of fall 2017, the law has passed in some form in 31 states.[19] Tennessee's version of Erin's Law expands the instruction from K-6 to K-12 and includes instruction on sexual abuse that may occur in the home.[20] While the law does not mandate districts to implement any kind of sexual abuse prevention curriculum, it does require TDOE, DCS, and SBE to work together to create a comprehensive plan and corresponding curriculum materials that would address the detection, intervention, prevention, and treatment of child sex abuse for grades K-12.[21]

The guidelines include links to existing sexual abuse prevention curricula districts may choose to use and outlines best practices for implementing.[22] Among the guidelines are recommendations to include multiple sessions conducted at least annually, at developmentally appropriate levels, delivered by a wide range of professionals including teachers, counselors, and outside agencies.[23] The guidelines also recommend that programs include a professional

training component for administrators, teachers, and other school personnel on talking to students about child sexual abuse prevention, effects of child sexual abuse on children, handling disclosures, and mandated reporting.[24]

In 2006, the Tennessee General Assembly passed Public Chapter 824 to address sexual violence awareness curriculums for middle and high school students as a part of the wellness, family life, or safety, or other existing curricula.[25] TDOE has identified the Michigan Model for Health as a recommended curriculum districts may use to comply with PC 824 or Erin's Law. Districts may use other curriculums, but they must be aligned to the state's health education standards.[26]

Several other states passed legislation similar to Tennessee's version of Erin's Law that requires the creation of a curriculum, plan, or guidelines to address sexual abuse but does not necessarily require implementation at the school level (Colorado, Michigan, Missouri).[27] Some states, however, *require* school districts to implement a health education curriculum that specifically addresses child sexual abuse prevention (Alaska, Louisiana, Oregon, Texas, Utah, Vermont).[28] For example, Oregon passed legislation in 2015 that requires developmentally-appropriate, evidence-based education on child sexual abuse for school children in K-12. Four sessions are to be provided each year in each grade, and the law also calls for professional development of administrators, teachers, and other school personnel on the issue. Parents are to be provided information, including how to discuss child sexual abuse with their children.[29]

Topics related to sexual abuse prevention and reporting are not included on required state tests; therefore, it is difficult to determine how schools are addressing sexual abuse prevention and reporting in the standards.

Because health education is not a tested subject, it is difficult to determine the extent to which districts are using the recommended curriculums or addressing topics related to sexual abuse prevention and reporting. In general, TDOE does not collect information on curriculums used at the local level; however, should a district choose to implement a health education curriculum as a part of its coordinated school health programming, the district must identify the curriculum used for health education, and the curriculum must follow the state standards.[30] Established in 2000, TDOE's Office of Coordinated School Health is responsible for improving student health outcomes and supporting the connection between good health practices, academic achievement, and lifetime wellness. The Coordinated School Health

program encompasses eight components related to student outcomes, including a component on health education. CSH coordinators are responsible for overseeing and supporting the implementation of all components of CSH in their district.[31]

Policy Options

The General Assembly may wish to consider the following questions when examining the issue:

- Should school districts be required to include sexual abuse prevention instruction in their K-12 curriculums?
- Is there data that could be collected by the Department of Education that would better inform stakeholders if or how districts are addressing topics related to sexual abuse prevention?
- Could the Department of Education provide more support or make resources more readily available for districts to access when teaching students about issues related to sexual abuse prevention and reporting?

The Department of Human Services requires a personal safety curriculum for pre-school children ages 3-5

Licensed child care centers in Tennessee are required under Department of Human Service's rules to deliver a personal safety curriculum at least once a year to children three and older. The curriculum must include a component that addresses child sexual abuse prevention for children four years and older. Additionally, all staff in preschool and child care agencies are required to receive training in the detection, intervention, prevention, and treatment of child sexual abuse. DHS currently requires childcare agencies to use the Keeping Kids Safe Curriculum which describes its purpose as:

To improve the knowledge, self-confidence and assertiveness skills of children thereby:

- Promoting disclosure of victimization
- Enhancing communication between parents and children about personal safety
- Reinforcing adult supervision and protection
- Assisting children in learning to identify adults they can trust who can help them with problems too big for them to handle alone.

Tennessee Department of Human Services, Adult and Family Services Division, Licensure Rules for Child Care Centers, Chapter 1240-04-03.09(7)(g); Tennessee Department of Human Services, Keeping Kids Safe, p. 13.

Endnotes: Section 5

[1] David Finkelhor, "Prevention of childhood sexual abuse," The Future of Children, Vol. 19, No. 2, Fall 2009, http://www.unh.edu/ccrc/pdf/CV192.pdf (accessed Dec. 4, 2017).

[2] 94th Tennessee General Assembly, Public Acts, 1985, Chapter No. 478, An act relative to certain victimized children and certain offenders; 108th Tennessee General Assembly, Public Acts, 2014, Chapter No. 706, An act relative to the detection, intervention and prevention of child sexual abuse.

[3] Tennessee Department of Education, email, Nov. 27, 2017.

[4] *Tennessee Code Annotated* 49-1-314.

[5] *Tennessee Code Annotated* 49-6-1022; Tennessee Department of Education, email, Nov. 27, 2017.

[6] Tennessee State Board of Education, Tennessee Health Education and Lifetime Wellness Standards, Grades K-12. https://www.tn.gov/education/instruction/academic-standards/health-pe-wellness-standards.html (accessed Nov. 28, 2017).

[7] Tennessee State Board of Education, High School Policy, 2.103, Revised Dec. 15, 2016, p. 1.

[8] Tennessee Department of Education, Office of Coordinated School Health, email, May 23, 2017; Coordinated School Health, Annual Report, 2015-16 School Year, p. 12.

[9] Tennessee State Board of Education, Tennessee Health Education and Lifetime Wellness Standards, Grades K-12. https://www.tn.gov/education/instruction/academic-standards/health-pe-wellness-standards.html (accessed Nov. 28, 2017).

[10] *Tennessee Code Annotated* 49-6-303(a)(1) and (3).

[11] Tennessee Department of Education, Frequently Asked Questions: Revised School Counseling Model of Practice and Standards, Oct. 2016; Tennessee Department of Education, email, Nov. 27, 2017.

[12] Tennessee State Board of Education, School Counseling Model and Standards Policy, 5.103, Revised April 2017.

[13] *Tennessee Code Annotated* 49-6-1301.

[14] *Tennessee Code Annotated* 49-6-1304(a).

[15] Tennessee Department of Health, Number of Pregnancies with Rates Per 1,000 Females Aged 15-17, By Race, For Counties of Tennessee, Resident Data, 2016, https://www.tn.gov/content/dam/tn/health/documents/TN_Pregnancy_Rates_Age_15-17_-_2016.pdf (accessed Nov. 30, 2017).

[16] Comptroller of the Treasury, Office of Research and Education Accountability, *Response to Public Chapter 585 (2012): HIV/AIDS Prevention Education in Tennessee Public Schools*, Revised Jan. 2014, http://www.comptroller.tn.gov/Repository/RE/revisedHIVAIDS.pdf; *Tennessee Code Annotated* 49-6-1304.

[17] 94th Tennessee General Assembly, Public Acts, 1985, Chapter No. 478, An act relative to certain victimized children and certain offenders.

[18] 108th Tennessee General Assembly, Public Acts, 2014, Chapter No. 706, An act relative to the detection, intervention and prevention of child sexual abuse.

[19] Erin's Law, "What is Erin's Law?" http://www.erinslaw.org/erins-law/ (Accessed September 25, 2017).

[20] Tennessee Joint Task Force on Children's Justice and Child Sexual Abuse, "Practice Guidelines and Resources for Implementing Erin's Law," June 2016.

[21] 108th Tennessee General Assembly, Public Acts, 2014, Chapter No. 706, An act relative to the detection, intervention and prevention of child sexual abuse.

[22] Tennessee Joint Task Force on Children's Justice and Child Sexual Abuse, "Practice Guidelines and Resources for Implementing Erin's Law," June 2016.

[23] Ibid.

[24] Ibid.

[25] 104th Tennessee General Assembly, Public Acts, 2006, Chapter No. 824, An act relative to sexual violence awareness and prevention curriculum.

[26] Tennessee Department of Education, email, Nov. 27, 2017.

[27] National Conference of State Legislatures, Child Sexual Abuse Prevention: Erin's Law, Aug. 19, 2015, http://www.ncsl.org/research/human-services/erins-law-and-child-sexual-abuse-prevention-laws.aspx.

[28] Ibid.; Jetta Bernier, *State and Federal Legislative Efforts to Prevent Child Abuse*, Prevent Child Abuse America, 2015, pp. 7, 10, 17, and 18, http://www.preventchildabuse.org/images/docs/PCA_MK_CSAstatusreport.pdf (accessed Sept. 25, 2017).

[29] Oregon, Enrolled Senate Bill 856, 2015, https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/SB856; Jetta Bernier, *State and Federal Legislative Efforts to Prevent Child Abuse*, Prevent Child Abuse America, 2015, pp. 7, 10, 17, and 18, http://www.preventchildabuse.org/images/docs/PCA_MK_CSAstatusreport.pdf (accessed Sept. 25, 2017).

[30] Ibid.

[31] Ibid.

Appendix A: Agencies and Organizations Contacted for Information

Georgia Professional Standards Commission

Kentucky Professional Standards Board

Metro Nashville Public Schools, Departments of Human Resources and Charter Schools

Nashville Children's Alliance

Professional Educators of Tennessee

Tennessee Bureau of Investigation

Tennessee Comptroller of the Treasury, Division of Investigations and Division of State Audit

Tennessee Department of Children's Services

- Office of General Counsel
- Special Investigations Unit

Tennessee Department of Education

- Office of General Counsel (current as well as former)
- Office of Educator Licensing
- Coordinated School Health
- School Choice
- School Counseling

Tennessee Education Association

Tennessee General Assembly, Legislative Attorney, Office of Legal Services

Tennessee Organization of School Superintendents

Tennessee School Boards Association

Tennessee Sexual Assault Center

Tennessee State Board of Education

The Tennessean

Appendix B: Response Letter from SBE

BILL HASLAM
GOVERNOR

DR. SARA H. MORRISON
EXECUTIVE DIRECTOR

TENNESSEE
STATE BOARD OF EDUCATION
1ST FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-1050
(615) 741-2966 (615) 741-0371 fax
www.tn.gov/sbe

November 22, 2017

Russell Moore, Director
Office of Research and Education Accountability
State Capitol
Nashville, TN 37243-9034

Re: *Educator Sexual Misconduct in Tennessee Schools Report*

Dear Mr. Moore,

The Tennessee State Board of Education (State Board) would like to thank you for the opportunity to provide feedback on the Office of Research and Education Accountability's (OREA) "Educator Sexual Misconduct in Tennessee Schools" report. The State Board appreciates the work your office has done in researching and reporting on the very important issue of protecting children from educators with a history of sexual misconduct. Furthermore, we welcome the attention this report gives to this issue and agree wholeheartedly that we must work together across agencies to ensure that the students in our classrooms are taught only by educators we know to be capable of upholding the highest expectations for the profession.

In January 2016, the State Board undertook revising its educator discipline rule in an effort to update and clarify its provisions for educators, districts and parents alike. In addition, in May 2017, a new staff attorney was hired who has worked diligently toward eliminating the backlog of licensure cases and has increased the communication with the Office of Educator Licensure (OEL) at the Tennessee Department of Education, which has led to a better workflow between the State Board and OEL.

Notwithstanding the improvements made thus far, the State Board is committed to ongoing examination of our processes to ensure we review and administer licensure cases with accuracy and efficiency. In that vein, the State Board greatly appreciates the thoughtful policy recommendations contained in the report and agrees with the recommendations, especially the need for greater capacity at the state level. Unlike the majority of jurisdictions, Tennessee only has one full-time employee dedicated to educator licensure discipline. In order for the State Board to fully implement the suggestions contained in the report, at minimum, the State Board needs an additional attorney and a paralegal, positions for which our current budget does not support.

On behalf of our board and team members, we are grateful for the opportunity to work with OREA, the administration and the General Assembly regarding Tennessee's educator licensure system and looks forward to future collaboration in this critical area.

Please do not hesitate to contact me if the State Board can be of any additional assistance.

Sincerely,

Sara H. Morrison Ed.D
Executive Director
Tennessee State Board of Education

Appendix C: Revised Educator Licensure Rule, Emergency Status, State Board of Education

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-02-03
EDUCATOR LICENSURE

This rule is currently in emergency status as of the publication of this report. See Appendix D for an updated version of this rule, which the State Board of Education plans to adopt as a permanent rule once it completes the promulgation process. See Appendix E for the version of the rule that preceded this one.

0520-02-03-.09 DENIAL, FORMAL REPRIMAND, SUSPENSION, AND REVOCATION.

(1) Definitions and Examples:

(a) Conviction - Conviction resulting from a judgment of conviction or on a plea of guilty, a plea of no contest, or an order granting diversion under T.C.A. §§ 40-15-101 *et seq*. or 40-35-313.

(b) Formal Reprimand - A less harsh licensing action than the suspension, revocation, or denial of a license, which admonishes an educator for certain conduct under this rule. An educator who has been reprimanded by the Board will receive a letter from the State Board of Education, which will become part of the educator's state and local record, indicating that the inappropriate conduct is discouraged and shall be subject to further disciplinary action if repeated.

(c) Inappropriate Communication (Explicit) - Any communication between an educator and a student that describes, represents, or alludes to sexual activity or any other illicit activity.

(d) Inappropriate Communication (Non-Explicit) – Any communication between an educator and a student that is beyond the scope of the educator's professional responsibilities. Examples of such non-explicit inappropriate communications include, but are not limited to, those communications that discuss the teaching staff member's or student's past or current romantic relationships; those that include the use of profanities or obscene language; those that are harassing, intimidating, or bullying; those that attempt to establish a personal relationship with a student; and those that are related to personal or confidential information regarding another school staff member or student.

(e) Inappropriate Physical Contact - Unnecessary and unjustified physical contact with a student. Examples of such unnecessary and unjustified contact include, but are not limited to sexual contact, physical altercations, horseplay, tickling, improper use of corporal punishment, and rough housing.

(f) Inappropriate Physical Contact With Harm – Inappropriate physical contact as described in subsection (e) above that results in physical or mental harm or the potential of physical or mental harm to a student.

(g) Major Testing Breach - A breach of test security that results in nullification of test scores.

(h) Minor Testing Breach - A breach of test security that does not result in nullification of any test scores.

(i) Negligence - Failure to exercise the care toward others that a reasonable or prudent person would exercise under the circumstances or taking action that a reasonable person would not.

(j) Official School Business – Any activity undertaken by an educator in an official capacity and in connection with the educator's employment.

(k) Other Good Cause – Conduct that calls into question the fitness of an educator to hold a license including, but not limited to, noncompliance with security guidelines for Tennessee Comprehensive Assessment Program (TCAP) or successor tests pursuant to T.C.A. § 49-1-607, failure to report licensure actions under parts (3) or (4), or violation of any provision in the Teacher Code of Ethics as contained in T.C.A. § 49-5-1003.

(l) Permanent Revocation – The nullification of an educator's license without eligibility for future reinstatement.

(m) School Premises – Any real property and/or land owned, leased, managed, controlled, or under the custody of a state or local education agency, school system, or school.

(n) School Property – Any property owned, leased, managed, controlled, or under the custody of a state or local education agency, school system, or school.

(o) School Related Activity – Any activity in which a student participates, including but not limited to classes, meetings, extracurricular activities, clubs, athletics, and field trips, sponsored by the school, state educational agency, or local educational agency.

(p) Suspension – The nullification of an educator's license for a predetermined term, after which the license is automatically reinstated. Reinstatement may be subject to the completion of terms and conditions contained in the order of suspension.

(q) Revocation – The nullification of an educator's license for a period of at least five (5) years, after which an educator may petition the State Board for reinstatement.

(2) Notification of Office of Educator Licensing - It is the responsibility of the Director of Schools of the employing public or non-public school or school system or his or her designee to inform the Office of Educator Licensing of licensed educators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under parts (3) or (4). The report shall be submitted within thirty (30) days of the suspension, dismissal, or resignation. The Director of Schools or his or her designee shall also report felony convictions of licensed educators within thirty (30) days of receiving knowledge of the conviction. School systems have a duty to respond to State Board inquiries and provide to the State Board any available documentation requested concerning the allegations contained in the notice.

(3) The State Board of Education may revoke, suspend, formally reprimand, or refuse to issue or renew an educator's license for the following reasons:

(a) Conviction of a felony;

(b) Conviction of possession of illegal drugs;

(c) Being on school premises, at a school-related activity involving students, or on official school business, while possessing or consuming alcohol or illegal drugs;

(d) Falsification or altering of a license or documentation required for licensure;

(e) Inappropriate physical contact with a student;

(f) Denial, suspension, or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension, or revocation under this rule;

(g) Other good cause as defined in section (1)(k) of this rule; or

(h) Any offense contained in part (4) of this rule.

(4) Disciplinary Actions

(a) Automatic Revocation of License – The State Board of Education shall automatically revoke, without the right to a hearing, the license of an educator upon receiving verification of the identity of the licensed educator together with a certified copy of a criminal record showing that the licensed educator has been convicted of any offense listed at T.C.A. §§ 40-35-501(i)(2), 39-17-417, a sexual offense or a violent sexual offense as defined in 40-39-202, any offense in title 39, chapter 13, 39-14-301 and 39-14-302, 39-14-401 and 39-14-404, 39-15-401 and 39-15-402, 39-17-1320, or any other offense in title 39, chapter 17, part 13 (including conviction for the same or similar offense in any jurisdiction). The Board will notify persons whose licenses are subject to automatic revocation at least thirty (30) days prior to the Board meeting at which such revocation shall occur.

(b) Automatic Suspension of License - The State Board of Education shall automatically suspend the license of an educator for the following offenses:

1. Default on a student loan pursuant to T.C.A. § 49-5-108(d)(2); or

2. Failure to comply with an order of support for alimony or child support, pursuant to T.C.A. §36-5-706.

(c) For the following categories of offenses, the State Board of Education shall impose uniform disciplinary action as detailed below:

1. Conviction of a felony

(i) Upon receiving notification that an individual has been convicted of a felony, the Board may revoke or permanently revoke the convicted individual's educator license.

2. Use or possession of alcohol or illicit substances

(i) An individual holding an educator's license who is found to be in possession of, or otherwise using, alcohol or illicit substances while on school premises or property when children are present shall be subject to a disciplinary action within the range of suspension for not less than one (1) year up to and including revocation.

(ii) An individual holding an educator's license who is found to be in possession of, or otherwise using, alcohol or illicit substances while on school premises or property without children present shall be subject to a disciplinary action within the range of suspension for not less than one (1) year up to and including revocation.

(iii) An individual holding an educator's license who is found to be in possession of, or otherwise using, alcohol or illicit substances while not on school premises or property, but while participating in school related activities with children present, shall be subject to a disciplinary action within the range of suspension for not less than one (1) year up to and including revocation.

(iv) An individual holding an educator's license who is found to be in possession of, or otherwise using, alcohol or illicit substances while not on school premises or property, but participating in school related activities without children present, shall be subject to a disciplinary action within the range of suspension for not less than six (6) months up to and including a two (2) - year suspension.

3. Negligence in the commission of duties as an educator

(i) An individual holding an educator's license who is found to be negligent in his or her commission of duties as an educator in such a manner that does not result in harm to a child shall be subject to a disciplinary action within the range of a letter of formal reprimand up to and including a two (2)-year suspension.

(ii) An individual holding an educator's license who is found to be negligent in their commission of duties as an educator in such a manner that results in harm to a child, shall be subject to a disciplinary action within the range of suspension for no less than one (1) year up to and including permanent revocation.

4. Testing breaches

(i) An individual holding an educator's license who is found to have committed a minor testing breach shall be subject to a disciplinary action within the range of a letter of formal reprimand up to and including a suspension not to exceed one (1) year.

(ii) An individual holding an educator's license who is found to have committed a major testing breach shall be subject to a disciplinary action within the range of a suspension of no less than one (1) year up to and including revocation.

5. Unprofessionalism

(i) An individual holding an educator's license who is found to have administered inappropriate disciplinary measures to a student shall be subject to a disciplinary action within the range of a suspension for no less than one (1) year up to and including permanent revocation.

(ii) An individual holding an educator's license who is found to have engaged in non-explicit inappropriate communication with a student shall be subject to a disciplinary action within the range of a suspension for no less than three (3) months up to and including revocation.

(iii) An individual holding an educator's license who is found to have engaged in inappropriate communication of an explicit nature with a student shall be subject to permanent revocation.

(iv) An individual holding an educator's license who is found to have inappropriately used school property shall be subject to a disciplinary action within the range of a suspension for no less than three (3) months up to and including revocation.

6. Inappropriate Physical Contact

(i) An individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that does not result in harm or potential harm to the student shall be subject to a disciplinary action within the range of a formal reprimand up to and including suspension for two (2) years.

(ii) An individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that results in harm or potential harm to the student shall be subject to a disciplinary action within the range of a suspension for not less than two (2) years up to and including permanent revocation.

7. Falsification of Licensure Documentation - An individual holding an educator's license who is found to have falsified licensure documentation shall be subject to a disciplinary action within the range of revocation or permanent revocation.

8. Violation of the Teacher Code of Ethics - An individual holding an educator's license who is found to have violated the teacher code of ethics shall be subject to a disciplinary action within the range of one (1) year up to and including revocation.

(d) Similar offenses – Actions related or similar to the above-enumerated offenses shall carry recommended disciplinary action commensurate with the range established for the similar offense.

(e) Nothing in this part shall prevent an educator from exercising his or her lawful authority to use reasonable force when necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another person pursuant to T.C.A. § 49-6-4107.

(f) Repeated violations – Individuals holding an educator's license who are subject to multiple disciplinary actions by the Board shall face disciplinary action in excess of the recommended ranges. A third violation, regardless of severity, shall be subject to a recommendation of revocation.

(g) Nothing in this rule shall prohibit the State Board from imposing a disciplinary action outside of the uniform discipline range upon good cause shown in extraordinary circumstances.

(5) Restoration of License

(a) Suspension

1. A person whose license has been suspended under parts (3) or (4) of this rule shall have his or her educator's license restored after the period of suspension has been completed, and, where applicable, the person has complied with all terms prescribed by the State Board. Suspended licenses are subject to the expiration and renewal rules of the State Board.

(b) Denial or Revocation

1. A person whose license has been denied or revoked under parts (3) or (4) of this rule may apply to the State Board to have the license issued or restored upon application showing that the cause for denial or revocation no longer exists and that the person has complied with any terms imposed in the order of denial or revocation. In the case of a felony conviction, before an application will be considered, the person must also show that any sentence imposed, including any pre-trial diversion or probationary period, has been completed. Application for such issuance or restoration shall be made to the Office of Educator Licensing and forwarded to State Board counsel.

2. A person whose license has been revoked under parts (3) or (4) of this rule shall not be eligible to reapply for licensure for a period of no less than five (5) years from the time at which the license was initially revoked.

3. In any deliberation by the Board of Education to restore a license that has been revoked, there will be a rebuttable presumption that an educator whose license has been revoked is unfit for licensure. Nothing in this section is intended to guarantee restoration of a license.

(6) Presumptive Denial – There shall be a rebuttable presumption that any person applying for an educator's license who has committed an offense that would subject him or her to revocation if licensed shall be ineligible to receive a Tennessee educator's license.

(7) Scope of Disciplinary Action – A person whose license has been denied, suspended, or revoked may not serve as a volunteer or be employed, directly or indirectly, as an educator, paraprofessional, aide, substitute teacher, or in any other position during the period of the denial, suspension, or revocation.

(8) Notice of Hearing – Any person who is formally reprimanded or whose license is to be denied, suspended, or revoked under parts (3) or (4) of this rule shall be entitled to written notice and an opportunity for a hearing to be conducted as a contested case under the Tennessee Uniform Administrative Procedures Act, T.C.A. § 4-5- 301, *et seq*.

(9) Discipline Schedule – The following chart outlines the least and greatest first-time disciplinary ranges for the offenses listed as indicated by the shaded squares.

	Letter of Formal Reprimand	**Suspension of 3 months up to and including 6 months**	**Suspension of 6 months up to and including 1 Year**	**Suspension of 1 Year up to and including 18 Months**	**Suspension of 18 months up to and including 2 Years**	**Suspension of 2 years up to and including Revocation**	**Revocation**	**Permanent Revocation**
Minor Testing Breach								
Negligence w/o Harm or Potential Harm								
Inappropriate Physical Contact w/o Harm								
Unprofessionalism — Inappropriate Communication (Non-Explicit)								
Unprofessionalism — Inappropriate Use of School Property								
Possession/Use - Off School Premises/Property w/o Children Present During School Related Activity								
Possession/Use - Off School Premises/Property w/ Children								
Possession/Use - On School Premises/Property w/o Children								
Possession/Use - On School Premises/Property w/ Children								
Major Testing Breach								
Violation of Teacher Code of Ethics								
Negligence w/ Harm or Potential Harm to a Student								
Inappropriate Disciplinary Measures								
Inappropriate Physical Contact with Harm								
Felony Conviction								
Falsification of Licensure Documentation								
Unprofessionalism - Inappropriate Communication (Explicit)								

Authority: *T.C.A. § 49-1-302.* **Administrative History:** *Repeal and new rule filed December 18, 2015; effective March 18, 2015. A stay of the rule was filed January 28, 2015; new effective date June 1, 2015. Amendment filed May 29, 2015; effective August 27, 2015. Emergency rule filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.*

Appendix D: Revised Educator Licensure Rule, Pending Promulgation, State Board of Education

This version of the rule has been approved by the Attorney General as of the publication of this report and will become effective March 5, 2018. See Appendix C for the version that is currently in emergency status. See Appendix E for the version that preceded both versions shown in Appendices C and D.

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-02-03
EDUCATOR LICENSURE

0520-02-03-.09 DENIAL, FORMAL REPRIMAND, SUSPENSION, AND REVOCATION.

(1) Definitions and Examples:

(a) Conviction - Means a judgment entered by a court upon a plea of guilty, a plea of nolo contendere, a finding of guilt by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from the judgment. Conviction includes, but is not limited to, a conviction by a federal court or military tribunal, including a court-martial conducted by the armed forces of the United States, and a conviction, whether upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court, in any other state of the United States, other jurisdiction, or other country. Conviction also includes a plea taken in conjunction with § 40-35-313 or its equivalent in any other jurisdiction.

(b) Formal Reprimand - A less harsh licensing action than the suspension, revocation, or denial of a license, which admonishes an educator for certain conduct under this rule. An educator who has been reprimanded by the Board will receive a letter from the State Board of Education, which will become part of the educator's state and local record, indicating that the inappropriate conduct is discouraged and shall be subject to further disciplinary action if repeated.

(c) Inappropriate Communication (Explicit) - Any communication between an educator and a student that describes, represents, or alludes to sexual activity or any other illicit activity. This shall not be construed to prevent an educator from communication regarding sexual or illicit activities for educational purposes such as in teaching family-life curriculum pursuant to T.C.A. § 49-6-1307 *et seq* or drug abuse resistance education pursuant to T.C.A. § 49-1-402.

(d) Inappropriate Communication (Non-Explicit) – Any communication between an educator and a student that is beyond the scope of the educator's professional responsibilities. Examples of such non-explicit inappropriate communications include, but are not limited to, those communications that discuss the teaching staff member's or student's past or current romantic relationships; those that include the use of profanities or obscene language; those that are harassing, intimidating, or bullying; those that attempt to establish an innapopriatepersonal relationship with a student ; and those that are related to personal or confidential information regarding another school staff member or student.

(Rule 0520-02-03-.09, continued)

(e) Inappropriate Physical Contact – Unlawful, unnecessary, and unjustified physical contact with a student. Examples of such unnecessary and unjustified contact include, but are not limited to, sexual contact, physical altercations, horseplay, tickling, improper use of corporal punishment, and rough housing.

(f) Inappropriate Physical Contact With Harm – Inappropriate physical contact as described in subparagraph (e) above that results in physical or mental harm or the potential of physical or mental harm to a student.

(g) Major Testing Breach - A breach of test security that results in nullification of test scores, as determined by the Department of Education.

(h) Minor Testing Breach - A breach of test security that does not result in nullification of any test scores, as determined by the Department of Education.

(i) Negligence - Failure to exercise the care toward others that a reasonable or prudent person would exercise under the circumstances or taking action that a reasonable person would not.

(j) Official School Business – Any activity undertaken by an educator in an official capacity and in connection with the educator's employment. Examples include, but are not limited to, conferences, professional development, trainings, and seminars.

(k) Other Good Cause – Conduct that calls into question the fitness of an educator to hold a license including, but not limited to, noncompliance with security guidelines for Tennessee Comprehensive Assessment Program (TCAP) or successor tests pursuant to T.C.A. § 49-1-607, failure to report as required under paragraph (2), or violation of any provision in the Teacher Code of Ethics as contained in T.C.A. § 49-5-1001, *et seq*.

(l) Permanent Revocation – The nullification of an educator's license without eligibility for future reinstatement.

(m) School Premises – Any real property and/or land owned, leased, managed, controlled, or under the custody of a state or local education agency, school system, or school.

(n) School Property – Any property owned, leased, managed, controlled, or under the custody of a state or local education agency, school system, or school.

(o) School Related Activity – Any activity in which a student participates, including but not limited to classes, meetings, extracurricular activities, clubs, athletics, and field trips, sponsored by the school, state educational agency, or local educational agency.

(p) Suspension – The nullification of an educator's license for a predetermined term, after which the license is automatically reinstated. Reinstatement may be subject to the completion of terms and conditions contained in the order of suspension.

(q) Revocation – The nullification of an educator's license for a period of at least five (5) years, after which an educator may petition the State Board for reinstatement.

(Rule 0520-02-03-.09, continued)

(2) Notification of Office of Educator Licensing - It is the responsibility of the Director of Schools of the employing public or non-public school or school system or his or her designee to inform the Office of Educator Licensing of licensed educators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under paragraphs (3), (4), or (5). The report shall be submitted within thirty (30) days of the suspension, dismissal, or resignation. The Director of Schools or his or her designee shall also report felony convictions of licensed educators within thirty (30) days of receiving knowledge of the conviction. School systems have a duty to respond to State Board inquiries and provide to the State Board, except when prohibited by law, any available documentation requested concerning the allegations contained in the notice.

(3) The State Board of Education may revoke, suspend, formally reprimand, or refuse to issue or renew an educator's license for any of the following reasons:

(a) Conviction of a felony;

(b) Conviction of possession of illegal drugs;

(c) Being on school premises, at a school-related activity involving students, or on official school business, while possessing or consuming alcohol or illegal drugs;

(d) Falsification or altering of a license or documentation required for licensure;

(e) Inappropriate physical contact with a student;

(f) Denial, suspension, or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension, or revocation under this rule;

(g) Other good cause as defined in subparagraph (1)(k) of this rule; or

(h) Any offense contained in paragraphs (4) and/or (5) of this rule.

(4) Automatic Revocation and Suspension

(a) Automatic Revocation of License – The State Board of Education shall automatically revoke, without the right to a hearing, the license of an educator for the following:

1. Upon receiving verification of the identity of the licensed educator together with a certified copy of a criminal record showing that the licensed educator has been convicted of any the following offenses listed at T.C.A. §§39-17-417, a sexual offense or a violent sexual offense as defined in 40-39-202, any offense in title 39, chapter 13, 39-14-301 and 39-14-302, 39-14-401 and 39-14-404, 39-15-401 and 39-15-402, 39-17-1320, or any other offense in title 39, chapter 17, part 13 (including conviction for the same or similar offense in any jurisdiction).

2. Upon receiving verification of the identity of the licensed educator together with a report from the Department of Children's Services (DCS) stating that DCS has found

the educator to have been a perpetrator of child abuse, severe child abuse, child sexual abuse, or child neglect as stated in T.C.A. § 49-5-413.

3. The Board will notify persons whose licenses are subject to automatic revocation at least thirty (30) days prior to the Board meeting at which such revocation shall occur.

(b) Automatic Suspension of License - The State Board of Education shall automatically suspend, without the right to a hearing, the license of an educator upon receiving notice from the responsible state agency of the identity of the licensed educator together with notification that the educator has committed any of the following offenses:

1. Default on a student loan pursuant to T.C.A. § 49-5-108(d)(2); or

2. Failure to comply with an order of support for alimony or child support, pursuant to T.C.A. §36-5-706.

3. The Board will notify persons whose licenses are subject to automatic suspension at least thirty (30) days prior to the Board meeting at which such revocation shall occur.

(5) Displinary Actions

(a) For the following categories of offenses, the State Board of Education shall impose uniform disciplinary action upon its findings as detailed below:

1. Conviction of a Felony

(i) Upon receiving notification that an individual has been convicted of a felony, the board may revoke or permanently revoke the convicted individual's educator license.

2. Use or possession of Alcohol or Illegal Substances

(i) An individual holding an educator's license who is found to be in possession of or consuming, alcohol or usingillegal substances while on school premises or property when students are present shall be subject to a disciplinary action within the range of suspension for not less than two (2) years up to and including revocation.

(ii) An individual holding an educator's license who is found to be in possession of, or consuming alcohol or using illegal substances while on school premises or property without students present shall be subject to a disciplinary action within the range of suspension for not less than one (1) year up to and including revocation.

(iii) An individual holding an educator's license who is found to be in possession of, or otherwis consuming alcohol or using illegal substances while not on school premises or property, but while participating in school related activities

with students present, shall be subject to a disciplinary action within the range of suspension for not less than one (1) year up to and including revocation.

(iv) An individual holding an educator's license who is found to be in possession of, or otherwise consuming alcohol or using illegal substances while not on school premises or property, but participating in school related activities without students present, shall be subject to a disciplinary action within the range of suspension for not less than six (6) months up to and including a two-(2) year suspension.

3. Negligence in the Commission of Duties as an Educator

(i) An individual holding an educator's license who is found to be negligent in his or her commission of duties as an educator in such a manner that does not result in harm to a child shall be subject to a disciplinary action within the range of a letter of formal reprimand up to and including a two (2)-year suspension.

(ii) An individual holding an educator's license who is found to be negligent in their commission of duties as an educator in such a manner that results in harm to a child, shall be subject to a disciplinary action within the range of suspension for no less than one (1) year up to and including permanent revocation.

4. Testing Breaches

(i) An individual holding an educator's license who is found to have committed a minor testing breach shall be subject to a disciplinary action within the range of a letter of formal reprimand up to and including a suspension not to exceed one (1) year.

(ii) An individual holding an educator's license who is found to have committed a major testing breach shall be subject to a disciplinary action within the range of a suspension of no less than one (1) year up to and including revocation.

5. Unprofessionalism

(i) An individual holding an educator's license who is found to have engaged in non-explicit inappropriate communication with a student shall be subject to a disciplinary action within the range of a suspension for no less than three (3) months up to and including revocation.

(ii) An individual holding an educator's license who is found to have engaged in inappropriate communication of an explicit nature with a student shall be subject to permanent revocation.

(iii) An individual holding an educator's license who is found to have inappropriately used school property shall be subject to a disciplinary action within the range of a suspension for no less than three (3) months up to and including revocation.

6. Inappropriate Physical Contact

(i) An individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that does not result in harm or potential harm to the student shall be subject to a disciplinary action within the range of a formal reprimand up to and including suspension for two (2) years.

(ii) An individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that results in harm or potential harm to the student shall be subject to a disciplinary action within the range of a suspension for not less than two (2) years up to and including permanent revocation.

7. Falsification of Licensure Documentation - An individual holding an educator's license who is found to have falsified licensure documentation shall be subject to a disciplinary action within the range of revocation or permanent revocation.

8. Violation of the Teacher Code of Ethics - An individual holding an educator's license who is found to have violated the teacher code of ethics shall be subject to a disciplinary action within the range of suspension within the range of a suspension for no less than one (1) year up to and including revocation.

(b) Similar offenses – Actions related or similar to the above-enumerated offenses in this rule shall carry recommended disciplinary action commensurate with the range established for the similar offense.

(c) Nothing in this rule shall prevent an educator from exercising his or her lawful authority to use reasonable force when necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another person pursuant to T.C.A. § 49-6-4107.

(d) Repeated violations – Individuals holding an educator's license who are subject to multiple disciplinary actions by the Board shall face disciplinary action in excess of the recommended ranges. A third violation, regardless of severity, shall be subject to a recommendation of revocation.

(e) Nothing in this rule shall prohibit the State Board from imposing a disciplinary action outside of the uniform discipline range upon good cause shown in extraordinary circumstances.

(6) Restoration of License

(a) Suspension

1. A person whose license has been suspended under paragraphs (3), (4), or (5) of this rule may have his or her educator's license restored after the period of suspension has been completed, and, where applicable, the person has complied with all terms prescribed by the State Board. Suspended licenses are subject to the expiration and renewal rules of the State Board.

(Rule 0520-02-03-.09, continued)

(b) Denial or Revocation

1. A person whose license has been denied or revoked under paragraph (3), (4), or (5) of this rule may apply to the State Board to have the license issued or restored upon application showing that the cause for denial or revocation no longer exists and that the person has complied with any terms imposed in the order of denial or revocation. In the case of a felony conviction, before an application will be considered, the person must also show that any sentence imposed, including any pre-trial diversion or probationary period, has been completed. Application for such issuance or restoration shall be made to the Office of Educator Licensing and forwarded to State Board counsel.

2. A person whose license has been revoked under paragraphs (3), (4), or (5) of this rule shall not be eligible to reapply for licensure for a period of no less than five (5) years from the time at which the license was initially revoked.

3. In any deliberation by the Board of Education to restore a license that has been revoked, there will be a rebuttable presumption that an educator whose license has been revoked is unfit for licensure. Nothing in this rule is intended to guarantee restoration of a license.

(7) Presumptive Denial – There shall be a rebuttable presumption that any person applying for an educator's license who has committed an offense that would subject him or her to revocation shall be presumed ineligible to receive a Tennessee educator's license.

(8) Scope of Disciplinary Action – A person whose license has been denied, suspended, or revoked may not serve as a volunteer or be employed, directly or indirectly, as an educator, paraprofessional, aide, substitute teacher, or in any other position during the period of the denial, suspension, or revocation.

(9) Notice of Hearing — Any person who is formally reprimanded or whose license is to be denied, suspended, or revoked under paragraphs (3) or (5) of this rule shall be entitled to written notice and an opportunity for a hearing to be conducted as a contested case under the Uniform Administrative Procedures Act, T.C.A. § 4-5- 301, *et seq*.

(10) Discipline Schedule – The following chart outlines the least and greatest disciplinary ranges for the offenses listed as indicated by the shaded squares.

	Letter of Formal Reprimand	**Suspension of 3 months up to and including 6 months**	**Suspension of 6 months up to and including 1 Year**	**Suspension of 1 Year up to and including 18 Months**	**Suspension of 18 months up to and including 2 Years**	**Suspension of 2 years up to and including Revocation**	**Revocation**	**Permanent Revocation**
Minor Testing Breach								
Failure to Report								
Negligence w/o Harm or Potential Harm								

(Rule 0520-02-03-.09, continued)

Inappropriate Physical Contact w/o Harm								
Unprofessionalism – – Inappropriate Communication (Non-Explicit)								
Unprofessionalism – – Inappropriate Use of School Property								
Possession/Use - Off School Premises/Property w/o Students Present During School Related								
Possession/Use - Off School Premises/Property w/ Students								
Possession/Use - On School Premises/Property w/o Students								
Possession/Use - On School Premises/Property w/ Students								
Major Testing Breach								
Violation of Teacher Code of Ethics								
Negligence w/ Harm or Potential Harm to a Student								
Inappropriate Physical Contact with Harm								
Felony Conviction								
Falsification of Licensure Documentation								
Unprofessionalism - Inappropriate Communication (Explicit)								

Authority: *T.C.A. §§ 49-1-302, 49-1-607, 49-5-108, 49-5-413.* **Administrative History:** *Repeal and new rule filed December 18, 2015; effective March 18, 2015. A stay of the rule was filed January 28, 2015; new effective date June 1, 2015. Amendment filed May 29, 2015; effective August 27, 2015. Emergency rule filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.*

Appendix E: Previous Educator Licensure Rule, State Board of Education

This version of the rule is no longer in effect as of the publication of this report. See Appendix C for the rule as it is currently in effect as an emergency rule. See Appendix D for the version of the rule that the State Board of Education plans to adopt as a permanent rule once the promulgation process is complete.

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-02-03
EDUCATOR LICENSURE

0520-02-03-.09 DENIAL, FORMAL REPRIMAND, SUSPENSION AND REVOCATION.

(1) Automatic Revocation of License. The State Board of Education shall automatically revoke the license of a licensed teacher or administrator without the right to a hearing upon receiving verification of the identity of the teacher or administrator together with a certified copy of a criminal record showing that the teacher or school administrator has been convicted of any felony or offense listed at T.C.A. §§ 40-35-501(i)(2), 39-17-417, a sexual offense or a violent sexual offense as defined in 40-39-202, any offense in title 39, chapter 13, 39-14-301 and 39-14-302, 39-14-401 and 39-14-404, 39-15-401 and 39-15-402, 39-17-1320, or any other offense in title 39, chapter 17, part 13 (including conviction on a plea of guilty or nolo contendere, conviction for the same or similar offense in any jurisdiction, or conviction for the solicitation of, attempt to commit, conspiracy, or acting as an accessory to such offenses). The Board will notify persons whose licenses are subject to automatic revocation at least thirty (30) days prior to the Board meeting at which such revocation shall occur.

(2) The State Board of Education may revoke, suspend, reprimand formally, or refuse to issue or renew a license for the following reasons:

(a) Conviction of a felony;

(b) Conviction of possession of narcotics;

(c) Being on school premises or at a school-related activity involving students while documented as being under the influence of, possessing or consuming alcohol or illegal drugs;

(d) Falsification or alteration of a license or documentation required for licensure;

(e) Denial, suspension or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension or revocation under this rule; or

(f) Other good cause. Other good cause shall be construed to include noncompliance with security guidelines for Tennessee Comprehensive Assessment Program (TCAP) or successor tests pursuant to T.C.A. § 49-1-607, default on a student loan pursuant to T.C.A. § 49-5-108(d)(2) or failure to report under part (e).

(Rule 0520-02-03-.01, continued)

For purposes of this part (2), “conviction” includes entry of a plea of guilty or nolo contendere or entry of an order granting pre-trial or judicial diversion.

A person whose license has been denied, suspended or revoked may not serve as a volunteer or be employed, directly or indirectly, as an educator, paraprofessional, aide, substitute teacher or in any other position during the period of the denial, suspension or revocation.

(3) Restoration of License.

(a) A person whose license has been suspended shall have the license restored after the period of suspension has been completed, and, where applicable, the person has complied with any terms prescribed by the State Board. Suspended licenses are subject to expiration and renewal rules of the State Board.

(b) A person whose license has been denied or revoked under parts (1) or (2) may apply to the State Board to have the license issued or restored upon application showing that the cause for denial or revocation no longer exists and that the person has complied with any terms imposed in the order of denial or revocation. In the case of a felony conviction, before an application will be considered, the person must also show that any sentence imposed, including any pre-trial diversion or probationary period has been completed. Application for such issuance or restoration shall be made to the Office of Educator Licensing and shall be voted on at a regularly scheduled meeting of the State Board of Education. Nothing in this section is intended to guarantee restoration of a license.

(4) Notice of Hearing. Any person who is formally reprimanded or whose license is to be denied, suspended or revoked under part (2) or who is refused a license or certificate under part (3) shall be entitled to written notice and an opportunity for a hearing to be conducted as a contested case under the Tennessee Uniform Administrative Procedures Act, T.C.A. § 4-5-301, et seq.

(5) Notification of Office of Educator Licensing. It is the responsibility of the superintendent of the employing public or non-public school or school system to inform the Office of Educator Licensing of licensed teachers or administrators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under parts (1) or (2). The report shall be submitted within thirty (30) days of the suspension, dismissal or resignation. The superintendent shall also report felony convictions of licensed teachers or administrators within thirty (30) days of receiving knowledge of the conviction.

Authority: *T.C.A. § 49-1-302.* ***Administrative History:*** *Repeal and new rule filed December 18, 2015; effective March 18, 2015. A stay of the rule was filed January 28, 2015; new effective date June 1, 2015. Amendment filed May 29, 2015; effective August 27, 2015. Emergency rule filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.*

Appendix F: Federal Law Affecting School Districts' Hiring Practices

20 U.S. Code § 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 chapter 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.

(Pub. L. 89–10, title VIII, § 8546, as added Pub. L. 114–95, title VIII, § 8038, Dec. 10, 2015, 129 Stat. 2120.)

Appendix G: Tennessee Teacher Code of Ethics, *Tennessee Code Annotated* 49-5-1001 et seq.

Part 10
Teacher Code of Ethics

49-5-1001. Short title.
49-5-1002. Legislative findings.
49-5-1003. Educator's obligations to students.
49-5-1004. Educator's obligations to the education profession.
49-5-1005. Public access to teacher code of ethics.

49-5-1001. Short title.

This part shall be known and may be cited as the "Teacher Code of Ethics."

Acts 2010, ch. 916, § 1.

Section to Section References. This part is referred to in § 49-5-501.

49-5-1002. Legislative findings.

The general assembly finds and declares that:

(1) An educator, believing in the worth and dignity of each human being, recognizes the supreme importance of the pursuit of truth, devotion to excellence, and the nurture of democratic principles. Essential to these goals is the protection of freedom to learn and to teach and the guarantee of equal educational opportunity for all. An educator accepts the responsibility to adhere to the highest ethical standards; and

(2) An educator recognizes the magnitude of the responsibility inherent in the teaching process. The desire for the respect and confidence of one's colleagues, of students, of parents and of the members of the community provides the incentive to attain and maintain the highest possible degree of ethical conduct.

Acts 2010, ch. 916, § 1.

49-5-1003. Educator's obligations to students.

(a) An educator shall strive to help each student realize the student's potential as a worthy and effective member of society. An educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals.

(b) In fulfillment of this obligation to the student, an educator shall:

(1) Not unreasonably restrain the student from independent action in the pursuit of learning;

(2) Not unreasonably deny the student access to varying points of view;

(3) Not deliberately suppress or distort subject matter relevant to the student's progress;

(4) Make reasonable effort to protect the student from conditions harmful to learning or to health and safety;

(5) Not intentionally expose the student to embarrassment or disparagement;

(6) Not on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, family, social or cultural background or sexual orientation unfairly:

(A) Exclude any student from participation in any program;

(B) Deny benefits to any student; or

(C) Grant any advantage to any student;

(7) Not use professional relationships with students for private advantage; and

(8) Not disclose information about students obtained in the course of professional service, unless disclosure serves a compelling professional purpose or is required by law.

Acts 2010, ch. 916, § 1.

49-5-1004. Educator's obligations to the education profession.

(a) The education profession is vested by the public with a trust and responsibility requiring the highest ideals of professional service. In the belief that the quality of the services of the education profession directly influences the nation and its citizens, the educator shall exert every effort to raise professional standards, to promote a climate that encourages the exercise of professional judgment, to achieve conditions which attract persons worthy of the trust to careers in education, and to assist in preventing the practice of the profession by unqualified persons.

(b) In fulfillment of this obligation to the profession, an educator shall not:

(1) Deliberately make a false statement or fail to disclose a material fact related to competency and qualifications in an application for a professional position;

(2) Misrepresent the educator's professional qualifications;

(3) Assist entry into the profession of a person known to be unqualified in respect to character, education, or other relevant attribute;

(4) Knowingly make a false statement concerning the qualifications of a candidate for a professional position;

(5) Assist a noneducator in the unauthorized practice of teaching;

(6) Disclose information about colleagues obtained in the course of professional service unless the disclosure serves a compelling professional purpose or is required by law;

(7) Knowingly make false or malicious statements about a colleague; and

(8) Accept any gratuity, gift, or favor that might impair or appear to influence professional decisions or actions.

Acts 2010, ch. 916, § 1.

49-5-1005. Public access to teacher code of ethics.

The state board of education shall post the teacher code of ethics on its web site.

Acts 2011, ch. 214, § 1.

Appendix H: Clarksville-Montgomery County School System Child Abuse Policy and Related Documents

Department: Human Resources
Policy Number: HUM-A009
Effective Date: 11/29/04

ADMINISTRATIVE POLICY

REPORTING SUSPECTED CHILD ABUSE

Clarksville-Montgomery County School System (CMCSS) recognizes that state law specifies that every citizen has a duty to report suspected brutality, abuse, neglect, or child sexual abuse. In accordance with Tennessee Code TCA 37-1-403(b), the district has developed its own policy and procedures for reporting suspected cases of abuse or neglect to give employees guidance to ensure that suspected child abuse is reported promptly.

The district requires any employee who suspects abuse that is not severe physical or sexual abuse to report that suspicion directly to the Department of Children's Services (DCS) AND to the district's Chief Human Resources Officer or designee. In addition to reporting to DCS, any employee who suspects severe physical or sexual abuse is required to report such suspicions directly to the district's Chief Human Resources Officer or designee who will notify the appropriate law enforcement agency.

In addition to reporting to DCS, in all cases where the suspected abuser is a CMCSS employee, volunteer, or contracted services provider, district employees will report their suspicions directly to the Chief Human Resources Officer or designee who will notify the appropriate law enforcement agency.

Each employee has an independent duty under state law and this policy to report child abuse. Persons making a report of child sexual abuse or reporting harm or physical abuse of a child are presumed to be acting in good faith and are immune from any liability, civil or criminal, that may be brought in a state court action. Such person's identity will remain confidential as set forth in the school system's applicable policies and procedures unless otherwise required by law or court order. Their name will not be released to any person other than DCS and school administrators on a need to know basis as required by state law and that may be needed to "protect the health and safety of the student or other individuals."

This policy will be reviewed and approved by legal counsel every two (2) years or upon any changes to the policy content. Approval signatures kept on file.

Associated Documents: HUM-G001 Training Guidelines for Reporting Suspected Child Abuse and Accommodating Related Investigations
HUM-P014 Reporting Suspected Child Abuse Procedure
HUM-P015 Accommodating DCS Investigations Procedure
HUM-F048 Child Protective Services Intake Report
HUM-F050 Department of Children's Services (DCS) Referral
(TN Code Annotated) TCA-37-1-403 AND 37-1-410

Revision History:

Date:	Rev.	Description of Revision:
11/29/04		Initial Release
7/15/08	A	Clarifies district policy on specific reporting channels for suspicions of severe physical/ sexual abuse.
8/27/12	B	Added statement "This policy will be reviewed and signed off by legal counsel every two (2) years or upon any changes to the policy content."
6/16/14	C	Deleted example of contracted service provider

5/4/15	D	Added TN Code Annotation
2/13/17	E	Added reporting promptly to first paragraph. Added statements regarding reporting to DCS. Clarified independent duty under state law and this policy.

*****End of Policy*****

REPORTING SUSPECTED CHILD ABUSE PROCEDURE (HUM-P014)

Clarksville-Montgomery County School System

1.0 SCOPE:

1.1 This procedure outlines the process for Clarksville-Montgomery County School System (CMCSS) employees to report any suspicions of child abuse as required by district policy per Tennessee Code TCA 37-1-403(b).

2.0 RESPONSIBILITY:

2.1 All CMCSS Employees

3.0 APPROVAL AUTHORITY:

3.1 Chief Human Resources Officer

3.2 Legal Counsel- This procedure will be reviewed and approved by legal counsel every two (2) years or upon any changes to the procedure content. Approval signatures kept on file.

4.0 DEFINITIONS:

4.1 Child Abuse or neglect: Exists when any person under the age of 18 has sustained an injury or is in immediate danger of being injured by the actions or inaction of a parent, relative, guardian or caretake**r.**

4.2 Injury: Significant physical trauma to the child including, but not limited to, broken bones, eye socket injuries, brain or spinal cord injury, puncture wounds, abrasions, auditory damage, any type of burn, any bruising on any part of a child age two or younger that is not the result of an accident, normal developmental activity, or developmentally appropriate discipline, deep penetrating contusions elsewhere on the body of a child over two years of age, any sexual contact, use of life threatening weapons against any child, or any other willful or knowing behavior which may cause any of the injuries.

4.3 Injury: Also includes any repeated and continuous failure to provide minimally adequate food, medical care, shelter or supervision. It may also include psychological abuse such as constant belittling, violent acts directed toward the child's possessions, or any other acts which are likely to cause profound and long-term emotional damage.

5.0 PROCEDURE:

5.1 Any CMCSS employee who suspects child abuse by a parent, relative, guardian, or caretaker who is someone other than a CMCSS employee and if the suspected abuse **is not** considered to be **severe physical** or **sexual in nature** must relate their suspicions immediately by telephone, fax, or online to Central Intake, DCS, Child Protective Services.

5.1.1 **Telephonic referrals** – call **Central Intake** at **1-877-237-0004.** This line is manned 24-hours a day by Central Intake personnel. The referring party should document the nature of the referral, who they spoke with and other pertinent information

related to the referral. HUM-F050, Telephonic Referral Form, is an available tool to assist in documenting telephonic referrals.

5.1.2 **Faxed and Online referrals** – For faxes, fax completed HUM-F048, Child Protective Services Intake Report Faxed Referral, to **Central Intake Fax** at **1-615-361-7041** and a record of receipt of the fax must be received by the sender of the fax. For online referral, complete the online report at https://apps.tn.gov/carat/ and keep a record of the online report.

Online and fax referrals are for non-emergency situations only as per DCS.

5.2 If the person who suspects child abuse does not have access to a telephone, he or she will contact the highest authority in the building or area who will make a telephone available so that the employee can report the suspected child abuse.

5.3 Building Principals and Department Directors must maintain a record of all referrals/supporting documentation (Telephonic and Faxed Referral, Verification of Fax Receipt, Online Reports, etc.) and maintain these in a secure location at the building/site level. Record of referrals should include who made the call, the purpose of the call, and the name of the DCS staff member contacted. Due to the sensitive nature of this information, it must be maintained in a secure manner.

5.4 After Central Intake has been notified, the employee or his or her supervisor will notify the Department of Human Resources via telephone or email. Schools will forward a copy of the record of referral to either the Chief Human Resource Office or designee as soon as possible after Central Intake has been notified.

5.5 The employee making the report should provide as much of the following information as possible to DCS, *if known*:

5.5.1 Name, address and age of the child as well as the nature of the harm or specific incident(s) that precipitated the report such as specific allegation(s), date(s) and description(s) of the injuries or danger.

5.5.2 Name address and person responsible for the care of the child.

5.5.3 Identities of alleged perpetrator(s) and their relationship to the victim.

5.5.4 Witnesses to the incident(s) and how to reach those witnesses.

5.5.5 Details of any physical evidence available.

5.5.6 Perpetrator's current access to the child, present condition of the child (alone, in need of medical attention, etc.).

5.5.7 The location of the child and directions to get there.

5.5.8 Facts that led to the report, how the referent came to know the information.

5.5.9 School's past experience with the family and any other agencies known to be working with the family.

5.5.10 Reporter's thoughts at the likelihood of further harm to the child(ren).

5.6 School personnel will take no action to verify or investigate the complaint.

5.7 Under normal circumstances, DCS will send the person reporting the suspected abuse a letter to tell them whether they have accepted the referral. After DCS completes its investigation, they will follow up with a second letter indicating whether abuse was indicated or unfounded. This letter does not include information regarding how DCS arrived at its decision.

5.8 Any CMCSS employee who suspects child abuse that is of a **severe physical** or **sexual nature OR if an allegation of abuse is made against a CMCSS employee, volunteer, or contractor, or that the abuse occurred on school grounds or while the child was under the supervision or care of the school,** the CMCSS employee must report their suspicions directly to the Chief Human Resources Officer or designee, providing the same information listed in # 5.5 above, if known.

5.8.1 If warranted, the Chief Human Resources Officer or designee will instruct the staff member to call "911" to report suspicions of abuse. After placing the "911" call, the employee will contact DCS directly and request a case "Reference Number" from DCS to provide to law enforcement personnel who respond to the "911" call.

5.9 Follow-up by DCS under normal circumstances is as follows:

5.9.1 DCS sends the person reporting suspected child abuse a letter or email telling them whether they have accepted the referral.

5.9.2 DCS sends a second letter or email when the investigation is completed indicating whether or not abuse was indicated or unfounded,

5.9.2.1 The letter/email does not include information regarding how DCS arrived at its decision.

5.10 Employee advises the Principal and Chief Human Resource Officer or designee of feedback received from DCS or any other entity involved in the investigation.

6.0 ASSOCIATED DOCUMENTS:

6.1 Tennessee Code Annotated and 37-1-611, 612, 37-1-403

6.2 Federal law (20 United States Code 1232g(b)(1)l and 34 Code of Federal Regulations 99.31(5) and 9.36

6.3 State of Tennessee Department of Children's Services, Applicable Administrative Policies and Procedures

6.4 Reporting Suspected Child Abuse (HUM-A009)

6.5 Accommodating DCS Investigations (HUM-A010)

6.6 Accommodating DCS Investigations Procedure (HUM-P015)

6.7 Child Protective Services Intake Report – Faxed Referral (HUM-F048)

6.8 Department of Children's Services Referral (HUM-F050)

6.9 Training Guidelines for Reporting Suspected Child Abuse and Accommodating DCS Investigations (HUM-G001)

6.10 E-mails

6.11 Referral Records

7.0 RECORD RETENTION TABLE:

Identification	Storage	Retention	Disposition	Protection
E-mails	HR Computer	Two school years	Shred	Locked offices/building
Referral Record	On Site	Two school years	Shred	Secured file/office

8.0 REVISION HISTORY:

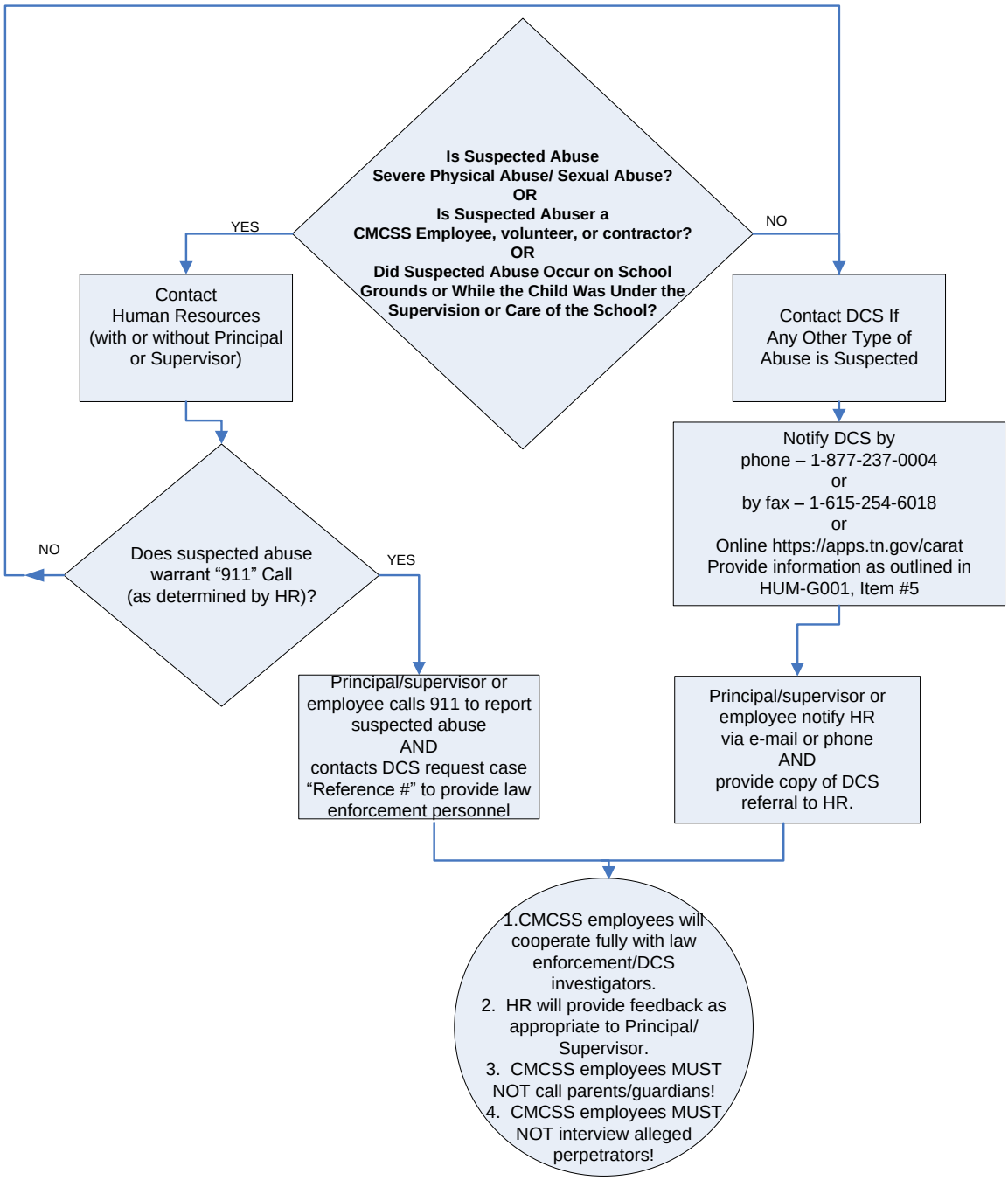
Date:	Rev.	Description of Revision:
7/15/08		Initial Release
7/27/09	A	Insert additional information in section 5.8 and update flowchart
1/27/11	B	Updated Flowchart Regarding Parent/Guardian Notifications of Abuse if Warranted by Circumstances of Alleged Abuse
4/26/11	C	Added requirement for schools to provide copy of DCS referral to Human Resources (5.4 above) Added requirement for schools to call "911" if instructed by Human Resources and to obtain a case Reference Number from DCS to provide to law enforcement personnel responding to the "911" call
5/11/12	D	In flowchart, regarding change made above in revision C- switched to '…contact DCS, then call 911…'. Changed DCS # to : 1-855-209-4226 per Jeanine Chester
7/23/12	E	Updated DCS Central Intake phone numbers. Updated HUM-F050.
8/27/12	F	Added approval authority "This procedure will be reviewed and approved by legal counsel every two (2) years or upon any changes to the procedure content. Approval signatures kept on file."
6/13/14	G	Updated wording in 5.8, deleted 5.8.2, revised flowchart, updated logo

10/8/14	H	Updated DCS fax number in 5.1.2 and flowchart
4/8/2015	I	Legal counsel review, updated TN code annotation
2/7/17	J	Updated contact information and added online referral information.

9.0 A flowchart detailing this process can be found below.

REPORTING SUSPECTED CHILD ABUSE PROCEDURE (HUM-P014)

Clarksville-Montgomery County School System



End of Procedure

ADMINISTRATIVE POLICY

ACCOMMODATING DEPARTMENT OF CHILDREN'S SERVICES (DCS) INVESTIGATIONS

As permitted by federal and state laws, Clarksville-Montgomery County School System (CMCSS) will cooperate fully with the Tennessee Department of Children's Services in their investigations of alleged child abuse. DCS is charged with investigating cases of suspected child abuse and conducting all related investigations to include child interviews. Except in cases where school employees are suspected of being the perpetrator, the school is regarded as an appropriate neutral setting for conducting such interviews. Principals and Department Heads will accommodate DCS and law enforcement personnel concerning student access and interviewing both students and school personnel. Principals and Department Heads will permit review of student records in accordance with federal and state law only.

Associated Documents: HUM-P015 Accommodating DCS Investigations
HUM-A009 Reporting Suspected Child Abuse
HUM-G001 Training Guidelines for Reporting Suspected Child Abuse and Accommodating Related Investigations
HUM-P014 Reporting Suspected Child Abuse Procedure
HUM-F048 Child Protective Services Intake Report
HUM-F050 Department of Children's Services (DCS) Referral
HUM-G001 FC Attachment A – Supplemental Instructions for Reporting Suspected Child Abuse

Revision History:

Date:	Rev.	Description of Revision:
11/29/04		Initial Release
7/15/08		Addition of Associated Documents, no revisions to policy
10/08/08		Reviewed no revisions
03/04/13	A	Update logo and spell out DCS in the title.
3/25/15		Reviewed, no changes
5/30/17	B	Updated to correspond with what is permitted by federal and state laws.

End of Policy

ACCOMMODATING DCS INVESTIGATIONS PROCEDURE (HUM-P015)

Clarksville-Montgomery County School System

1.0 SCOPE:

1.1 This procedure outlines the process for Principals and Department Heads to accommodate investigations of alleged child abuse conducted by the state of Tennessee's Department of Children's Services (DCS) and/or law enforcement personnel at CMCSS buildings.

2.0 RESPONSIBILITY:

2.1. Director of Schools

2.2. Senior Leadership Team

2.3. Chief Human Resources Officer

2.4. School Principals

2.5. Department Heads

2.6. The Department of Children's Services (DCS) is charged with investigating cases of suspected child abuse and conducting all related interviews.

3.0 APPROVAL AUTHORITY:

3.1 Chief Human Resources Officer

4.0 DEFINITIONS:

4.1 Protocols: Protocols address behavior/responsibilities of school personnel in accommodating DCS and law enforcement personnel, procedures for DCS to access students and other school personnel, access to student records as well as appropriate methods for bringing the student to the interview and returning student to the classroom.

5.0 PROCEDURE:

5.1 Incident of abuse is reported to DCS and DCS begins an investigation.

5.1.1 The school cooperates fully with the DCS caseworker and/or law enforcement personnel within the limits of the law.

5.1.2 The principal or his/her designee represents the school to DCS and law enforcement personnel in a cordial and professional manner.

5.2 Principals follow established internal protocols to ensure investigations are properly accommodated.

5.2.1 The school provides a private room for DCS/law enforcement interviews.

5.2.2 Except in cases where school employees are suspected of being the perpetrator, the school is regarded as an appropriate neutral setting for conducting such interviews.

5.3 The principal or his/her designee insures the child is brought to the interview in such a way as to not call attention to the fact that someone from DCS/law enforcement is there to interview them. This may vary from school to school due to the age of the students.

5.4 The principal or his/her designee prepares the child for the interview by assuring him/or that they are not in trouble and have done nothing wrong.

5.4.1 The principal or his/her designee informs the child that a DCS caseworker and/or a law enforcement officer is/are here to talk with him/her.

5.4.2 The principal or his/her designee introduces the child to the caseworker and/or officer and assures the child that he/she will be close by in case he/she is needed.

5.5 At the conclusion of the interview, the principal or his/her designee takes charge of the student and returns him/her to class if the student is deemed capable of doing so.

5.5.1 If the child is not in condition to return to class, he/she should be placed with the guidance counselor/other designated adult until he/she is able to return to class.

5.6 If the DCS caseworker deems that it is not safe for the child to return home, the child may be placed in custody of the State, and a transport order may be obtained from the appropriate court to remove the child from the school.

5.6.1 In the event removal occurs on school premises, the principal or his/her designee shall request a copy of the order and shall make a copy of the DCS caseworker's badge. Copies of both should remain in the student's file at school.

5.6.2 There are times when the judicial order regarding a child's transport may not be in writing yet. In those circumstances, the principal or his/her designee shall call the local DCS telephone number (931-503-3200) and speak with Heather Wyatt or other appropriate supervisor to confirm the existence of the verbal court order, documenting the names and positions of both the DCS caseworker and supervisor who confirms this information.

5.7 The school permits DCS caseworkers to view and/or have copies student records under the circumstances as set forth below in 5.7.1 through 5.1.4

5.7.1 If the student is in DCS custody/foster care, there should be an order in place which permits DCS to have access to all student records. The principal or his/her designee shall ensure that he/she has a copy of the order for the school file prior to releasing any student information.

5.7.2 If the student is not in DCS custody/foster care, the principal or his/her designee must have one of the following from the DCS caseworker prior to giving access to or copies of student records: valid court order, subpoena, or parental/guardian authorization.

5.7.3 The principal or his/her designee may provide DCS with student enrollment information as long as the student or his/her parent/guardian have not opted out of the directory information.

5.7.4 If there is a truancy case and DCS requests attendance information, it should be able to obtain a subpoena or order from the court, or have parent/guardian authorization to access this information.

5.7.5 Personal notes made and owned by school personnel will be treated according to guidance provided by State Department of Education legal counsel that states personal notes do not have to be surrendered, but information in those notes must be shared with the caseworker.

5.8 As permitted by federal and state law as noted in the exceptions above in Section 5.7, the principal or his/ her designated representative, and other school personnel may answer any questions the DCS caseworker or law enforcement official may have to the best of their abilities.

5.9 DCS is always responsible for notifying parents or guardians of DCS intervention.

5.9.1 School personnel do not notify parents or guardians of actions taken by or to be taken by DCS.

5.10 School personnel refer all questions or inquiries for information about the investigation from parents or guardians to DCS or the local law enforcement agency. News media inquiries shall be directed to the Chief Communications Officer.

6.0 ASSOCIATED DOCUMENTS:

6.1 Tennessee Code Annotated 37-1-4-01, et. seq. and 37-1-611, 612

6.2 Federal law (20 United States Code 1232g(b)(1)I and 34 Code of Federal Regulations 99.31(5) and 9.36

6.3 Reporting Suspected Child Abuse Procedure (HUM-P014)

6.4 School Protocols

6.5 DCS sign-in registers

6.6 Record of Referral

7.0 RECORD RETENTION TABLE:

Identification	Storage	Retention	Disposition	Protection

School Protocols	On-site	Two school years	Destroy after two school years	Secured office
DCS Sign in Registers	On-site	Two school years	Destroy after two school years	Secured office
Record of Referral (if used)	On-site	Two school years	Destroy after two school years	Secured office

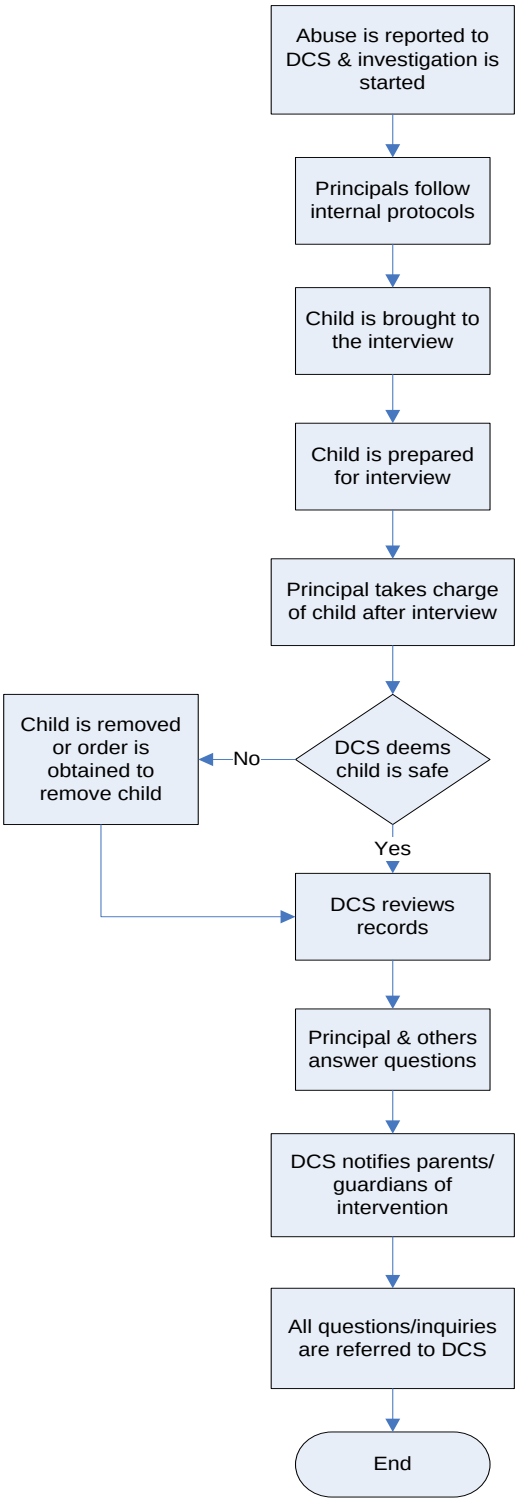
8.0 REVISION HISTORY:

Date:	Rev.	Description of Revision:
7/15/08		Initial Release
2/20/13	A	Minor grammatical changes.
5/12/15		Updated logo
6/27/16	B	Updated responsibility 2.1.
2/7/17	C	Changed media inquiries statement. Updated TCA reference.
5/23/17	D	Added: 5.6.1, 5.6.2, 5.7.1 – 5.7.4. Updated 5.8 to include note of exceptions in section 7.5.

9.0 FLOWCHART:

9.1 A flowchart detailing this process can be found below.

*****End of Procedure*****


Abuse is reported to DCS & investigation is started
Principals follow internal protocols
Child is brought to the interview
Child is prepared for interview
Principal takes charge of child after interview
DCS deems child is safe
No
Child is removed or order is obtained to remove child
Yes
DCS reviews records
Principal & others answer questions
DCS notifies parents/ guardians of intervention
All questions/inquiries are referred to DCS
End

CHILD PROTECTIVE SERVICES
INTAKE REPORT
FAXED OR ON-LINE REFERRAL

CMCSS Employees who suspect child abuse must report that suspicion directly to the Department of Children's Services Child Protective Services. Referrals may be made by calling Central Intake at 1-855-209-4226 or 1-877-237-0004, reporting online (https://apps.tn.gov/carat), OR by faxing this form to Central Intake (615-361-7041). Principals will maintain a copy of the faxed referral form, as well as the verification that the fax was received, in a secure location. If you wish to track the status of a DCS referral, enter the referral ID number @ https://apps.tn.gov/carat

	Date_____ In-take Number _____ (To Be Assigned by CPS)
Category	
1. WHO	CHILD(REN)'S INFORMATION (Include as much information as known) Name / Age/DOB / Sex / Race / School/Daycare / Relationship to Alleged Perpetrator _____ _____ ____ ____ _____ _____ _____ _____ ____ ____ _____ _____ _____ _____ ____ ____ _____ _____ _____ _____ ____ ____ _____ _____ PARENT/CARETAKER'S INFORMATION (Include as much information as known) Name / Age/DOB / Sex / Race / Employment/School _____ _____ ____ _____ _____ _____ _____ ____ _____ _____ _____ _____ ____ _____ _____ ALLEGED PERPETRATOR'S INFORMATION (Include as much information as known) Name / Age/DOB / Sex / Race / Employment/School _____ _____ ____ _____ _____ _____ _____ ____ _____ _____ OTHER HOUSEHOLD MEMBERS (Include as much information as known) Name / Age/DOB / Sex / Race / Employment/School _____ _____ ____ _____ _____ _____ _____ ____ _____ _____ _____ _____ ____ _____ _____ Address and phone number of all household members, including the length of time at current address: _____ Phone No._____ _____ Work No._____

CHILD PROTECTIVE SERVICES
INTAKE REPORT
FAXED OR ON-LINE REFERRAL

	Driving Directions:_____ _____ Others who may have knowledge of the situation (include name, address, phone number): _____ _____ Do you have any information about the children's other relatives? (Include name, address, and phone number, if known). _____ _____ _____ _____ Has the family ever been involved with this DCS? Yes ____ No_____ Unknown_____
2. WHAT	What happened to the child(ren)? Please describe simple terms. Be as specific as possible. _____ _____ _____ _____ _____ _____ Did you see physical evidence of abuse or neglect? If yes, please describe in simple terms. Be as specific as possible as to size, shape, color of any injuries as well as whether skin is broken, raised or flat. _____ _____ _____ _____

CHILD PROTECTIVE SERVICES
INTAKE REPORT
FAXED OR ON-LINE REFERRAL

3. WHEN	Approximately when did the incident occur? _____ When is the last time you saw the child? _____
4. WHERE	Where is the child right now? _____ Where is the alleged perpetrator right now? _____ Where is the parent/caretaker right now? _____
5. HOW	How do you know what happened to the child/family? _____ _____ How long has this been going on? _____

Referent: Name: _____

Address: _____

_____

Phone Number _____

Completed form must be faxed or emailed to the HR Department: FAX 931-920-9913 or email jeanine.johnson@cmcss.net.

Note: It is very important that the individual making the report include the above listed information so that a member of the Department of Children's Services can contact the referent directly in the event they need to obtain additional information.

CHILD PROTECTIVE SERVICES
INTAKE REPORT
FAXED OR ON-LINE REFERRAL

If a non-emergency situation:
Department of Children's Services
Central Intake
1284 Foster Avenue
Nashville, Tennessee 37243

Fax Numbers: 615-361-7041

Online reports made at https://apps.tn.gov/carat

Associated Document:

HUM-G001 Employee Guidelines Reporting Suspected Child Abuse and Accommodating DCS Investigations

DEPARTMENT OF CHILDREN'S SERVICES (DCS) REFERRAL

To Document Telephonic Referrals
24-hour access Central Intake No. 1-877-237-0004 or
Fax: 1-615-361-7041 or online https://apps.tn.gov/carat
If you wish to track the status of a DCS referral enter the referral ID number @
https://apps.tn.gov/carat

Date: _____ Time: _____

DCS Person spoken to: _____

DCS referral/intake #: _____

Person making referral: _____

Other CMCSS Employees aware of the concerns: _____

Name of School: _____

Student Name: _____

Age: _____ Grade: _____

Parent/Guardian Name: _____

Address:_____

_____

Phone Number: _____

Concern Reported:

Follow-up:

Completed Form must be faxed or emailed to the Human Resources Department
Fax: 931-920-9913 or Email: jeanine.johnson@cmcss.net
Associated Document: HUM-G001 Employee Guidelines Reporting Suspected Child Abuse and Accommodating DCS Investigations

REPORTING SUSPECTED CHILD ABUSE

Clarksville-Montgomery County School System (CMCSS) recognizes that state law specifies that every citizen has a duty to report suspected brutality, abuse, neglect, or child sexual abuse. In accordance with Tennessee Code TCA 37-1-403(b), the district has developed its own policy and procedures for reporting suspected cases of abuse or neglect.

The district requires any employee who suspects abuse that is not severe physical or sexual abuse to report that suspicion directly to the Department of Children's Services (DCS) AND to the district's Chief Human Resources Officer or designee. In addition to reporting to DCS, any employee who suspects severe physical or sexual abuse is required to report such suspicions directly to the district's Chief Human Resources Officer or designee who will notify the appropriate law enforcement agency.

In all cases where the suspected abuser is a CMCSS employee, volunteer, or contracted services provider, or if it is suspected that the abuse occurred on school grounds or while the child was under the supervision or care of the school, district employees will report their suspicions directly to the Chief Human Resources Officer or designee who will notify the appropriate law enforcement agency.

Persons making a report of child sexual abuse or reporting harm or physical abuse of a child are presumed to be acting in good faith and are immune from any liability, civil or criminal, that may be brought in a state court action. Such person's identity will remain confidential as set forth in the school system's applicable policies and procedures unless otherwise required by law or court order. Their name will not be released to any person other than DCS and school administrators on a need to know basis as required by state law and that may be needed to "protect the health and safety of the student or other individuals."

The information contained in these training guidelines is to provide supervisors information to use in informing all district employees about the definition of child abuse, how to report suspicions of child abuse, and how to accommodate related investigations.

What is Child Abuse?

1. Child abuse or neglect exists when any person under the age of 18 has sustained an injury or is in immediate danger of being injured by the actions or inactions of a parent, relative, guardian, or caretaker.

2. Injury includes significant physical trauma to the child including: broken bones, eye socket injuries, brain or spinal cord injury, puncture wounds, abrasions, auditory damage, any type of burn, any bruising on any part of a child age two or younger that is not the result of an accident, normal developmental activity, or developmentally appropriate discipline, deep penetrating contusions elsewhere on the body of a child over two years of age, any sexual contact, use of life threatening weapons against any child, or any other willful or knowing behavior which may cause any of the injuries.

3. Injury shall also include repeated and continuous failure to provide minimally adequate food, medical care, shelter, or supervision. It may also include psychological abuse such as constant belittling, violent acts directed toward the child's possessions, or any other acts which are likely to cause profound and long-term emotional damage.

How Do I Report Suspicion of Child Abuse? (See Exhibit A)

1. Any CMCSS employee who suspects child abuse that **is not** considered to be **severe physical** or **sexual in nature** must relate their suspicions immediately by telephone, online, or via fax to Central Intake, DCS, Child Protective Services.

    a. **Telephonic referrals** - call **Central Intake** at **1-877-237-0004.** This line is manned 24-hours a day by Central Intake personnel. The referring party should document the nature of the referral, who they spoke with and other pertinent information related to the referral. HUM-F050, Telephonic Referral Form, is an available tool to assist in documenting telephonic referrals.

    b. **Faxed and online referrals** – For faxes, fax completed HUM-F048, Child Protective Services Intake Report Faxed Referral, to **Central Intake Fax** at **1-615-361-7041** and a record of receipt of fax must be received by the sender of the fax. For online referral,

complete the online report at https://app.tn.gov/carat and keep a record of the online report. **Online and faxed referrals are for non-0emergency situations only per DCS.**

c. If the person who suspects child abuse does not have access to a telephone, he or she will contact the highest authority in the building or area who will make a telephone available so that the employee can report the suspected child abuse.

d. After Central Intake has been notified, the employee or his or her supervisor will notify the Department of Human Resources via telephone, email, or fax.

e. School personnel will take no action to verify or investigate the complaint.

f. Building Principals and Department Directors must maintain a record of all referrals/supporting documentation (Telephonic and Faxed Referral, Verification of Fax Receipt, Online Reports, etc.) and maintain these in a secure location at the building/site level. Record of referrals should include who made the call, the purpose of the call, and the name of the DCS staff member contacted. Due to the sensitive nature of this information, it must be maintained in a secure manner.

g. The employee making the report should provide as much of the following information as possible to DCS: 1) Name, address, and age of child; 2) Name, address and person responsible for the care of the child; 3) Facts that led to the report., and 4) Other pertinent information such as the location of the child's parents, identity of the alleged perpetrator, other agencies working with the family, the family's knowledge of the referral, the school's past experience with the family, and other children in the family.

h. Under normal circumstances, DCS will send the person reporting the suspected abuse a letter to tell them whether they have accepted the referral. After DCS completes its investigation, they will follow up with a second letter indicating whether abuse was indicated or unfounded. This letter does not include information regarding how DCS arrived at its decision.

2. In addition to reporting to DCS, any CMCSS employee who suspects child abuse that is of a **severe physical** or **sexual nature OR if an allegation of abuse is made against a CMCSS employee, volunteer, or contract vendor** must report their suspicions directly to the Chief Human Resources Officer or designee, who will notify the Clarksville Police Department or Montgomery County Sheriff's Office as appropriate.

CLARIFICATION OF INFORMATION

Employees should address questions regarding this information directly to his or her principal or department head for clarification. Principals or Department Heads should notify the Chief Human Resources Officer or the Human Resources General Counsel of any atypical situations involving DCS personnel that may require Central Office involvement.

RELATED TRAINING INFORMATION

PURPOSE: To familiarize participants with the roles, responsibilities and functions of both the Department of Children Services (DCS) and CMCSS regarding the reporting of suspected child abuse AND accommodating investigations into alleged child abuse.

TRAINING FOLLOW UP PLAN: Principals and Department heads will familiarize ALL personnel assigned to their respective buildings/areas with basic procedures for reporting suspected abuse and accommodating DCS investigations.

REFERENCES: Tennessee Code Annotated 37-1-4-01, et. seq. and 37-1-611, 612; DCS Administrative Policy 14.1 – 14.6; CMCSS Policies and Procedures for Reporting Suspected Child Abuse and Accommodating DCS Investigations

INTRODUCTION: Public school systems are considered local agencies with a duty to cooperate in child abuse investigations, therefore, any employee of the public school system must report suspected child abuse in accordance with the district's related policies and procedures. DCS is the agency charged with conducting such investigations. As such, we share a common goal and must partner together to ensure the protection and privacy of our children. We are not adversaries and must see ourselves as co-advocates in doing what is right for the children in Montgomery County. This is the law!

1. Child Abuse

A. Definition of Child Abuse and Neglect

1) Child abuse or neglect exists when any person under the age of 18 has sustained an injury or is in immediate danger of being injured by the actions or inactions of a parent, relative, guardian, or caretaker.

2) Injury includes significant physical trauma to the child including: broken bones, eye socket injuries, brain or spinal cord injury, puncture wounds, abrasions, auditory damage, <u>any type of burn, any bruising on any part of a child age two or younger that is not the result of an accident, normal developmental activity, or developmentally appropriate discipline</u>, deep penetrating contusions elsewhere on the body of a child over two years of age, any sexual contact, use of life threatening weapons against any child, or any other willful or knowing behavior which may cause any of the injuries.

3) Injury includes repeated and continuous failure to provide minimally adequate food, medical care, shelter, or supervision. It may also include psychological abuse such as constant belittling, violent acts directed toward the child's possessions, or any other acts which are likely to cause profound and long-term emotional damage.

B. DCS accepts a report of child maltreatment provided it meets these three criteria:
1) The report pertains to a child under the age of 18 years, and
2) The report alleges harm or imminent risk of harm to the child, and
3) The alleged perpetrator is:
a. A parent or caretaker, or
b. A relative or other person living in the home, or
c. An educator, volunteer or employee of a recreational/ organizational setting who is responsible for the child; or any individual providing treatment, care or supervision for the child. (Note: you have a professional obligation to report suspected abuse. "If you think it. . . report it.")

C. Referral types

Minor physical abuse	Lack of Supervision	Other
Severe physical abuse	Abandonment	Abuse – Death
Failure to thrive	Sexual Abuse	Neglect – Death
Malnutrition	Emotional Abuse	Substantial Risk, Physical Injury
Physical Neglect	Emotional Neglect	Substantial Risk, Sex Abuse
Medical Neglect	Educational Neglect	Substance Affected Infant

D. DCS does not investigate allegations of minor injuries that are the result of developmentally appropriate discipline or allegations of physical abuse of children by strangers or persons who were not in a caretaking role unless the parent refuses to take necessary action to protect the child from future harm.

DCS accepts all referrals involving sexual abuse of children under the age of 13 years regardless of the previous relationship between the alleged victim and the alleged perpetrator. DCS does not investigate sexual abuse allegations of a child 13 to 18 years old by an alleged perpetrator who does not have a relationship with the child as defined in B.3) above. DCS may assist law enforcement or the district attorney's office in such cases if resources allow.

E. Child abuse may lead to behavioral manifestations in the child victim. While most of the below listed behavioral indicators can have numerous explanations besides child abuse, they are important when they are linked to abuse allegations.

Preadolescent	**Adolescent**
1. Stylized behavior; excessive seductiveness	1. Stylized behavior; excessive provocativeness beyond norm for age
2. Unusual interest in sex organs of self or others	2. Shy, withdrawn, overburdened appearance
3. Fearful or suspicious of adults	3. Change in school grades
4. Tugging at clothing in genital area	4. Running away
5. Tired, lethargic, sleepy appearance	5. Self-destructive behavior
6. Regressive behaviors, such as whining, negative changes in toilet habits	6. Substance abuse that is more than experimental
7. Persistent fears or overwhelming nightmares	7. Unwillingness to participate in group activities
8. Blaming or dislike of self	8. Stealing; shoplifting
9. Change in school grades	9. Pregnancy wishes
10. Public or excessive masturbation	10. Prostitution
11. Developmental delays	11. Fear or distrust of men, adults
12. Perceived and/or treated by parent as bad, unusual, and/or different	12. Statements about being bad or undesirable
13. Behavioral extremes (e.g., extremely aggressive or passive, persistent crying)	13. Wary of/avoidance of physical contact
14. Child assumes parent role (i.e., caretaking of one or both parents and/or siblings beyond normal "role-playing" for child's age.	14. Child assumes parent role (i.e., caretaking of one or both parents and/or siblings beyond normal "role-playing" for child's age.
	15. Excessive longing for affection
	16. Reluctant to change clothes for gym

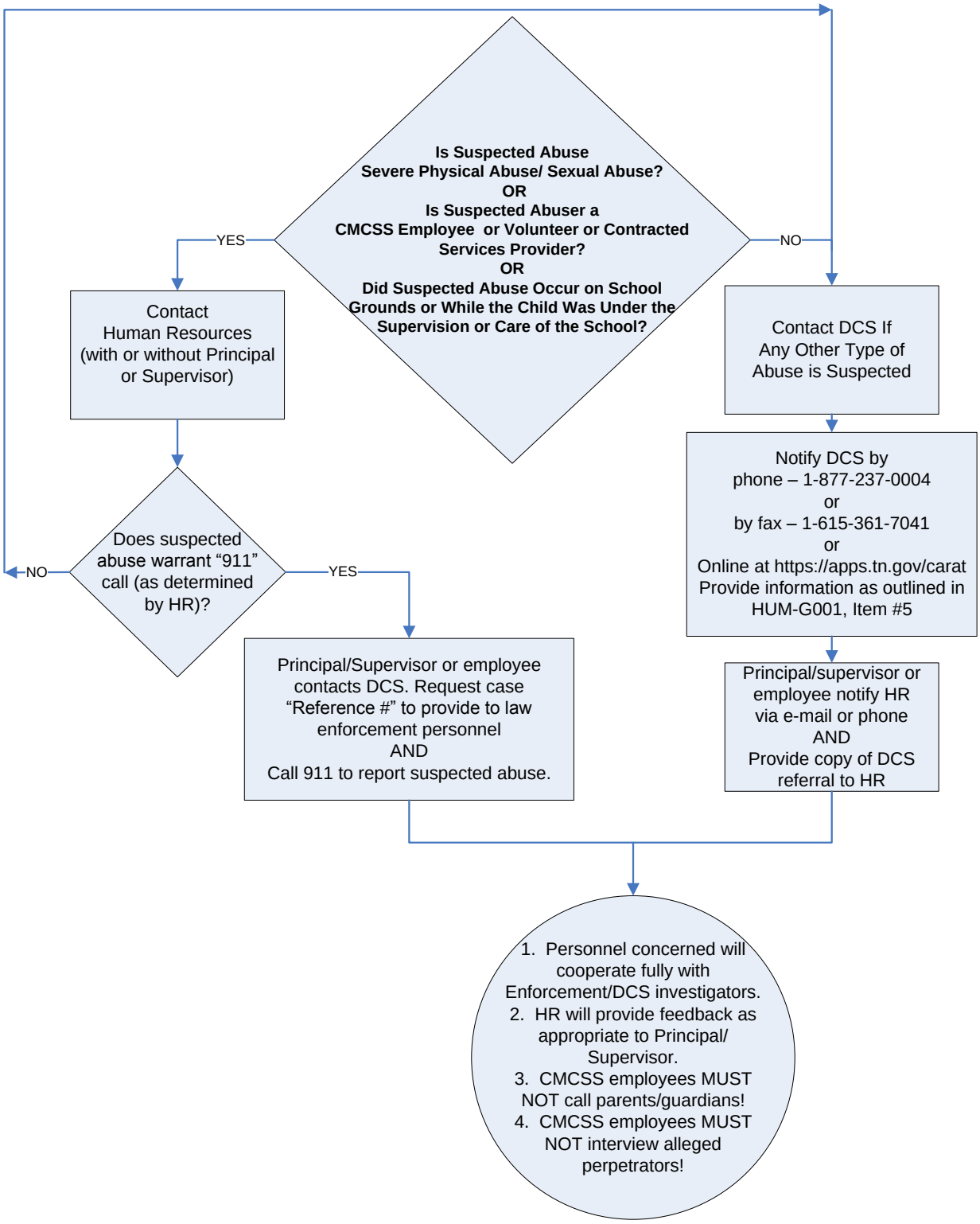
F. Conversely, there are "normal" preadolescent and adolescent behaviors that in and of themselves that do not indicate great need for concern. These might include the following.

Preadolescent	**Adolescent**
1. Playing doctor.	1. Sexually explicit conversations, non-coercive, with similar age peers
2. Occasional masturbation	2. Sexual innuendo – flirting
3. Imitation – kissing and flirting	3. Hugging, kissing and holding hands
4. Genital conversations with similar age peers	4. Petting and fondling, non-coercive
5. Show me and I will show you mine with similar age peers	5. Dirty words or jokes

Associated Documents: HUM-A009 Reporting Suspected Child Abuse
HUM-A010 Accommodating DCS Investigations
HUM-P014 Reporting Suspected Child Abuse Procedure
HUM-P015 Accommodating DCS Investigations Procedure
HUM-F048 Child Protective Services Intake Report
HUM-F050 Department of Children's Services (DCS) Referral
HUM-G006 Training Guidelines for Accommodating DCS Investigations

A flowchart detailing these training guidelines is below.

Reporting Suspected Child Abuse



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TENNESSEE COMPTROLLER OF THE TREASURY