



STATE OF ALABAMA
DEPARTMENT OF EDUCATION



Eric G. Mackey, Ed.D.
State Superintendent of Education

September 24, 2020

MEMORANDUM

TO: City and County Superintendents of Education

FROM: Eric G. Mackey 
State Superintendent of Education

RE: ESEA Prohibition on Aiding and Abetting Sexual Abuse

One important aspect of the federal *Elementary and Secondary Education Act* (ESEA) is its “prohibition on aiding and abetting sexual abuse” of minors or students. You may already have a local policy in place to comply with this law but if not, I recommend that you review this memorandum and its attachment and work to implement a local policy to better ensure that all staff, contractors, and agents are aware of it.

Although “aiding and abetting” are terms that are used in the title of this section of ESEA (codified at 20 U.S.C. § 7926), they are not specifically defined in the section. Instead the law provides the following general rule:

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.

However, this prohibition does **not** apply if:

- (1) The matter has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct and properly reported to any other authorities as specified by law or regulation, and

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- (2) One or more of the following three conditions is met:
- a. The matter has been officially closed or the prosecutor or law enforcement with jurisdiction over the alleged misconduct notified school officials that there is insufficient information to establish probable cause that there was sexual misconduct regarding a minor or a 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 system employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

This law does not prohibit “the routine transmission of administrative and personnel files.” 20 U.S.C. § 7926(a). For your reference I have attached a copy of the entire 20 U.S.C. § 7926.

If you would like additional information or have any questions about this law, please contact James Ward, Associate General Counsel, Office of General Counsel, by email at jward01@alsde.edu or by telephone at 334-694-4699.

EGM:JW

Attachment

cc: Public Charter Schools

FY20-1007

ESEA Section 8546 (20 U.S.C. § 7926):
Prohibition on Aiding and Abetting Sexual Abuse

(a) **IN GENERAL.** — A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this Act shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

(b) **EXCEPTION.** — The requirements of subsection (a) shall not apply if the information giving rise to probable cause —

(1)(A) has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and

(B) has been properly reported to any other authorities as required by Federal, State, or local law, including title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the regulations implementing such title under part 106 of title 34, Code of Federal Regulations, or any succeeding regulations; and

(2)(A) the matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law;

(B) the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or

(C) the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

(c) **PROHIBITION.** — The Secretary shall not have the authority to mandate, direct, or control the specific measures adopted by a State, State educational agency, or local educational agency under this section.

(d) **CONSTRUCTION.** — Nothing in this section shall be construed to prevent a State from adopting, or to override a State law, regulation, or policy that provides, greater or additional protections to prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee who engaged in sexual misconduct regarding a minor or student in violation of the law in obtaining a new job.