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**SBEC DISCIPLINARY
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Joey Moore

Author Contact Information:

Joey Moore
Walsh Gallegos Treviño Russo & Kyle, P.C.
Austin, Texas

joeymoore@wabsa.com
(512) 454-6864

Recently, allegations of educator misconduct have dominated the headlines. In January 2015, the Washington Post reported that Texas led the nation in the number of sexual misconduct cases against educators, with 179.¹ More recently, the Dallas Morning News reported that the Texas Education Agency opened 222 investigations into inappropriate educator-student relationships in fiscal year 2015-2016.² In fact, between September 1, 2016 and January 31, 2017, the Agency had reportedly opened 97 new cases—a 43% increase of cases opened compared to the previous year. *Id.* To address the issue, the Legislature adopted Senate Bill 7 during the 85th legislative session. On May 25, 2017, Governor Greg Abbott signed SB 7 into law.

Although SB 7 has increased the attention given to the issue of educator misconduct, it is not as though enforcement actions are new to the Agency. This paper will focus on the legal and practical issues related to litigating educator misconduct cases with the Agency before the State Office for Administrative Hearings, arguing the Proposal for Decision before the State Board for Educator Certification, and appellate issues.

Senate Bill 7

Promoted as a crackdown on inappropriate student-teacher relationships, SB 7 was signed by Governor Greg Abbott on May 25, 2017.

As we all know, however, mandatory reporting requirements for certain types of misconduct were already in place under the Texas Education Code and the Texas Administrative Code. As discussed below, Texas Education Code § 21.006 and Title 19, Texas Administrative Code § 249.14 set out the requirements for mandatory reporting of educator misconduct in certain circumstances.

“Texas schools are filled with some of the best teachers in the country, but unfortunately a small number of them have abused their position, and as a parent I find this abuse of trust abhorrent. This type of behavior is unacceptable, and Texas will protect its children from sexual predators in our classrooms. I would like to thank the legislature for their work and dedication on this important law.”

--Governor Greg Abbott, May 25, 2017

Requirement to Report Misconduct, TEX. EDUC. CODE § 21.006

The Texas Education Code enumerates the circumstances that mandate reports to the Texas Education Agency.

(b) In addition to the reporting requirement under Section 261.101, Family Code, the superintendent or director of a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement shall notify the State Board for Educator Certification if:

¹ Washington Post, January 20, 2015, Terry Abbott, “More teachers are having sex with their students. Here’s how schools can stop them.” https://www.washingtonpost.com/posteverything/wp/2015/01/20/more-teachers-are-having-sex-with-their-students-heres-how-schools-can-stop-them/?utm_term=.e7a0dc196e1d

² Dallas Morning News, May 25, 2017, Nanette Light and Brandi Grissom, “Abbott signs bill cracking down on Texas’ ‘statewide plague’ of improper student-teacher relationships.” <https://www.dallasnews.com/news/education/2017/05/25/abbott-signs-bill-cracking-sexual-improper-student-teacher-relationships>

(1) an educator employed by or seeking employment by the school district, district of innovation, charter school, service center, or shared services arrangement has a criminal record and the school district, district of innovation, charter school, service center, or shared services arrangement obtained information about the educator's criminal record by a means other than the criminal history clearinghouse established under Section 411.0845, Government Code;

(2) an educator's employment at the school district, district of innovation, charter school, service center, or shared services arrangement was terminated and there is evidence that the educator:

(A) abused or otherwise committed an unlawful act with a student or minor;

(A-1) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor;

(B) possessed, transferred, sold, or distributed a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(C) illegally transferred, appropriated, or expended funds or other property of the school district, district of innovation, charter school, service center, or shared services arrangement;

(D) attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; or

(E) committed a criminal offense or any part of a criminal offense on school property or at a school-sponsored event;

(3) the educator resigned and there is evidence that the educator engaged in misconduct described by Subdivision (2); or

(4) the educator engaged in conduct that violated the assessment instrument security procedures established under Section 39.0301.

Tex. Educ. Code Ann. § 21.006 (West).

The circumstances for mandatory reports are further explained by the Commissioner's rules, which are set out in Title 19 of the Texas Administrative Code. It is important to note that the current version of Section 249.14 found online does not conform to the changes in SB 7. Although the State Board for Educator Certification (SBEC) has adopted new rules which conform to SB 7, the State Board for Education (SBOE) has not reviewed the newly adopted rules. As such, the version of Section 249.14 that has been recently adopted by SBEC is not final, and will not be posted online until SBOE reviews it. The following version of Section 249.14 is the newly adopted SBEC rule, which will be considered by the SBOE soon.³

³ The rules adopted by SBEC can be found at:

[https://tea.texas.gov/About TEA/Laws and Rules/SBEC Rules \(TAC\)/Adopted State Board for Educator Certification Rules - Subject to SBOE Review/](https://tea.texas.gov/About%20TEA/Laws%20and%20Rules/SBEC%20Rules%20(TAC)/Adopted%20State%20Board%20for%20Educator%20Certification%20Rules%20-%20Subject%20to%20SBOE%20Review/)

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"Navigating the World of SBEC Disciplinary Hearings: Lessons Learned and Practice Tips"