2018 Legislative Recap: Educator Sexual Misconduct Involving Students in Tennessee Schools

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During the 110th General Assembly, members passed five pieces of legislation concerning educator sexual misconduct following the release of the Comptroller's January 2018 report *Educator Sexual Misconduct Involving Students in Tennessee Schools*. The report provided lawmakers with an examination of Tennessee's laws, policies, and practices concerning the prevention and reporting of the sexual abuse of children by school personnel, considered areas of risk or weakness that could be improved, and compared Tennessee's practices to those of other states. This document provides a description of each new public chapter and an overview of the report's original findings.

Public Chapter 935

(Senate Bill 2011 – Sen. Dolores Gresham | House Bill 2009 – Rep. Tilman Goins and Rep. Harry Brooks)

Public Chapter 935 **requires directors of schools to report** to the **State Board of Education (SBE or the board)** when they learn that a licensed educator who their district employs:

(1) has been convicted of certain serious felony offenses (including statutory rape by an authority figure, among others) listed in the criminal code or

(2) has either resigned or been suspended or dismissed from their job because of allegations of conduct (including sexual misconduct) that could warrant the State Board suspending or revoking their license to teach.

Currently, SBE rules require directors to report such incidents to the Tennessee Department of Education (TDOE or the department) within 30 days. SBE is then responsible for reviewing cases concerning potential licensure actions. The new law allows the board to set timeline parameters for reporting.

The new law **allows SBE to publicly reprimand a director of schools for failing to make a required report**. If reprimanded, the board must notify both the director and the local board of education (or governing bodies for charter schools or non-public schools) about the failure to report. The Comptroller's report found the information that districts provide to SBE is often 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, but the board had limited ability to act should a director fail to report.

Public Chapter 935 also supports an update made to State Board rules concerning educator licensure. The new law **clarifies SBE's authority to take a range of disciplinary actions** – including formal reprimand, suspension, or revocation – **against the licenses of educators in school districts and schools for misconduct**. (This part of the law applies to all potential misconduct, not just sexual misconduct.) In February 2018, the Government Operations Committee approved an updated board rule 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.

The Comptroller's report found that Tennessee state law contained only broad language concerning educator misconduct. The new law **defines "sexual misconduct" in the context of school personnel** to mean any sexually related behavior with a child or student, including verbal, nonverbal, written, physical, or electronic behavior that is designed to establish a sexual relationship with the child or student.

Public Chapter 936

(Senate Bill 2012 – Sen. Dolores Gresham | House Bill 2099 – Rep. Jay Reedy and Rep. Harry Brooks)

Public Chapter 936 requires **SBE to develop policies concerning the transmission of final disciplinary actions taken against an educator's license to a national clearinghouse**, which receives similar information from all states. TDOE routinely reports these actions to the clearinghouse, administered by the National Association of State Directors of Teacher Education and Certification, but has not had a formal policy to follow in doing so. The clearinghouse maintains information on disciplinary actions taken against educator licenses across the country and allows state departments of education to access information when a person from out of state applies for an in-state teaching license. The board has denied licensure to some out-of-state applicants based on information it received through the clearinghouse.

The law also **requires SBE to post to its website all final disciplinary actions taken by the board on educator licenses**. The Comptroller's report recommended the board consider publishing the final dispositions for all actions it takes 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. SBE has already updated its website to reflect all licensure actions dating back to 2014.

Public Chapter 937

(Senate Bill 2013 – Sen. Dolores Gresham | House Bill 2165 – Rep. Tilman Goins and Rep. Harry Brooks)

Public Chapter 937 **clarifies the appropriate boundaries that should exist between educators and their students** through additions to the Tennessee Teacher Code of Ethics in state law, disregard of which can result in an educator's dismissal. Prior to the new law, the Teacher Code of Ethics did not explicitly refer to inappropriate relationships between teachers and students. The Comptroller's report found some other states have adopted ethics codes for educators that are detailed and straightforward about teacher-student relationships.

Among the new language, for example, is "[The educator shall] not engage in any sexually related behavior with the student, whether verbal, written, physical, or electronic, with or without the student's consent."

The law also makes additions to the Teacher Code of Ethics for areas not related to the sexual misconduct of teachers, including the administration of testing, for example.

Educators who have personal knowledge of another educator's breach of the Tennessee Teacher Code of Ethics will be required to report the information to the educator's immediate supervisor, director of schools, local board of education, or the State Board of Education, within 30 days of discovery. Failure to report will itself be a breach of the Teacher Code of Ethics.

The Comptroller's report found that while some districts may conduct training for educators and other employees regarding appropriate boundaries between school personnel and students, Tennessee does not require it. The law **requires school districts to conduct annual training concerning the Teacher Code of Ethics and its requirements**, addressing what constitutes unethical conduct. State-approved **teacher preparation programs are also required to provide training to all teacher candidates on the Teacher Code of Ethics**.

Public Chapter 938

(Senate Bill 2015 – Sen. Dolores Gresham | House Bill 2433 – Rep. Mark White and Rep. Harry Brooks)

Public Chapter 938 **prohibits school districts from entering into nondisclosure agreements with employees who have committed sexual misconduct** involving a student. Some school districts have entered into such agreements, agreeing not to give an employee a negative recommendation in exchange for the employee's resignation, thus allowing the employee to continue to work in another school district. This practice, widely referred to as "passing the trash," has been documented in news accounts in Tennessee and across the country. The new law fulfills a provision in the federal education law, the Every Student Succeeds Act, that requires states to take some action to prevent this from occurring in order to remove educators who commit sexual misconduct involving students from the classroom.

The law **authorizes school districts to request personnel files of persons seeking employment from any district** in which they were previously employed. Districts receiving such requests must provide the files within 10 business days.

Public Chapter 1006

(Senate Bill 2014 – Sen. Dolores Gresham | House Bill 1997 – Rep. Harry Brooks)

Public Chapter 1006 requires school districts, charter schools, and public and private child care programs to ensure that criminal background checks are completed *every five years* for all educators and any other employee whose job requires them to work with or near school children or children in a child care program. Previously, criminal background checks were not required to be repeated after a person was hired by a school district. School districts, charter schools, and child care programs will be responsible for the costs of the recurring background checks, which will continue to be conducted by the Tennessee Bureau of Investigation (TBI).

If Tennessee is accepted into a national program, instead of ensuring that criminal background checks occur every five years, **districts, charter schools, and child care programs would be required to participate in the FBI "Rap Back" program**, which would provide continual notifications of any criminal history reported to the FBI after an employee is hired. Background checks provide a "snapshot in time" of a person's criminal record, but the information in a background check can change over time. The "Rap Back" program will allow Tennessee to receive ongoing notifications about any criminal arrests or convictions of employees who work in positions of trust with children, including licensed educators, support staff, and childcare workers.

The Tennessee Bureau of Investigation may charge a reasonable fee for the criminal history checks performed under the program, and both the TBI and the Federal Bureau of Investigation (FBI) will retain applicant and employee fingerprints to continually update information.

The new law requires **school districts and charter school governing bodies to adopt policies concerning background check procedures for contract workers and volunteers**; the law still requires districts or their contract vendors to conduct background checks on contract employees but districts may choose to do so for volunteers.

Public Chapter 1061 – Appropriations Act

The 2018 Appropriations Act includes funding for one additional staff attorney within the SBE to review cases of educator misconduct.

The Comptroller's report found that the State Board of Education's capacity to **investigate cases of educator misconduct is limited compared to some other states' capacity**. 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. 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, SBE had a backlog of approximately six to eight months of outstanding cases from 2016-17 to review.

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