



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING


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MICHAEL F. RICE, Ph.D.
STATE SUPERINTENDENT

MEMORANDUM

DATE: July 14, 2022

TO: Local and Intermediate School District Superintendents
Public School Academy Directors

FROM: Delsa D. Chapman, Ed.D., Deputy Superintendent
Division of Educator, Student, and School Supports 

SUBJECTS: Legal Obligations of Educational Personnel Related to
Student Abuse and Neglect

The federal [Elementary and Secondary Education Act of 1965](#) (ESEA), as reauthorized in 2015, includes Section 8546—a provision to help protect students from sexual abuse and misconduct in schools. Section 8546 requires states to have in place laws or policies that prohibit K-12 employers from assisting or aiding and abetting school employees and contractors in obtaining a new job if they are known, or believed based on probable cause, to have engaged in sexual misconduct with a student or minor.

Recently, the U.S. Department of Education (USED) published a study concerning the requirements of Section 8546. USED's study and a fact sheet providing an overview of state laws and policies relevant to Section 8546 are available on the federal [Office of Elementary and Secondary Education web page](#) under "Publications."

The purposes of this memorandum are: 1) to describe Michigan's statutory requirements related to Section 8546; 2) to describe requirements of Michigan's Child Protection Law and to share relevant training resources; and 3) to make a recommendation for fully informed hiring decisions. The identified purposes are detailed on the pages that follow.

On behalf of the U.S. Department of Education, Office of Elementary and Secondary Education's Office of Safe and Supportive Schools, the National Center on Safe Supportive Learning Environments (NCSSLE) is offering a "Lessons from the Field" webinar, [Protecting Students by Preventing Aiding and Abetting Adult Sexual Misconduct](#) from 3-4 p.m. Wednesday, July 20. Register [here](#) to participate.

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1) MICHIGAN STATUTORY REQUIREMENTS RELATED TO SECTION 8546

Michigan Compiled Laws (MCL) [18.1287](#), [380.1230](#), [380.1230a](#), [380.1230b](#), [380.1532](#), [380.1535a](#), [380.1539b](#), [388.1763](#), [399.811](#), and [750.491](#) impose the following obligations related to Section 8546.

As prospective employers, local and intermediate school districts and public school academies shall:

- Conduct criminal background checks with fingerprinting on, at a minimum, all job applicants to whom a district desires to offer employment.
- Check state certification and licensure status of applicants and employ only individuals who are eligible.
- Require that an applicant authorize current and former employers to disclose any unprofessional conduct¹ of the applicant and to make available copies of personnel record documents related to that conduct.
- Require that an applicant release current and former employers from liability for providing information about unprofessional conduct.
- Request an applicant's current or previous employer to provide information about the applicant's unprofessional conduct.
- Request an applicant's current or previous employer to provide results of a criminal history check.
- Decline to hire an applicant who does not provide the required authorization and release about unprofessional conduct.
- Within 60 days after receiving a criminal history report that discloses a felony conviction, notify the Michigan Department of Education (MDE).

Job applicants shall:

- Provide written authorization for current and former employers to disclose employment information and records.
- Provide a written release of current and former employers from liability for providing information about unprofessional conduct.
- Provide a written statement disclosing any criminal convictions and unprofessional conduct.
- Provide contact information for all current and former employers.
- Provide written consent for a criminal history check.

¹ MCL 380.1230b(8)(b) provides:

"Unprofessional conduct" means 1 or more acts of misconduct; 1 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.

As current and former employers, local and intermediate school districts and public school academies shall:

- Retain personnel files for employees cited for unprofessional conduct for not less than 50 years after the individuals are no longer employed by the district.
- Retain all other personnel files for not less than 6 years after the individuals are no longer employed by the district.
- Respond to prospective employers' requests for information about unprofessional conduct within 20 business days.
- Respond to prospective employer requests for results of criminal history checks.
- Retain criminal history reports in employees' personnel records.
- Not enter into a collective bargaining agreement, employment contract, resignation or severance agreement, or any other contract or agreement that has the effect of suppressing information about unprofessional conduct of an employee or former employee.
- Not enter into a collective bargaining agreement, employment contract, resignation or severance agreement, or any other contract or agreement that has the effect of expunging information about substantiated unprofessional conduct from personnel records.
- Within 15 days after being notified or learning from an authoritative source that an employee who holds an educator credential has been convicted of criminal sexual conduct or another crime described in MCL 380.1535a or 380.1539b, notify the superintendent of public instruction.

2) MICHIGAN'S CHILD PROTECTION LAW

Section 3(1)(a) of Michigan's [Child Protection Law](#), MCL 722.623, requires teachers, school counselors, and school administrators to make an **immediate** verbal report to the Michigan Department of Health and Human Services (MDHHS) of suspected child abuse or neglect. The report shall be made by telephone (855-444-3911) or online through the [Michigan Online Reporting System \(MORS\)](#). If the report is by telephone, the reporting person shall also file a [written report](#) **within 72 hours**.

If the reporting person is a school employee, the person shall notify the person in charge of the school of the suspected abuse or neglect and of the report to MDHHS and shall make the report available to the person in charge. The mandatory reporter is not expected to investigate the matter, know the legal definitions of child abuse and neglect, or know the name of the perpetrator. **Reports are confidential, and mandatory reporters should err on the side of children's safety.** The Child Protection Law, which is intended to simplify the reporting process, places responsibility for determining appropriate action with the Children's Protective Services (CPS) program of MDHHS.

Notifying parents, guardians, school administrators, or other individuals, but not notifying MDHHS, does not satisfy mandatory reporting requirements and is a breach

of the [Michigan Code of Educational Ethics](#). MDE has developed [training resources](#) to ensure educators are equipped to identify signs of abuse and neglect, understand the requirements of mandatory reporting, and respond appropriately when students disclose information to them.

3) MDE'S ADDITIONAL RECOMMENDATION

Local and intermediate school districts and public school academies are **strongly encouraged** to take advantage of the National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Identification Clearinghouse (clearinghouse). The clearinghouse is a database that monitors and tracks adverse actions taken against an educator's credential. Many of these actions are not related to criminal prosecutions and do not show up in traditional criminal background checks. By including the clearinghouse in the screening of certified and non-certified applicants, a school district can make more fully informed hiring decisions. More information about the NASDTEC clearinghouse can be found at its [website](#).

Questions related to the school safety elements addressed in this memorandum may be directed to Leah Breen, director of the Office of Educator Excellence, at BreenL1@Michigan.gov.

cc: Michigan Education Alliance
Confederation of Michigan Tribal Education Departments