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Study of State Policies to Prohibit Aiding and Abetting Sexual Misconduct in Schools

Task 3.5 Third Draft OMB Package: Appendix C, State Education Agency Interview Protocol

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Introduction to the Interview

Introduce yourself and thank the administrator for participating in the interview.

Explain the purpose of the study and topics to be covered in the interview by reading the following statement to interview respondents:

The Study of State Policies to Prohibit Aiding and Abetting Sexual Misconduct in Schools will document how each state, plus the District of Columbia and the island territories, has responded to ESEA Section 8546. Section 8546 of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) of 2015 requires laws, regulations, or policies that prohibit school employees, contractors, or agents, or any SEA or district, from assisting (or “aiding and abetting”) school employees, contractors, or agents in obtaining a new job (apart from the routine transmission of administrative and personnel files) if the individuals or agencies know, or have probable cause to believe, the latter employees, contractors or agents engaged in sexual misconduct with a student or minor in violation of the law.

To be clear, our goal as researchers is to describe how SEAs are responding to Section 8546, and not to monitor state actions or evaluate state compliance with federal law. As stated in Section 8546, “The Secretary shall not have the authority to mandate, direct, or control the specific measures adopted by a State, State educational agency, or local education agency under this section.”

The study began with our reviewing publicly available state documents and continues with interviews with key SEA officials in each state. The purpose of our state document reviews was to generate preliminary information on existing or pending statutes, regulations, policies, or codes of ethics that respond to Section 8546. We are now interviewing key SEA officials to learn about their perspectives on responding to the requirements in ESEA Section 8546; how they implement related policies or procedures in their work with local school districts; the successes and challenges to implementation; and any support or assistance they may need from the U.S. Department of Education to respond to Section 8546.

Explain the provisions for protecting interview respondents’ privacy by reading the following statement to respondents at the beginning of each interview:

As part of the study, the study team will share its findings with the U.S. Department of Education. However, data collected during the interviews will be summarized across all the states participating in interviews. Individuals will not be identified by name in any report, and data will be reported in a way that does not reveal your identity or the identity of your state. However, we may use anonymous quotes to help illustrate the findings. Except for that which is already public, every effort will be made to maintain the confidentiality of all information collected, and we will not provide information that identifies you or your state to anyone outside the study team, except as required by law.

If this is a group interview:

In addition, we ask that you agree to keep the names of the participants in this group interview—and the details of the group discussion—confidential.

Advise respondents that the interview will last approximately 60 minutes.

Invite questions from respondents.

Confirm respondent's (respondents') willingness to participate in the interview.

Ask permission to audio-record the interview using the following statement:

We would like to record this conversation in order to ensure that we accurately capture your comments. If you agree, we will retain the recording only until we are able to validate the quality of the transcript, at which point the voice recording will be destroyed. If at any point you would like to say something off the record, I will stop the recording. Do you agree to allow us to record the interview?

Explain whom they can contact if they have questions about the interview:

If you have questions after this interview, you may contact Leslie Anderson, the project director, or Andrew Abrams at the Department. Contact information for both Leslie and Andy was included in the email that I sent you to confirm this interview. I will also include it in a follow-up email after this interview.

Confirm respondents' current position and responsibilities within the agency/organization, including how long they have been in their current role in the state.

Interview Questions

NOTE: Interviewers will ask all follow-up questions as specified in the protocol. In addition, interviewers will be directed to seek clarification of any response they judge to be vague or incomplete. The primary strategy for seeking clarification will be to ask respondents to provide specific examples to illustrate their responses. A second strategy will be to ask respondents to "say more" or to "expand on" or "explain the meaning of" a particular comment.

Background & state context

1. What responsibility do you and your office within the SEA have for developing or implementing state policies specifically related to preventing new employment of those known or believed with probable cause to have engaged in sexual misconduct regarding a student or minor? *[Probe for names of other SEA offices or other state agencies, organizations, or boards that may also have responsibility for developing or implementing these policies.]*
2. Preventing sexual misconduct of students and minors is a complicated matter of law and policy. We thought it would be helpful to talk through some specific examples to help us understand how your state's laws, regulations, codes of ethics, and/or policies are intended to prevent aiding and abetting new employment of a school employee, contractor, or agent ("staff member") known or believed with probable cause to have engaged in sexual misconduct with a student or minor. To the extent you have such policies, could you walk us as best you can through what should happen in this state in each of the following scenarios? Are you aware of what should happen in each scenario according to your state laws, regulations, codes of ethics, and/or policies?

Scenario 1: A school staff member who was believed with probable cause to have engaged in sexual misconduct with a student or minor asks for a letter of recommendation from a colleague also employed in the district (i.e., a teacher, principal, or administrator) who knows about the accusations of sexual misconduct.

Scenario 2: A school district administrator or school principal receives an application for employment from an individual who currently works in another school district. There is probable cause to believe that this individual has engaged in sexual misconduct with a student or minor, but the district administrator or school principal who receives the application does not know that.

Scenario 3: A school staff member accused of sexual misconduct with a student or minor has been exonerated in an investigation and asks for a letter of recommendation.

Scenario 4: A school staff member convicted of sexual misconduct with a student or minor requests that the incident not be documented in his personnel file or disclosed to anyone outside the school.

[Probe for how specific policies around hiring practices and disclosures should ultimately prevent employment in schools or in positions with access to children in Scenarios 1, 2, and 4.]

Developing state statutes, legislation, regulations, and/or policies that address Section 8546

3. To your knowledge, which state agencies were involved in developing, reviewing, or updating laws, regulations, codes of ethics, and/or policies to address Section 8546? What role did the SEA play in this process?

[Probe for who was involved and roles in discussions/policy decisions, e.g., state legislators, Governor's office, SEA offices, state superintendent/commissioner of education, state boards or other state agencies or organizations, district administrators, teacher unions, etc.]

4. *[Skip to Q5 if respondent does not know.]* To your knowledge, what laws, regulations, and/or codes of ethics did the state legislature, SEA, or other state agencies, organizations or boards:
 - a. develop in response to the requirements of Section 8546?
 - b. review and update in response to the requirements of Section 8546? How and in what ways were *[laws, regulations, codes of ethics, and/or policies]* updated?
 - c. To your knowledge, did decisionmakers favor laws over policies? If so, why?
5. What policies and procedures has the SEA developed, revised, or updated to address Section 8546?
 - a. Which offices within the SEA were involved in developing those policies?

[Probe for whether other state agencies, organizations, or boards were involved in developing those policies]

- b. What process did the SEA follow to develop these policies? How did the SEA engage key stakeholders? *[Listen for: District and school administrator involvement, parent involvement.]*

Now, I'd like to ask you some questions about the SEA's role in particular:

6. To what extent, if at all, did the requirements of Section 8546 change the SEA's perspective on ways to prohibit aiding and abetting new employment of individuals known or believed with probable cause to have engaged in sexual misconduct with a student or minor?

- a. Does the SEA define and/or interpret what “assisting employment” or “aiding and abetting” means?
7. What, if any, challenges did your SEA encounter when [helping *develop or reviewing/revising*] laws, regulations, codes of ethics, and/or policies that respond to the requirements of Section 8546? How and to what extent were these challenges resolved?

Implementing statutes, legislation, regulations, and/or policies that address Section 8546

8. How is the SEA communicating the requirements of Section 8546 and of state laws or policies prohibiting aiding and abetting to each of the following institutions and individuals: local school districts, private/nonpublic schools receiving federal funds, charter schools, and contractors?
 - a. How would a district administrator know what constitutes educator sexual misconduct in his or her district or school?
 - b. How would a district administrator know what constitutes “assisting” an educator in this situation in obtaining a new job?
9. How does the SEA support districts and schools (i.e., public, including charter schools, as well as private schools receiving federal funds) to develop policies that reflect state laws, codes of ethics, and/or policies that prohibit aiding and abetting?
 - a. Does the SEA partner with other state agencies to provide this support? Which agencies?
10. What guidance and technical assistance, such as trainings, is the SEA providing to districts and schools regarding local implementation of state laws or policies pertaining to the requirements of Section 8546? Which offices in the SEA are responsible for providing guidance and technical assistance to districts and schools?

[Listen for how the SEA supports proper investigations of incidents of aiding and abetting employment of individuals known or believed with probable cause to have engaged in sexual misconduct, including whether the SEA appoints trained investigators. Listen for policies requiring regular background checks on all school employees; SEA liaisons for districts investigating allegations of educator sexual misconduct; or exit interviews with school personnel who have responded to a documented case of misconduct.]

- a. Does the SEA partner with other state agencies to provide this support? Which agencies?
11. How, if at all, does the SEA monitor local districts’ compliance with state laws or policies prohibiting aiding and abetting?¹ For example, what processes are in place to monitor employer implementation of required hiring practices, such as conducting criminal background checks on job applicants? *[Probe for how often monitoring occurs around specific laws, regulations or policies related to hiring practices and/or disclosures of information.]*

¹ Note to interviewers (not part of questions) to keep discussion specifically around 8546: the “actors” who should be monitored to ensure compliance with state laws under 8546/the SEA are not the school personnel who engaged or are alleged to have engaged in misconduct, but rather the administrators, contractors, agents, and LEAs who may “assist” them. SEAs under 8546 are not responsible for investigations of teachers for misconduct. This assurance is about investigating their “aiders and abettors” for the aid they may offer them. This is an important distinction for the line of questioning in the interview.

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- a. How does the SEA support districts and/or schools who have not complied with the law and/or policies that prohibit aiding and abetting?
 - b. What other state agencies are responsible for ensuring compliance with state laws and policies, in addition to the SEA? What are their responsibilities?
12. How does the SEA track complaints and/or incidents of sexual misconduct from districts? [*Probe for whether the SEA has a statewide database on educator incidents of sexual misconduct in schools it can share with districts*]
- a. Does the SEA require districts to maintain records of incidents of sexual misconduct in schools?
13. What is the SEA's process for determining whether district policies respond to state laws prohibiting aiding and abetting? [*Probe for how often the SEA has reviewed district policies to determine whether they reflect state laws prohibiting aiding and abetting?*]
- a. To your knowledge, to what extent do districts have policies in place that reflect state laws and policies prohibiting aiding and abetting?

Successes and challenges to implementing state laws and policies that address the requirements of Section 8546

14. Do you have any examples that lead you to believe that your state's laws and policies prohibiting aiding and abetting have prevented any school employee, contractor or agent known or believed with probable cause to have engaged in sexual misconduct with a student or minor from obtaining a new job?
15. [*If the state has laws, regulations, codes of ethics, and/or policies that address Section 8546*] What challenges, if any, has the SEA encountered in its efforts to implement laws, regulations, codes of ethics and/or policies, that address Section 8546? [*When SEAs describe challenges, probe for examples. As needed, ask how those challenges have hindered implementation of state laws (e.g., How so?).*]
- a. What strategies has the SEA used to address these challenges and to what extent have they been effective?
16. To your knowledge, what challenges, if any, have districts encountered in their efforts to develop implement, or enforce laws, regulations, codes of ethics and/or policies that address Section 8546?
- a. What strategies have the SEA and/or school districts used to address these challenges and to what extent have they been effective?
17. What types of support and assistance do you need, if any, from the Department in order to respond to the requirements of Section 8546?

Wrap-up

18. Is there anything else that we should know about your state's laws and policies that address the requirements of Section 8546?