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

Task 3.5 Third Draft OMB Package: Section A, Justification

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SRI Project P25500

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Introduction

The United States Department of Education, Office of Elementary and Secondary Education (OESE) requests Office of Management and Budget (OMB) clearance for the collection of data for the Study of State Policies to Prohibit Aiding and Abetting Sexual Misconduct in Schools. The study is being carried out under the authority of the *Elementary and Secondary Education Act (ESEA)* as reauthorized by the *Every Student Succeeds Act (ESSA)*, Public Law 114-95 (12/10/2015), section 8042.

OESE is requesting clearance to conduct interviews with state education agency (SEA) officials from 50 states, the District of Columbia, and the five island territories (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) to collect information about how SEAs address and implement the requirements of Section 8546 under ESSA.

Section 8546 of the *Every Student Succeeds Act (ESSA)* of 2015 (SEC. 8546. 20 U.S.C. 7926) requires laws, regulations, or policies that prohibit schools, local education agencies, or state education agencies (SEAs) from assisting school employees, contractors, or agents in obtaining a new job if there is a conviction or probable cause to believe they have engaged in sexual misconduct. Exceptions to the provision are as follows: if the information giving rise to probable cause has been properly reported to law enforcement and other authorities as required by law; if the employee is currently under investigation or acquitted of charges; if law enforcement finds insufficient information to establish probable cause; if the charges have been dropped; and if the case or investigation remains open with no charges filed within four years of the date of the initial report to law enforcement. Section 8546 also makes a specific exception for the routine transmission of administrative and personnel files, noting that this practice does not constitute aiding and abetting.

This package contains two major sections:

- 1.** Supporting Statement for Paperwork Reduction Act Submission
 - a. Justification (Section A)
 - b. Description of Statistical Methods (Section B)
- 2.** Appendices
 - a. Appendix A – Notification letter
 - b. Appendix B – Email invitation
 - c. Appendix C – State Interview Protocol
 - d. Appendix D – Study Overview

A. Justification

1. Circumstances that make the collection of information necessary

Purpose of the Study

The purpose of this study is to examine the extent to which states have statutes, legislation, regulations, policies, and/or codes of ethics to prohibit schools, school districts, and SEAs, as well as school employees, from assisting school personnel in obtaining a new job if they have engaged in, or there is probable cause to believe they have engaged in, sexual misconduct with a student or minor.

An estimated 4.5 million students nationwide are affected by school employee sexual misconduct (U.S. Department of Education, 2004). In a 2014 sample of 361 published cases of such misconduct in the United States, most offenders were male and general education teachers, with approximately a quarter identified as athletic coaches (Henschel and Grant 2018). Victims in the sample were most often high school females. More than half of these offenders were placed on administrative leave or resigned immediately after their arrest, and almost all were convicted of their crimes. While the high rate of convictions for these cases appears reassuring, they represent only those that school or district leaders reported to law enforcement officials and published in the media. Many more cases go unreported. School leaders estimate that only 5 percent of sexual abuse and misconduct incidents by school employees are reported to law enforcement or child welfare personnel (Corbett, Gentry, and Pearson, 1993; Finkelhor, Hotaling, and Yllo 1988; Kenny, 2001).

Many cases continue to go unreported because school administrators often handle them internally to avoid such consequences as unwanted media attention, negative public perception, decreased teacher morale, and potential legal ramifications (Grant, Wilkerson, Pelton, Cosby, and Henschel, 2019). As a consequence, school administrators may use confidentiality agreements or private settlements with offenders to keep the incident quiet (Shakeshaft and Cohan 1994; Shoop, 2004; Stein, 1999). Collective bargaining clauses often allow for scrubbing of personnel files, so no record is left once an offender leaves the system. This allows school employees who have committed abuses or misconduct to leave a school district with a letter of recommendation and without a criminal record of their abuse or misconduct to alert future school employers. On average, a teacher-offender will pass through three different districts before being stopped (Government Accountability Office 2010). These practices, allowing known sexual predators to quietly leave the district, to potentially seek work elsewhere, are known as “passing the trash” or “the lemon dance” (Hobson 2012). With no criminal conviction or disciplinary record, predators can obtain new jobs—and move on to other victims.

ESSA Section 8546 requires laws, regulations, or policies that prohibit assisting the continued employment of individuals engaged or allegedly engaged in sexual misconduct with a student or minor. ESSA Section 8546, however, does not define the actions that might constitute “assisting” school personnel in obtaining a new job, and the provision prohibits the U.S. Department of Education from mandating, directing, or controlling the specific measures states or districts adopt under this provision.

As of January 2017, 17 states had enacted legislation or policies that addressed the requirements of Section 8546 whereas 39 had no plans to create legislation, either because they were unaware of the ESSA provision or because, based on the study authors’ assessment, states erroneously believed that

existing laws fulfilled the ESSA mandate (Grant, Wilkerson, and Henschel 2018).

Exhibit 1 shows the study questions and the data sources planned to answer each question. The study team, including researchers from SRI International (SRI), Policy Studies Associates (PSA), and Magnolia Consulting, has completed a review of publicly available documents,¹ systematically examining state legislation, regulations, and codes of ethics that meet the requirements of ESSA Section 8546 and found that available data partially answer Question 1. That is, the publicly available data offer preliminary answers about the number of states that have statutes, legislation, or regulations that prohibit aiding and abetting. However, because some states may be slow to update public records of recently enacted legislation or regulations, we cannot confirm that this review is exhaustive. Accordingly, the state interviews will be used, in part, to verify information from the document reviews, clarify any policy language and interpretation, and identify other statutes, pending legislation, regulations, and policies related to ESSA Section 8546. In addition, the state interview data will permit the study team to investigate Questions 2–4 and how SEAs implement statutes, regulations, and/or policies that prohibit aiding and abetting employment as well as how they communicate, guide, and assist districts and schools in implementing the requirements of statutes, regulations, and/or policies.

Exhibit 1. Study questions and data sources

Study question	Extant document review	State interviews
1.To what extent do states have statutes, legislation, or regulations that prohibit aiding and abetting continued employment of school employees, contractors, or agents who have engaged or allegedly engaged in sexual misconduct with a student or minor?	√	√
a. How many states’ statutes or pending legislation authorize executive branch agencies to issue regulations to prohibit aiding and abetting? Which agencies are charged with issuing and enforcing those regulations?	√	√
b. Do state statutes, pending legislation, or regulations that pertain to aiding and abetting offer specific models, guidelines, or practices to prohibit aiding and abetting employment? If so, what are they?	√	√
2. How did states develop statutes, regulations, and/or policies to address Section 8546?		√
a. Who was involved in the process?		√
b. How did states decide whether to implement state statutes or legislation, as opposed to regulations or policies?		√
3. How are SEAs implementing statutes, regulations, and/or policies that prohibit aiding and abetting continued employment of school employees, contractors, or agents who have engaged in sexual misconduct with a student or minor?		√

¹ The review of state documents is not the subject of this clearance request because the documents are public, accessed through state websites and other online data sources. The Department is requesting clearance only to conduct interviews with state education agency (SEA) officials from 50 states, the District of Columbia, and island territories to collect information about how SEAs address and implement the requirements of Section 8546 under ESSA.

Study question	Extant document review	State interviews
a. How are SEAs communicating the requirements of their state statutes, regulations, and/or policies to districts?		√
b. What guidance and technical assistance, such as trainings, are SEAs providing to districts and schools regarding local implementation of laws or policies pertaining to the requirements of Section 8546?		√
c. How are SEAs supporting school districts and schools in drafting policies pertaining to the requirements of Section 8546?		√
d. How are SEAs monitoring districts' compliance with laws or policies pertaining to the requirements of Section 8546? Do states have a reporting process for potential violations?		√
4. What challenges have SEAs faced in implementing the requirements of Section 8546?		√
a. What challenges have districts reported to SEAs?		√
b. How have SEAs and districts addressed the challenges?		

Immediately upon receiving OMB clearance, the study team will send notification letters signed by OESE to all Chief State School Officers (CSSOs), inviting them to participate in the study. The notification letter can be found in Appendix A. One week after mailing the letter, the study team will send email invitations to every state Title IV, Part A Coordinator. The email invitation can be found in Appendix B. The email describes the study, including its importance, purposes, and products, and invites Title IV Coordinators to participate in a 60-minute telephone interview. The email also provides an overview of the data collection plan; provisions for maintaining the confidentiality of participants and data security; and a list of interview topics. The email asks state officials: (1) whether they are the most knowledgeable state-level respondent on the topics relevant to the study, (2) whether they wish to involve multiple individuals with relevant knowledge and responsibilities in the interview, and (3) whether they wish to refer us to other administrators who are more knowledgeable about state legislation, regulations, and policies that meet the requirements of ESSA Section 8546. Finally, the email will attach a copy of the letter sent to the CSSO. The state interview protocol can be found in Appendix C.

2. Indicate how, by whom, and for what purpose the information is to be used

Information obtained through this collection will result in a public report planned for release in spring 2021. The report will aggregate findings across states on the processes, implementation, and challenges associated with the requirements of Section 8546, based on both the interviews with state officials and the review of public documents. OESE will disseminate the public report on the Web. The results of the study will generate important findings that can guide OESE's technical assistance and inform states about current practices that are most prevalent in the field or that the study's technical working group has identified as potentially promising for developing, communicating, implementing, and monitoring state laws, regulations, policies, and codes of ethics that meet the requirements of Section 8546.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology

The study team will not ask respondents to provide any data via electronic means. However, the study team will use a variety of technologies and methods to maximize data collection efficiency and minimize respondent burden. The following describes the use of technology to support each data collection or data analysis activity.

- **Collect contact information for SEA interviews respondents.** To identify the appropriate state interview respondents, analysts will start by updating contact information for state coordinators of the Title IV, Part A Student Support and Academic Enrichment grants program based on a review of all SEA websites, including the District of Columbia and the island territories.
- **Capturing and coding state interview data.** The study team will use Qualtrics, an online surveying software, to capture data collected during the state interviews. For the state interviews, the Qualtrics form will include: (1) closed-ended questions about strategies related to Section 8546 and (2) text boxes for capturing detailed open-ended responses from state officials, including direct quotations, as appropriate. The online repository is not intended to be completed concurrently with the interview. Rather, relying on interview transcripts, interviewers will enter responses into the data repository soon after the transcripts are available. The state interview protocol can be found in Appendix C.

Analysts will use Qualtrics as well to code the qualitative data, which will greatly facilitate the analytic process by enabling the study team to integrate multiple data sources, to efficiently and consistently condense data into key analysis categories tied to report topics, and to compare findings and patterns across states and districts.

During the data collection period, a toll-free phone number and email address will be available to permit interview respondents to contact the study leads with questions or concerns about the study.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above

The study team is using all available data, including a review of the academic literature and public reports. The study team also recently completed a systematic review of public documents that examined states' progress toward adopting laws and policies that respond to ESSA Section 8546. These data, particularly the document review, have provided some preliminary answers to the study questions. However, there are gaps in information needed to fully answer all questions. The telephone interviews with state officials for which clearance is sought would provide critical information not available from other sources. In addition to confirming the results of the extant document review, the planned data collection will provide information regarding: (1) the processes states used to develop laws and policies that address the requirements of Section 8546; (2) the practices for supporting and monitoring the implementation of the requirements; and (3) the challenges SEAs face in implementing these requirements. The Study of State Policies to Prohibit Aiding and Abetting Sexual Misconduct in Schools, for which clearance is requested, is the only national study of the implementation of ESSA Section 8546 currently funded.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden

Not applicable. The study will engage SEA officials, which are not small businesses or small entities.

6. Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden

An estimated 4.5 million students nationwide are affected by school employee sexual misconduct (U.S. Department of Education 2004). School employees who have committed abuse or misconduct can leave a school district with a letter of recommendation and without a record of their abuse or misconduct to disclose to future school employers. ESSA Section 8546 was designed to prevent this behavior by requiring states to develop laws, regulations, policies, and/or codes of ethics to prohibit aiding and abetting the continued employment of individuals accused of sexual misconduct. As of January 2017, 17 states had enacted relevant legislation or policy that addressed the requirements of Section 8546.²

Failure to collect information will limit OESE, Congress, and others from understanding to what extent states have developed statutes, regulations, policies, or codes of ethics that prohibit aiding and abetting. In addition, it will limit OESE's access to information that will help guide its technical assistance and inform states and local policymakers and education leaders about what constitutes aiding and abetting continued employment of sexual abusers as well as guidelines, procedures, and practices for implementing the ESSA provision and current practices that are most prevalent in the field.

² Grant, B. J., S. B. Wilkerson, and M. Henschel. "Passing the Trash: Absence of State Laws Allows for Continued Sexual Abuse of K-12 Students by School Employees." *Journal of Child Sexual Abuse* (2018). Taylor and Francis Online. doi:10.1080/10538712.2018.1483460

7. Special Circumstances

None of the special circumstances apply to this data collection.

8. Federal Register comments and persons consulted outside the agency

A technical working group comprising five individuals with knowledge of the legislative, regulatory, and policy history of aiding and abetting sexual misconduct in schools reviewed and provided feedback on the study design and interview protocols, taking into account the history and current context of state and local efforts to prevent aiding and abetting sexual misconduct in schools. In addition, TWG members will alert the study team to any new issues or sensitivities influencing policymaking and implementation of state policies to prevent aiding and abetting of sexual misconduct. They will also help ensure that data collection, analysis, and reporting identify current needs for technical assistance from OESE to states and from states to local educators, drawing on their own experience and perspectives.

The 60-day Federal Register notice was published on October 28, 2019, Vol. 84, No. 208 page 57708-57709. It yielded one, non-substantive public comment for which no action was required.

Study team members asked pilot respondents to provide feedback on the extent to which the protocol questions were: (1) confusing, inappropriate, or leading; (2) illogically sequenced; or (3) unreasonably burdensome to answer. In addition, pilot respondents provided feedback on whether the protocol questions were relevant to understanding state efforts to respond to *ESSA* Section 8546.

Pilot respondents' feedback was very positive; all believed the protocol was clear, followed a logical order, was not unreasonably burdensome, and asked relevant questions about SEA responses to the requirements of Section 8546. The study team made a few minor changes to the protocol based on pilot respondents' feedback, including: (1) referencing, where relevant, other agencies, organizations, and boards that may be involved in developing policies that address the requirements of Section 8546; and (2) adding a question about the types of support and assistance SEAs need from the Department in order to respond to the requirements of Section 8546. Finally, pilot respondents verified that the information can be collected in approximately 60 minutes.

9. Payment or gift

The study team will provide no payment or gift to state officials who participate in this study.

10. Assurances of confidentiality

The study team will take several steps to assure participants' confidentiality. During the initial contact with potential participants, the study team will emphasize confidentiality to alleviate concerns about employment repercussions or legal consequences for participating in the study. All potential interview respondents will receive written communication describing the purpose of the study, provisions for maintaining participant confidentiality and data security, and the plan for data collection prior to participating in the interview. All written communications will explain that the interviews—including group interviews—will not commence without the verbal consent of the respondent(s) to: (a)

participate in the individual or group interview; and b) be audio recorded.

Because of the potential sensitivity of the subject matter, the explanation of the consent process will assure interviewees that the study will report on states in the aggregate and will not publicly reveal information that is specific to their state. In addition, all written communication will indicate that researchers will make every effort to protect the confidentiality of the information provided, to the extent provided by law. The description of the study will also advise respondents that the study team may include direct quotes in reports but that identifying information will not accompany quotes.

The plan is for one interview per SEA, but a group interview will be conducted if the state identifies multiple key individuals with relevant knowledge and responsibilities. The same confidentiality assurances apply to the group as apply to the individual. However, the study team will take added precautions to protect the confidentiality of the group discussion by asking respondents to agree to keep the names of the participants and the details of the discussion confidential.

In the event that a respondent—or group of respondents—withholds their consent for audio recording, the study team will make arrangements for a second data collector to be present in the interview to take near-verbatim notes on a laptop computer. So that we will know to include a second data collector in the interview, we will ask interviewees for consent to audio record the interviews as part of the interview scheduling process.

Safeguards to protect the privacy and confidentiality of all respondents include the following:

- All team members will participate in a training that will cover procedures for assuring participant confidentiality.
- The study team will provide secure environments for all data collected for the study.
- The study team will immediately deidentify all data collected during the study that can potentially be linked to individual respondents.
- Only authorized members of the study team will have direct access to deidentified study databases. Study team members will maintain a high level of focus on ensuring the confidentiality of both quantitative and qualitative data.
- The team will not share data obtained in this research with any entity or individual other than OESE and will not use the data for purposes other than this study.

Responses to this data collection will be used only for statistical purposes. The reports prepared for this study will summarize findings across the sample and will not associate responses with a specific individual. We will not provide information that identifies respondents to anyone outside the study team, except as required by law.

11. Justification for questions of a sensitive nature

School employee sexual misconduct is a sensitive topic. While interview questions are intended to collect information about each state's processes for responding to and implementing the requirements of ESSA Section 8546, participants may need to reveal sensitive information to provide context for their state's response or challenges reported by districts. The study team will take every step to ensure that respondents feel comfortable during interviews and protect respondents from potential threats posed by sensitive research.

12. Estimates of the hour burden

The study team estimates that the telephone interview will require no more than 60 minutes with each state Title IV coordinator or with a group of state officials identified in consultation with the state Title IV coordinator, which the study team anticipates will require 56 labor hours across states, the District of Columbia, and island territories.

Exhibit 2 provides estimates of the number of telephone interviews and the amount of time required to conduct them. The total number of estimated labor hours needed to collect information for this study will be 56 hours. There are no monetary costs to respondents for this activity. At an estimated 56 labor hours at an average of \$45 per hour in labor, the overall cost burden for this information collection is \$2,520.

Exhibit 3. Estimated number of state officials and labor hours for each information collection

Respondent category	Number of respondents per state	Number of states	Total responses	Time to complete data collection	Total labor hours
State Title IV Coordinator	1	56	56	60 minutes	56
Total to complete the data collection			56		56
Annualized (over three years)			19		19

13. Total annual cost burden for this activity

There is no capital or start-up cost component to these data collection activities, nor is there any operations, maintenance, or purchase cost associated with the study.

14. Annualized costs to the federal government

The estimated cost to the federal government is \$599,712. Annualized over three years, this cost is \$199,904 per year. This total includes costs already invoiced, plus budgeted future costs charged to the government for contractual services from SRI, PSA, and Magnolia Consulting to finalize the study design, data collection, data analysis, and reporting.

15. Program changes in burden/cost estimates

This request is for a new information collection, so no changes apply.

16. Plans for tabulation and publication

The study will result in a comprehensive report and a short brief designed to inform OESE, Congress, state and local education agencies, and other key stakeholders about the extent to which states have responded—through statutes, legislation, regulations, policies, and/or codes of ethics—to Section 8546 by prohibiting assisting school personnel in obtaining a new job if they have engaged in, or there is

probable cause to believe they have engaged in, sexual misconduct with a student or minor. In particular, the report will describe the decisions and processes states used to develop legislation, regulations, policies, and/or codes of ethics related to Section 8546.

The report will present data interpretation and conclusions, as well as a description of study goals, the study methodology used, and study limitations. The final report will also contain information-rich, reader-friendly graphics that communicate important, actionable information to policymakers, program administrators, and the broader research and practitioner communities. The only information identifying individual states in the final report will be included in an appendix. The appendix will only include data collected in reviews of publicly available extant documents, and states will have an opportunity to review and correct their data before the report is finalized.

Data collection is scheduled for May and June 2020, analysis will begin in July 2020, and the final report is scheduled for completion in May 2021.

17. Expiration date omission approval

Not applicable. All data collection instruments will include the OMB data control number and data collection expiration date.

18. Exceptions to the certification statement

Not applicable. There are no exceptions requested.

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