

AB-2534

New Requirements for Hiring/Reference Checks in Local Educational Agency Employment (Certificated Employee Egregious Misconduct)

Nov. 2024



Overview

- Requirements of AB 2534
- Employer Consequences of Non-Compliance
- Employee Consequences of Non-Compliance
- Dealing with In-Progress Investigations
- Out of State Applicants

Requirements

(Applicant)

- Applicants for Public School Employment
 - shall provide the prospective employer with a complete list of every school district, county office of education, charter school, and state special school (local educational agency, or “LEA”) that the applicant has previously been an employee of.

Requirements

(Hiring Agency)

- LEA Receiving Application
 - shall inquire with each LEA disclosed by the applicant), as to whether the applicant, while previously employed by the local educational agency, was the subject of any credible complaints of, substantiated investigations into, or discipline for, egregious misconduct, as defined in paragraph (1) of subdivision (a) of Section 44932, that were required to be reported to the Commission on Teacher Credentialing.

Definition - Egregious Misconduct

(Ed. Code § 44932(a)(1))

- “Egregious misconduct” is defined exclusively as immoral conduct that is the basis for an offense described in:
 - Education Code Section 44010 or 44011; or in
 - Penal Code Sections 11165.2 to 11165.6, inclusive

Definition - Egregious Misconduct (Ed. Code § 44010)

- Comprehensive Definition of “sex offense” for purposes of Education Code sections
- Includes, generally:
 - Assault with intent to commit sex offense (PC § 288.2)
 - Rape (PC § 261)
 - Unlawful intercourse with minor (PC § 261.5)
 - Distributing child pornography to minors (PC § 288.2)
 - Child pornography offense (PC § 311.2)
 - Distributing harmful matter (PC § 313.1),
 - Loitering in public to solicit any lewd and lascivious act (PC § 647(a), (b))
 - Lewd, obscene conduct/indecent exposure (PC § 313)
 - Loitering about adult schools
 - Lewd & lascivious conduct (PC § 272)
 - An attempt to commit any of the above
 - Any act committed in another state that would be punishable under the above California laws
 - Failure to register as a sex offender
 - Commitment as mentally disordered sex offender

Definition (Egregious Misconduct)

(Ed. Code § 44011)

- Definition of Controlled Substances Offenses for Education Code
- Includes, generally:
 - Possession of controlled substances (PC § 11350)
 - Possession of GHB with intent to commit sexual assault (PC § 11351)
 - Possession, purchase for sale, distribution of certain controlled substances (PC §§ 11351, 11351.5, 11352, 11352.1, 11352.5)
 - Distributing controlled substances where children are present (PC § 11353.5)
 - Distributing controlled substances within 1000 feet of school (PC § 11353.6)
 - Adult distributing controlled substances to minor in parks (PC § 11353.7)
 - Adults employing minors to sell, or selling controlled substances to minors (PC § 11361)
 - Operating or maintaining place to unlawfully sell controlled substances (PC § 11366)
 - Prescription forgery (PC § 11368)
 - Possession of non-narcotic controlled substances (PC § 11377)
 - Sale or furnishing counterfeit controlled substances (PC § 11382)
 - Under the influence of controlled substance, failure to complete rehabilitation, and possession of firearm while under the influence of certain controlled substance (PC § 11550)

Definition – Egregious Misconduct

(Penal Code §§ 11165.2 to 11165.6)

- Child Neglect, Severe Neglect (PC § 11165.2)
- Willful harming, injuring of a child, endangering the person or health of child (PC § 11165.3)
- Unlawful corporal punishment (PC § 11165.4)
- Abuse or neglect in out-of-home care (PC § 11165.5)
- Child abuse or neglect (PC § 11165.6)

Requirements

(Previous Employer)

- Prior Employer of Applicant to LEA
 - If the LEA made a report of an employee's egregious misconduct to the Commission on Teacher Credentialing,
 - it shall disclose this fact to LEA considering an application for employment from the employee, upon inquiry, and,
 - notwithstanding any other law, shall provide the inquiring local educational agency with a copy of all relevant information that was reported to the Commission on Teacher Credentialing, within its possession

Employer Consequences of Non-Compliance

- Non-compliance can lead to exposure and liability. For example:
 - Provides grounds for potential Petition for Writ of Mandate per Code of Civ. Proc. § 1085 commanding compliance.
 - Potential for attorney's fees under Code of Civ. Proc. § 1021.5 for private enforcement.
 - Failure to disclose report of egregious misconduct could lead to liability if the applicant commits further misconduct that results in injury.
 - Reputational damage for failure to report egregious misconduct, regardless of whether further misconduct occurs.

Employee Consequence of Non-Compliance

- Potential dismissal
 - Probationary
 - For-cause, if discovered after probationary period;
- Further CTC Reporting

Dealing with In-Progress Investigations

- AB-2534's disclosure requirements apply when a LEA has “made a report of egregious misconduct” to the CTC.
 - No obligation to provide information to LEA's inquiring under AB-2534 unless there has been a report of egregious misconduct made to CTC.
 - If LEA is in-progress on making a report of egregious misconduct, it can consider making the report prior to responding to requests under AB-2534

Out-of-State Applicants

- AB 2534 specifically applies to California agencies
- For out-of-state applicants:
 - Districts should inquire with former educational employers regarding substantiated reports of egregious misconduct and reports to the state's licensing agency.
 - Contact us for template out-of-state inquiry forms.

Out-of-State Applicants

- Risks of Not Inquiring
 - California public schools may unknowingly hire applicants with a history of egregious misconduct in their home state, posing risks to school and student safety.
 - Potential liability for negligent hiring practices, particularly in the event of future egregious misconduct.

Summary

- Starting January 1, 2025
 - Applicants must disclose prior all educational employment
 - Hiring employers must inquire with all prior employers of applicant for egregious misconduct reports to CTC.
 - Former employers must provide information relating to the report

Further Resources

- Contact us for:
 - Questions regarding your agency's obligations under AB 2534
 - Template Employer Inquiry Forms
 - Recommended Language for Employment Application Updates

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