

The Texas Education Agency (TEA) adopts an amendment to §61.1051, concerning reporting child abuse and neglect. The amendment is adopted with changes to the proposed text as published in the August 23, 2019 issue of the *Texas Register* (44 TexReg 4433) and will be republished. The adopted amendment incorporates definitions; requires additional reporting under certain circumstances; details what must be included in the policy addressing sexual abuse, trafficking, and other maltreatment of children; and describes training requirements for new employees and employees not previously trained.

REASONED JUSTIFICATION: Section 61.1051 relates to the reporting of child abuse and neglect and related training requirements for school districts and open-enrollment charter schools as required by TEC, §38.004 and §38.0041.

The adopted amendment adds new subsection (a) to incorporate definitions for *child abuse or neglect*, *other maltreatment*, and *trafficking of a child* to align with statute.

Language is added in subsection (b)(1) to align with Texas Family Code requirements regarding mandatory reporting notification.

Language is added in subsection (b)(2) to require school district and open-enrollment charter school policy to require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

New subparagraphs (b)(3), (7), and (8) are added to describe the school district's or open-enrollment charter school's policy addressing sexual abuse, trafficking, and other maltreatment of children.

Former subsection (c), which contains outdated training dates, has been removed.

Language is added to subsection (d) to specify that training must be provided to all new school district and open-enrollment charter school employees and to existing school district and open-enrollment charter school employees not previously trained. This requirement implements TEC, §38.0041. The new language in subsection (d) also addresses what must be included in the training, requires records of each staff member who participated in the training to be maintained locally, and describes the resources that may be used to provide the training.

In response to public comment, a change was made to the rule since published as proposed. Language that was proposed in subsection (b)(1) was removed and original language relating to suspected abuse or neglect was reinstated in order to align with the Texas Family Code requirements regarding mandatory notification.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 23, 2019, and ended September 23, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: An individual and a representative of the Hill Country Alliance Against Trafficking commented in support of the proposal, which they stated will train educators to recognize and report the signs and symptoms of human trafficking, and reiterated the importance of educating children how to avoid becoming victims of traffickers.

Agency Response: The agency agrees that the new training requirements for educators in 19 TAC §61.1051 will increase educators' knowledge and awareness so they can report and help prevent human trafficking.

Comment: An individual and a representative of the Big Country Human Trafficking Coalition commented in support of the proposed amendment, noting the importance of properly training educators to identify and report cases of human trafficking in efforts to combat this crime in our state.

Agency Response: The agency agrees educators will play an instrumental role in identifying and reporting trafficking of children, as well as facilitating the rescue of trafficked children by law enforcement.

Comment: A representative of the Noah Project Inc. commented in support of requiring educators to be trained specifically on trafficking and prevention and stated that trafficking is becoming more prevalent in Texas public schools.

Agency Response: The agency agrees that trafficking can occur in any neighborhood, community, and school. This new training requirement will equip educators and school districts to identify and report cases of human trafficking.

Comment: A Texas counselor commented in support of addressing the issue of human trafficking and assisting educators in recognizing behavioral indicators.

Agency Response: The agency agrees that the training requirements will assist educators in recognizing behavioral indicators and addressing the issue of human trafficking.

Comment: A Texas teacher commented in support of the proposal's training requirements for educators to recognize indicators of human trafficking.

Agency Response: The agency agrees the training requirements will assist educators in identifying the indicators of human trafficking.

Comment: A Texas counselor commented that the new training requirement will have a monetary impact on schools and would require time and effort from staff members to ensure the implementation of the proposal. The Texas counselor also commented that the effective date for this rule in November is an ambitious goal with no review of materials.

Agency Response: The agency disagrees that there will be a monetary impact on the schools to implement the required training. Districts will be able to utilize a training module developed by TEA at no-cost. Districts will also be able to collaborate with local law enforcement agencies and community resources, however, there might be costs if the district chooses an outside entity to facilitate and document their training. Additionally, school district staff and open-enrollment charter school staff are required to receive training on the prevention and mandated reporting requirements of child abuse or neglect.

Comment: A director of education from the Big Country Human Trafficking Coalition Regional Victim Crisis Center (RVCC) commented in support of the proposal, stating that all school district staff should be mandated to receive training on prevention and awareness of human trafficking.

Agency Response: The agency agrees all staff members should receive training on human trafficking in alignment with the child abuse and neglect definitions in the Family Code and Penal Code.

Comment: The legal director of policy and program support at the Texas Department of Family and Protective Services commented that the rule text is not accurate because it states that the professional reporting must have cause to believe a child's physical or mental health or welfare has been adversely affected by abuse or neglect, while in the Texas Family Code, Chapter 261, it states a professional shall make a report when they have cause to believe the child has been or may be abused or neglected or when a person has cause to believe the child's physical or mental health or welfare has been adversely affected by abuse or neglected.

Agency Response: The agency agrees and has modified subsection (b)(1) at adoption to reinstate original language relating to suspected abuse or neglect in order to align with the Texas Family Code requirements regarding mandatory notification.

Comment: The Texas Classroom Teachers Association recommended that rule text revisions should reflect changes to the Texas Family Code, §261.110, made by House Bill (HB) 621, 86th Texas Legislature, 2019, that expanded the protections for professionals who in good faith report child abuse or neglect by providing that an employer may not take any adverse employment action against a professional who in good faith reports child abuse or neglect.

Agency Response: The agency disagrees. The changes made by HB 621 are not legally required. Immunity provisions for a person who reports child abuse or neglect or otherwise assists in an investigation in good faith is already addressed in 19 TAC §61.1051(b)(2)(C).

Comment: A parent recommended that the prohibition of a policy that school personnel report suspicions of child abuse or neglect to a school administrator prior to making a report to an identified agency should be extended to prohibit a policy that school personnel report suspicions of child abuse or neglect to a school administrator after making a report to an identified agency in proposed subsection (b)(5). The parent stated that staff members would be less likely to report suspicions of abuse and neglect if required to make a report to an administrator after making a report to an identified agency. The parent also recommended the rule text include a training requirement for abuse in a school setting, including restraints and seclusion as a behavior management practice.

Agency Response: The agency disagrees. The agency has determined that the rule text as written is more likely to result in reports. Any additional training requirements will be addressed in guidance.

Comment: A representative of the Texas American Federation of Teachers suggested adding a requirement that a copy of a report made to the Texas Department of Family and Protective Services and Child Protective Services must be sent to the home address of the employee making the report of possible child abuse or neglect.

Agency Response: The agency disagrees. The Texas Education Agency is not the appropriate state entity to address this reporting requirement.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §38.004, which requires Texas Education Agency (TEA) to develop a policy governing the reports of child abuse or neglect, including reports related to the trafficking of a child under Texas Penal Code, §20A.02(a)(5), (6), (7), or (8), as required by Texas Family Code, Chapter 261; TEC, §38.0041, as amended by HB 111, 86th Texas Legislature, 2019, which requires each school district and open-enrollment charter school to adopt and implement a policy addressing sexual abuse and other maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities; Texas Family Code, §261.001, which defines child abuse and neglect, which includes knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Texas Penal Code, §20A.02(a)(5)-(8); and Texas Penal Code, §20A.02(a)(5)-(8), which provides a person commits an offense if the person knowingly: traffics a child with the intent that the trafficked child engage in forced labor or services; receives a benefit from participating in such a venture; traffics a child and by any means causes the trafficked child to engage in, or become of a victim of, conduct prohibited by §20A.02(a)(7)(A)-(K); or receives a benefit from participating in such a venture or engages in sexual conduct with a child trafficked in this manner.

CROSS REFERENCE TO STATUTE. Texas Education Code, §38.004 and §38.0041, as amended by House Bill (HB) 111, 86th Texas Legislature, 2019; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

<rule>

#### **§61.1051. Reporting Child Abuse or Neglect, Including Trafficking of a Child.**

- (a) The following words and terms, when used in this subchapter, have the following meanings.
  - (1) Child abuse or neglect--The definition of child abuse or neglect includes the trafficking of a child in accordance with Texas Education Code (TEC), §38.004.
  - (2) Other maltreatment--This term has the meaning assigned by Human Resources Code, §42.002.
  - (3) Trafficking of a child--This term has the meaning assigned by Texas Penal Code, §20A.02(a)(5), (6), (7), or (8).
- (b) The board of trustees of a school district or governing body of an open-enrollment charter school shall adopt and annually review policies for reporting child abuse and neglect. The policies shall follow the requirements outlined in Texas Family Code, Chapter 261.

- (1) The policies must require that every school employee, agent, or contractor who suspects a child's physical or mental health or welfare has been adversely affected by abuse or neglect submit a written or oral report to at least one of the following authorities within 48 hours or less, as determined by the board of trustees, after learning of facts giving rise to the suspicion:
  - (A) a local or state law enforcement agency;
  - (B) the Texas Department of Family and Protective Services, Child Protective Services Division;
  - (C) a local office of Child Protective Services, where available; or
  - (D) the state agency that operates, licenses, certifies, or registers the facility in which the alleged child abuse or neglect occurred.
- (2) The policies must require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child and must notify school personnel of the following:
  - (A) penalties under Texas Penal Code, §39.06; Texas Family Code, §261.109; and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) for failure to submit a required report of child abuse or neglect;
  - (B) applicable prohibitions against interference with an investigation of a report of child abuse or neglect, including the following:
    - (i) Texas Family Code, §261.302 and §261.303, prohibiting school officials from denying an investigator's request to interview a student at school; and
    - (ii) Texas Family Code, §261.302, prohibiting school officials from requiring the presence of a parent or school administrator during an interview by an investigator;
  - (C) immunity provisions applicable to a person who reports child abuse or neglect or otherwise assists an investigation in good faith;
  - (D) confidentiality provisions relating to reports of suspected child abuse or neglect;
  - (E) any disciplinary action that may result from noncompliance with the district's reporting policy; and
  - (F) the prohibition under TEC, §26.0091, against using or threatening to use the refusal to consent to administration of a psychotropic drug to a child or to any other psychiatric or psychological testing or treatment of a child as the sole basis for making a report of neglect, except as authorized by TEC, §26.0091.
- (3) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, trafficking, and other maltreatment of children. The policy must be included in any informational handbook provided to students and parents and must address the following:
  - (A) methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, trafficking, and other forms of maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;
  - (B) actions a child who is a victim of sexual abuse, trafficking, or other maltreatment should take to obtain assistance and intervention; and
  - (C) available counseling options for students affected by sexual abuse, trafficking, or other maltreatment.
- (4) The policies must be consistent with Texas Family Code, Chapter 261, and 40 TAC Chapter 700 (relating to Child Protective Services) regarding investigations by the Texas Department of Family

and Protective Services, including regulations governing investigation of abuse by school personnel and volunteers.

- (5) The policies may not require that school personnel report suspicions of child abuse or neglect to a school administrator prior to making a report to one of the agencies identified in paragraph (1) of this subsection.
  - (6) The policies must include the current toll-free telephone number of the Texas Department of Family and Protective Services.
  - (7) The policies must provide for cooperation with law enforcement child abuse investigations without the consent of the child's parent, if necessary, including investigations by the Texas Department of Family and Protective Services.
  - (8) The policies must include child abuse anti-victimization programs in elementary and secondary schools consisting of age-appropriate, research-based prevention designed to promote self-protection and prevent sexual abuse and trafficking.
- (c) The policies required by this section and adopted by the board of trustees shall be distributed to all school personnel at the beginning of each school year. The policies shall be addressed in staff development programs at regular intervals determined by the board of trustees.
- (d) Training concerning prevention techniques for, and recognition of, sexual abuse, trafficking, and all other maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities, must be provided as a part of new employee orientation to all new school district and open-enrollment charter school employees and to existing school district and open-enrollment charter school employees not previously trained as required by TEC, §38.0041.
- (1) The training must include:
    - (A) factors indicating a child is at risk for sexual abuse, trafficking, or other maltreatment;
    - (B) warning signs indicating a child may be a victim of sexual abuse, trafficking, or other maltreatment;
    - (C) internal procedures for seeking assistance for a child who is at risk for sexual abuse, trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;
    - (D) techniques for reducing a child's risk for sexual abuse, trafficking, or other maltreatment; and
    - (E) information on community organizations that have relevant research-based programs that are able to provide training or other education for school district or open-enrollment charter school staff, students, and parents.
  - (2) Each school district and open-enrollment charter school must maintain records that include the name of each staff member who participated in training.
  - (3) To the extent that resources are not yet available from the Texas Education Agency or commissioner of education, school district and open-enrollment charter schools shall implement the policies and trainings with existing or publicly available resources. The school district or open-enrollment charter school may also work in conjunction with a community organization to provide the training at no cost to the district or charter school.
- (e) Using a format and language that is clear, simple, and understandable to students, each public school and open-enrollment charter school shall post, in English and in Spanish:
- (1) the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number;
  - (2) instructions to call 911 for emergencies; and

- (3) directions for accessing the Texas Department of Family and Protective Services website ([www.txabusehotline.org](http://www.txabusehotline.org)) for more information on reporting abuse, neglect, and exploitation.
- (f) School districts and open-enrollment charter schools shall post the information specified in subsection (e) of this section at each school campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The information must be on a poster (11x17 inches or larger) in large print and placed at eye-level to the student for easy viewing. Additionally, the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number should be in bold print.