UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

JUN 2 7 2018

Dear Chief State School Officers:

As you know, in December 2015, Congress reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), through the Every Student Succeeds Act (ESSA). The reauthorized law builds on the ESEA's role in helping to ensure that every child has the opportunity to obtain a high-quality education. Achieving this goal is essential, but we can achieve it only if every student is safe in his or her school. To that end, I am writing to remind you of an important provision that Congress included in the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act, to help protect students from sexual abuse. That provision, in section 8546 of the ESEA (20 U.S.C. § 7926), requiring policies to be in place to prohibit the aiding and abetting of sexual abuse, imposes an important requirement on States, State educational agencies (SEAs), and local educational agencies (LEAs) that receive ESEA funds. When your agency applied for funds under ESEA, your agency provided an assurance that all applicable legal requirements, including section 8546, would be complied with; additionally, LEAs provided similar assurances.

For too long, and too often, teachers or other school staff who have engaged in sexual misconduct with a student or minor at one school have been able to obtain employment at another school, without that other school ever learning of the prior misconduct. This sometimes occurs because someone from the employee's prior school provides a recommendation that helps the employee obtain new employment. Section 8546 of the ESEA seeks to end this abhorrent practice.

Under section 8546, every State, SEA, or LEA that receives ESEA funds must have in place laws, regulations, or policies that prohibit the SEA, an LEA, or school, as well as any school employee, contractor, or agent, from providing a recommendation of employment for an employee, contractor, or agent that the SEA, LEA, or school, or the individual acting on behalf of the SEA, LEA, or school, knows, or has probable cause to believe, has engaged in sexual misconduct with a student or minor in violation of the law. The SEA, LEA, school, or individual acting on behalf of one of those entities would not be prohibited from following routine procedures regarding the transmission of administrative or personnel files but would be prohibited from doing more than that to help the employee obtain new employment.

Section 8546 allows for certain exceptions to the prohibition on providing a recommendation of employment. In particular, the prohibition does not apply if: (1) the alleged misconduct has been properly reported to law enforcement and any other authorities required by Federal, State, or local law; and (2) the matter has been officially closed; the employee, contractor, or agent has been exonerated; or the relevant case or

investigation remains open without an indictment or other charges having been brought within four years of the date on which the information was provided to law enforcement.

Significantly, section 8546 establishes the minimum requirements that must be met by a State, SEA, or LEA that receives ESEA funds. It does not preempt or prevent a State from adopting a statute, regulation, or policy that establishes more rigorous protections to prevent an SEA, LEA, school, or individual acting on behalf of one of those entities from assisting an employee, contractor, or agent who has engaged in sexual misconduct with a minor or student in violation of the law in obtaining new employment.

The complete text of section 8546 is set forth in the enclosure to this letter.

The U.S. Department of Education (Department) is committed to ensuring State and local compliance with the requirements of section 8546. Failure to meet these requirements may result in the Department taking appropriate enforcement action. In addition, should an LEA or school receiving funds under the ESEA fail to meet these requirements, the SEA under a State-administered program has a range of other enforcement actions at its disposal with respect to noncompliance by an LEA, including placing appropriate special conditions on an LEA's Title I, Part A grant or withholding an LEA's Title I, Part A funds (*see, e.g.,* section 440 of the General Education Provisions Act (20 U.S.C. § 1232c)). In the near future, we intend to reach out to State officials to discuss how SEAs and LEAs are meeting their responsibilities under this important provision. Should you need technical assistance on this matter, please let us know.

We look forward to working with you to help ensure that all children are safe in their schools so that they may receive the best education possible and go on to succeed in college and careers. If you have any questions about this letter, please contact Paul Kesner, Acting Director of the Office of Safe and Healthy Students in the Office of Elementary and Secondary Education.

Thank you for your continued commitment to providing a quality education for all children.

Sincerely,

Jason Botel
Principal Deputy Assistant Secretary
Office of Elementary and Secondary Education

cc: Governors

Enclosure

ESEA Section 8546 (20 U.S.C. § 7926):
Prohibition on Aiding and Abetting Sexual Abuse

(a) IN GENERAL. — A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this Act shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

(b) EXCEPTION. — The requirements of subsection (a) shall not apply if the information giving rise to probable cause —

> (1)(A) has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and
> (B) has been properly reported to any other authorities as required by Federal, State, or local law, including title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the regulations implementing such title under part 106 of title 34, Code of Federal Regulations, or any succeeding regulations; and
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> (2)(A) the matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law;
> (B) the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or
> (C) the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

(c) PROHIBITION. — The Secretary shall not have the authority to mandate, direct, or control the specific measures adopted by a State, State educational agency, or local educational agency under this section.

(d) CONSTRUCTION. — Nothing in this section shall be construed to prevent a State from adopting, or to override a State law, regulation, or policy that provides, greater or additional protections to prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee who engaged in sexual misconduct regarding a minor or student in violation of the law in obtaining a new job.