

**MODEL LEGISLATION/ POLICY**

**TO COMPLY WITH ESSA § 8038, BAN ON AIDING & ABETTING SEXUAL ABUSE**

**Mandatory Provisions:**

**Section. 1. Ban on Aiding and Abetting Sexual Abuse.**

**(a) Violation.**—It shall be a violation of this Act/ policy for 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) Penalty.**—*[The State or agency may chose whichever penalty it wishes—criminal or civil]*

**Optional Provision:**

**A State or Education may adopt some or all of the following exceptions to liability. The State or agency may not adopt any other exceptions. And it need not adopt any exceptions.**

**(c) 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

(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.