

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 131 **Educator Conduct**

SPONSOR(S): Education & Employment Committee, Secondary Education & Career Development Subcommittee, Duggan, Buchanan and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1864

FINAL HOUSE FLOOR ACTION: 116 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 131 passed the House on April 15, 2021, and subsequently passed the Senate on April 29, 2021.

Too often school employees can engage in sexual misconduct with a student and evade any consequences by moving among schools, districts, and employers. According to a 2017 study, half of school-based perpetrators had prior allegations of sexual misconduct with students and one in three had multiple victims. However, current employment tools do not identify teachers, administrators, and educational support personnel who have committed sexual misconduct with a student. To protect students from these individuals, the bill requires:

- school districts and the Department of Education (DOE) to conduct full and complete investigations of the conduct;
- school districts to execute an affidavit of separation and specify when the separation is due to sexual misconduct with a student; and
- the DOE to include such individuals on the disqualification (DQ) list maintained by the department that consists of individuals who are prohibited from future employment by public schools, charter schools, and private schools participating in state scholarship programs.

An individual may be removed from the DQ list when: a completed criminal investigation results in no conviction or finding of guilt and the employer determines that the individual did not commit the disqualifying conduct; the individual was added in error; or the employer who requests that the individual be removed submits documentation to support the request.

The bill limits, to 1 year, an investigation and subsequent discipline, conducted by a school district after receiving a "legally sufficient complaint" of misconduct. The Commissioner must make a determination of probable cause on that complaint within 90 days of receipt.

The bill requires parental notification when an employee is arrested for offenses that involve abuse of a child or drug offenses. The notification must include the employee's name and the specific charges for which he or she was arrested.

The bill does not appear to have a fiscal impact since any costs associated with DOE maintaining the unified DQ list can be absorbed within existing resources.

The bill was approved by the Governor on June 21, 2021, ch. 2021-138, L.O.F., and will become effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

“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.”¹ A 2017 case study of school employee sexual misconduct found that, on average, a perpetrator would pass through three school districts before being stopped.² Additionally, one out of three incidents of sexual misconduct with a student involved multiple victims, including one perpetrator that had 73 victims.³

In 2017, the National Center for Education Statistics (NCES), an agency within the U.S. Department of Education, created a definition of “sexual misconduct” in order to improve data collection in its periodic survey of public schools regarding the incidence, frequency, seriousness, and nature of violence affecting students and school personnel.⁴ NCES defines “sexual misconduct” as:⁵

Any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a student regardless of the age of the student that is designed to establish a romantic or sexual relationship with the student. School staff have power over students by virtue of their position, thus student-staff relationships are not equal and students cannot be consenting parties to romantic or sexual relationships.

For perpetrators who move among school districts, the perpetrator is often aided in the transition by a recommendation from the prior school district.⁶ This practice has become so common that it is referred to as “passing the trash” or “the lemon dance.”⁷

In an effort to end this practice, the Every Student Succeeds Act (ESSA) of 2015 included an amendment to Section 8546 of the Elementary and Secondary Education Act of 1965 (ESEA) that prohibits specified agencies and individuals from providing a recommendation for employment to an individual the covered agency knows, or has probable cause to believe, engaged in sexual misconduct with a student or minor in violation of the law.⁸ Section 8546 of the ESEA also authorizes states to adopt additional protections to prohibit covered entities from assisting a school employee who engaged in sexual misconduct regarding a minor or student in obtaining a new job.⁹ In an effort to end this abhorrent practice, the U.S. Department of Education in 2018 issued a “Dear Colleague” letter and restated the federal law prohibition, emphasizing that failure to meet these requirements could lead to restrictions on, or withholding of, federal funding.¹⁰

¹ U.S. Department of Education, *ESSA Dear Colleague Letter on ESEA Section 8546 Requirements*, p. 1 (June 27, 2018), available at <https://oese.ed.gov/files/2020/07/section8546dearcolleagueletter.pdf> [hereinafter *Dear Colleague Letter*].

² Billie-Jo Grant, Ph.D., et al., *A Case Study of K-12 School Employee Sexual Misconduct: Lessons learned from Title IX Policy implementation*, p. 6, (Sept. 17, 2017), available at <https://www.ojp.gov/pdffiles1/nij/grants/252484.pdf> [hereinafter *Sexual Misconduct Case Study*].

³ *Id.* at pgs. 6 and 50.

⁴ U.S. Department of Education, Institute of Education Sciences, *2017-18 School Survey on Crime and Safety (SSOCS): Public-Use Data File User's Manual*, pgs. 1 and 3 (April 2020), available at <https://nces.ed.gov/pubs2020/2020054.pdf>.

⁵ *Id.* at 3.

⁶ *Dear Colleague Letter* at 1.

⁷ *Sexual Misconduct Case Study* at 6.

⁸ *Dear Colleague Letter* at 1; 20 U.S.C. s. 7926.

⁹ 20 U.S.C. s. 7926(d).

¹⁰ *Dear Colleague Letter* at 1-2.

Despite this federal activity, perpetrators continue to move between school districts and avoid discipline in Florida. There are many cases when school personnel, substitute teachers, or contractors have committed acts of moral turpitude and continued serving in positions that require direct contact with students.¹¹ Many times these individuals resigned before the completion of an investigation and were subsequently employed because they were never formally charged. For example, in Hillsborough County, five teachers who resigned while under investigation for wrongdoing later returned to the classroom through a company that provides temporary workers for the school district. Of those five, two worked as substitute teachers after resigning.¹²

In May 2014, Broward County Public Schools fired and “disqualified from future employment” a substitute teacher following allegations from multiple children that he touched them inappropriately.¹³ Despite this fact, the employee received a temporary teaching certificate from the Department of Education (DOE) in 2016 and began teaching at a charter school in Broward County.¹⁴ In August 2018, the teacher was arrested and is currently facing multiple counts of sexual battery and molestation stemming from conduct at the charter school.¹⁵ While his temporary teaching certificate expired in July 2019, the teacher was not permanently barred from certification until July 2020.¹⁶

Some instances of criminal conduct by teachers have gone either unreported or the teacher was not disciplined. In March 2019, a certified middle school teacher stood trial in Miami-Dade County for sexual misconduct with students over an 11-year time period. Despite numerous complaints against the teacher, he continued teaching and working with students. Allegations included forcible rape, child pornography, inappropriate text messages, unwanted sexual touching, groping a fellow teacher, and verbal sexual comments.¹⁷ The teacher’s certification was not revoked by the DOE until March 15, 2021, following the teacher’s voluntary surrender of his certificate.¹⁸

There have also been numerous reports of untimely investigations and penalties by school districts. In December 2019, a Broward County school terminated a teacher who faced repeated allegations of acting inappropriately with students, nearly 2 years after being arrested on charges he molested a 12-year old girl.¹⁹ During the 2-year period following his arrest, he remained on administrative suspension with full salary, while assigned to the school district’s book depository. Although documented complaints of misconduct against the teacher dated back to 1998, he still found employment at other schools.²⁰

¹¹ Jarrod Holbrook, *I-Team: Hillsborough school supervisors lacked oversight on substitute teachers who misbehave*, <https://www.abcactionnews.com/news/local-news/i-team-investigates/i-team-hillsborough-school-supervisors-lacked-oversight-on-substitute-teachers-who-misbehave> (last visited April 29, 2021). See also Marlene Sokol, *After months, no action on Hillsborough’s substitute teacher problem*, https://www.tampabay.com/news/education/k12/After-months-no-action-on-Hillsborough-s-substitute-teacher-problem_167477475/ (last visited April 29, 2021).

¹² Marlene Sokol, *Company in charge of Hillsborough substitute teachers weighs in on problem cases*, https://www.tampabay.com/news/education/k12/Company-in-charge-of-Hillsborough-substitute-teachers-weighs-in-on-problem-cases_168478343 (last visited April 29, 2021).

¹³ NBC 6, *Former Substitute Teacher Gets State License After Being Fired*, (February 2, 2019), <https://www.nbcmiami.com/news/local/former-substitute-teacher-gets-state-license-after-being-fired/3867/> (last visited April 29, 2021).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* See also *Richard Corcoran v. Christopher Falzone*, Case No. 20-0041-TC, EPC Index No. 20-218-FOI, (Educ. Prac. Comm. July 14, 2020), available at https://www.doah.state.fl.us/FLAID/DOE/2020/DOE-EPC_20-0041-TC_07212020_081139.pdf.

¹⁷ Colleen Wright, *How did this middle school teacher stay so long while girls said he was molesting them?*, Miami Herald, <https://www.miamiherald.com/news/local/education/article226466655.html> (last visited April 29, 2021).

¹⁸ Florida Education Practices Commission, *Final Order in Case 19-0187-RT*, (March 15, 2021), available at http://www.myfloridateacher.com/discipline/icmsorders/178-1821_FO_031621-042118.pdf.

¹⁹ Scott Travis, *Broward teacher accused in 2017 of molesting student fired*, <http://www.sun-sentinel.com/news/education/fl-ne-broward-teacher-molest-arrest-fired-20191210-fpofintupzrg65kgbmew7nsnlbm-story.html> (last visited April 29, 2021).

²⁰ Trent Kelly, *Broward County School Board votes to fire 2 teachers over sexual misconduct complaints*, <https://www.local10.com/news/local/2020/05/05/broward-county-school-board-votes-to-fire-teacher-with-history-of-sexual-misconduct-complaints/> (last visited April 29, 2021).

Private, charter, and public schools can face challenges in identifying persons whose sexual misconduct should disqualify the individual from continued access to students. For example, a Highlands County teacher who began a sexually inappropriate relationship with a 13-year old student in 2017 was subsequently convicted in May 2019.²¹ Despite being incarcerated, his teacher certification was not revoked by the DOE until August 25, 2020, approximately three years after the initial allegations.²²

Parents may be unaware of allegations against a school employee accused of sexual misconduct with a student. In March 2021, an elementary school physical education paraprofessional²³ employed by the Hernando County School District was arrested and removed from school grounds for three charges of sexual battery on a victim under 12 years of age and one charge of lewd and lascivious behavior.²⁴ He worked at the elementary school in a position that had direct contact with students for approximately 30 days prior to his arrest. After his arrest, the district notified parents, but did not include information relating to the allegations or the perpetrator's identity.²⁵

Disqualification of Educational Employees and Personnel

Present Situation

Disqualification of Educational Personnel

Background screening is required for instructional personnel and noninstructional personnel employed in positions that require direct contact with students.²⁶ An individual who has a conviction for any crime involving moral turpitude may not be employed, engaged to provide services, or serve in any position that requires direct contact with students.²⁷ Educational personnel who have direct contact with students may not have a conviction for any of the offenses listed in s. 1012.315, F.S., which include:²⁸

- enumerated felony offenses such as unlawful sexual activity with certain minors and lewdness and indecent exposure;²⁹
- enumerated misdemeanor offenses relating to battery on a child, or luring or enticing a child;³⁰
- any criminal act committed in another state or under federal law which, if committed in Florida, constitutes a prohibited felony or misdemeanor offense;³¹ or
- any act committed in Florida, another state, or under federal law which qualifies an individual for inclusion on the Registered Juvenile Sex Offender List.³²

Teacher Certification and Disciplinary Databases

²¹ Marc Valero, *Dewberry pleads guilty, sentenced to 25 years*, https://www.yoursun.com/sebring/news/dewberyy-pleads-guilty-sentenced-to-years/article_398e3ea0-86f6-11e9-917a-9f96fdcc8209.html (last visited April 29, 2021).

²² *Richard Corcoran v. Kevin Dewberry*, Case No. 20-0216-RT, EPC Index No. 20-280-FON (Educ. Prac. Comm. Aug. 25, 2020), https://www.doah.state.fl.us/FLAID/DOE/2020/DOE-EPC_20-0216-RT_09152020_084540.pdf.

²³ Paraprofessionals are staff that provide instructional support in schools, such as, providing one-on-one tutoring, assisting with classroom management, and acting as a translator or providing instructional support services under the direct supervision of a highly qualified teacher. Paraprofessionals are not certified by the DOE. See Florida Department of Education, *Memorandum Regarding Revised Information - Assignment of Teachers and Paraprofessionals under Differentiated Accountability for Title I and Non-Title I Schools*, available at <https://info.fldoe.org/docushare/dsweb/Get/Rendition-13615/unknown> (last visited April 29, 2021).

²⁴ Pat Raia, *Suncoast Elementary employee charged with sexual assault*, (March 8, 2021), <https://www.hernandosun.com/article/suncoast-elementary-employee-charged-sexual-assault> (last visited April 29, 2021).

²⁵ *Id.*

²⁶ Section 1012.32(2)(a), F.S.

²⁷ Rule 6A-5.056(7), F.A.C., provides a list of offenses that are considered crimes involving moral turpitude, including the offenses listed in s. 1012.315, F.S.

²⁸ Section 1012.315(1)(a)-(vv), (3), and (4), F.S.

²⁹ Section 1012.315(1)(a)-(vv), F.S.

³⁰ Section 1012.315(2)(a)-(b), F.S.

³¹ Section 1012.315(3), F.S.

³² Section 1012.315(4), F.S.

To avoid continued and future employment of certificateholders (i.e. instructional personnel and administrators) who have a conviction for any of the offenses listed in s. 1012.315, F.S., the DOE provides two screening tools to authorized staff of school districts, charter schools, the Florida School for the Deaf and the Blind, and private schools participating in a state scholarship program:

- The Professional Practices' Database of Disciplinary Actions Against Educators.³³
- The Department of Education's Teacher Certification Database.³⁴

Both databases contain only information necessary for performing employment history checks of certificated instructional personnel and school administrators. The databases do not include educational support employees who are non-certificated employees, but whose work supports the educational process.³⁵

The Department of Education Investigations of Alleged Misconduct

The DOE is required to expeditiously investigate any legally sufficient complaint that contains grounds for the revocation or suspension of an individual's educator certificate.³⁶ A complaint is considered legally sufficient if it contains ultimate facts which show a violation for which the Education Practices Commission (EPC) could discipline a certificated individual.³⁷ The DOE must investigate or continue to investigate and take appropriate action on a complaint even if the original complainant withdraws the complaint or otherwise indicates a desire not to cause it to be investigated or prosecuted to completion.³⁸

For certificateholders found to have committed acts of misconduct, the DOE's Office of Professional Practice Services (OPPS) administers the state grievance process, including investigations of alleged misconduct and disciplinary actions.³⁹ Complaints can be filed by any person or entity, and the OPPS can self-generate complaints on their own using media reports or other sources. Legally sufficient complaints of misconduct that affect the health, safety, or welfare of a student have priority over other pending complaints.⁴⁰

Complaints and materials relating to an investigation of a complaint are confidential and exempt from public records laws until a probable cause determination or until the investigation is considered inactive.⁴¹ A preliminary investigation is active so long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the near future. Generally, there is no deadline for completion in Florida law. An investigation is presumed to be inactive if no finding relating to probable cause is made within 60 days after the complaint is made.⁴² Once the OPPS finds probable cause, the case is turned over to the EPC for an administrative hearing.

Education Practices Commission

The State Board of Education (SBE) has adopted standards for educator conduct, referred to as the Principles of Professional Conduct for the Education Profession.⁴³ The EPC interprets and applies the

³³ Section 1001.10(5)(a), F.S.

³⁴ Section 1001.10(5)(b), F.S.

³⁵ Section 1012.01(6), F.S.

³⁶ Section 1012.796(1)(a), F.S.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Florida Department of Education, *Professional Practices*, <http://www.fldoe.org/teaching/professional-practices/> (last visited April 29, 2021).

⁴⁰ Section 1012.796(1)(b), F.S.

⁴¹ Section 1012.31(3)(a)1., F.S., relating to public school personnel files; s. 1012.796(4), F.S., relating to EPC.

⁴² Section 1012.31(3)(a)1., F.S.

⁴³ Section 1012.795(1)(j), F.S.; rule 6A-10.081, F.A.C.

principles to certificated educational personnel.⁴⁴ At least once each year, the EPC must report to and meet with the SBE.⁴⁵ The EPC is authorized to revoke or suspend an educator certificate or take other appropriate action as provided in law.⁴⁶

Upon investigation and finding probable cause, the Commissioner of Education must file a formal complaint and prosecute the complaint according to administrative procedures.⁴⁷ An administrative law judge must be assigned by the Division of Administrative Hearings of the Department of Management Services to hear the complaint if there are disputed issues of material fact. The administrative law judge makes recommendations to the appropriate EPC panel, which conducts a final hearing and reviews the recommendations and other pertinent information. The EPC panel enters a final order either dismissing the complaint or imposing one or more penalties.⁴⁸

Specifically, the EPC may revoke or suspend an educator's certificate if a person has been:⁴⁹

- found guilty of gross immorality or an act involving moral turpitude as defined by SBE rule;
- convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation; or
- disqualified from educator certification under s. 1012.315, F.S., based on a conviction for certain criminal offenses.

The EPC may impose one or more of the following penalties against a person with an educator certificate:⁵⁰

- Revocation or suspension of a certificate.
- Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense.
- Probation.
- Restriction of the authorized scope of practice.
- Written reprimand.
- Referral to the recovery network program for impaired educators.

The DOE may deny initial certification if it has satisfactory evidence that an applicant has committed an act for which the EPC would be authorized to revoke a teaching certificate.⁵¹ The DOE's decision is subject to review by the EPC upon the filing of a written request from the applicant within 20 days after receipt of notice of denial.⁵²

Duties of District School Boards and Superintendents

District school boards are required to disqualify instructional and administrative personnel from employment in any position that requires direct contact with students if the personnel are ineligible for such employment due to a conviction for a disqualifying offense under s. 1012.315, F.S.⁵³ An elected or appointed school board official forfeits his or her salary for 1 year if:

- the school board official knowingly signs and transmits to any state official a false or incorrect report of alleged misconduct by instructional personnel or administrative personnel which affects the health, safety, or welfare of a student;⁵⁴ or

⁴⁴ Section 1012.79(7)(a), F.S.

⁴⁵ Section 1012.79(7)(c), F.S.

⁴⁶ Section 1012.79(7)(b), F.S.

⁴⁷ Section 1012.796(6), F.S.; see ch. 120, F.S.

⁴⁸ Section 1012.796(7); see s. 1012.796(7)(a)-(h), F.S.

⁴⁹ Section 1012.795(1), F.S.

⁵⁰ Section 1012.796, F.S. The EPC is also authorized to deny an application, including prohibiting reapplication for a period of up to ten years or permanently.

⁵¹ Section 1012.56(12)(a), F.S.

⁵² Section 1012.56(12)(b), F.S.

⁵³ Section 1001.42(7), F.S.; see s. 1012.315, F.S.

⁵⁴ Section 1001.42(7)(a), F.S.

- the school board official knowingly fails to adopt policies that require:⁵⁵
 - instructional personnel and administrative personnel to report alleged misconduct by other instructional personnel and administrative personnel;⁵⁶
 - the district school superintendent to report misconduct by instructional personnel or school administrators that would result in disqualification from educator certification or employment to the law enforcement agencies with jurisdiction over the conduct;⁵⁷ or
 - the investigation of all reports of alleged misconduct by instructional personnel and administrative personnel, if the misconduct affects the health, safety, or welfare of a student.⁵⁸

Additionally, a district school superintendent forfeits his or her salary for 1 year if he or she knowingly:

- signs and transmits to any state official a false or incorrect report;
- fails to investigate any allegation of misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student;
- fails to report the alleged misconduct to the DOE; or
- fails to report misconduct to the law enforcement agencies with jurisdiction over the conduct.⁵⁹

Each school district must file in writing with the DOE all legally sufficient complaints of misconduct by a certificateholder affecting the health, safety, or welfare of a student within 30 days after the date on which the misconduct comes to the attention of the school district, regardless of whether the subject of the complaint is still employed by the school district.⁶⁰ The school district must include all known information relating to the complaint at the time of filing. A school district must immediately notify the DOE if the subject of a legally sufficient complaint resigns or is terminated before the conclusion of the school district's investigation.⁶¹ Upon receipt of the notification, the DOE must place an alert on the person's certification file indicating that he or she resigned or was terminated before an investigation was concluded.

If the district school superintendent determines that misconduct by a certificateholder affects the health, safety, or welfare of a student and the misconduct warrants termination, the superintendent must still report the misconduct to the DOE, even if the certificateholder resigns or is terminated.⁶² The DOE maintains each report of misconduct as a public record in the instructional personnel's or school administrators' certification files. This requirement does not limit or restrict the power and duty of the DOE to investigate complaints, regardless of the school district's untimely filing, or failure to file, complaints and follow-up reports.

When an allegation of misconduct by instructional personnel or school administrator is received, the superintendent in consultation with the school principal, or upon the request of the Commissioner, must immediately suspend the individual from regularly assigned duties with pay if the alleged misconduct affects the health, safety, or welfare of a student.⁶³ The superintendent must also reassign the suspended individual to a position that does not require direct contact with students in the district school system. Such suspension continues until the completion of the proceedings and the determination of sanctions, if any.

Duties of Charter Schools

⁵⁵ Section 1001.42(7)(b), F.S.

⁵⁶ Section 1001.42(7)(b)1., F.S.

⁵⁷ Section 1001.42(7)(b)2., F.S.

⁵⁸ Section 1001.42(7)(b)3., F.S.

⁵⁹ Section 1001.51(12)(b), F.S.

⁶⁰ Section 1012.796(1)(d)1., F.S.

⁶¹ Section 1012.796(1)(d)2., F.S.

⁶² Section 1012.796(1)(d)5., F.S.

⁶³ Section 1012.796(5), F.S.

The governing board of a charter school must adopt policies establishing standards of ethical conduct for instructional personnel and school administrators.⁶⁴ The policies must require all instructional personnel and school administrators to complete training on the standards; establish the duty of instructional personnel and school administrators to report, and procedures for reporting, alleged misconduct by other instructional personnel and school administrators, which affects the health, safety, or welfare of a student; and include an explanation of the liability protections.

An individual must undergo a background screening⁶⁵ prior to employment by a charter school or serving on a charter school governing board.⁶⁶ Prior to employing instructional personnel or school administrators, a charter school must conduct an employment history check of each of the applicants previous employers and screen the applicant using the educator screening tools maintained by the DOE.⁶⁷ A charter school must disqualify instructional personnel and school administrators from employment in any position that requires direct contact with students if the personnel or administrators are ineligible for such employment due to a felony conviction for a disqualifying offense under s. 1012.315, F.S.⁶⁸

A charter school may not conceal information related to an employee's termination, or resignation in lieu of termination, by written agreement or otherwise, when such termination or resignation stemmed from misconduct affecting the health safety or welfare of a student.⁶⁹ The charter school must disclose the misconduct when providing an employment reference.

Duties of Private Schools Participating in a State Scholarship Program

A private school participating in a state scholarship program must adopt policies establishing standards of ethical conduct for instructional personnel and school administrators.⁷⁰ The policies require all instructional personnel and school administrators to complete training on the standards; establish the duty of instructional personnel and school administrators to report, and procedures for reporting, alleged misconduct by other instructional personnel and school administrators which affects the health, safety, or welfare of a student; and include an explanation of the liability protections.

Additionally, before employing instructional personnel or school administrators in any position that requires direct contact with students, a private school participating in a state scholarship program must conduct employment history checks of each previous employer, screen the personnel or administrators through use of the educator screening tools, and document the findings. If unable to contact a previous employer, the private school must document efforts to do so.⁷¹

Current law prohibits a private school participating in a state scholarship program from concealing information about employee misconduct relating to the health, safety, or welfare of a student, regardless of whether the individual was terminated or resigned in lieu of termination due to such misconduct.⁷² When providing an employment reference, the private school must disclose employee misconduct relating the health safety, or welfare of a student.

Employee Misconduct Reporting Policies

Each school district, charter school, and private school participating in a state scholarship program must post, at each school and on their website, if they maintain a website, their policies and procedures

⁶⁴ Section 1002.33(12)(g)3., F.S.

⁶⁵ See s. 1012.32(2)(b), F.S.

⁶⁶ Section 1002.33(12)(g)1., F.S.

⁶⁷ Section 1002.33(12)(g)4., F.S.

⁶⁸ Section 1002.33(12)(g)2., F.S.

⁶⁹ Section 1002.33(12)(g)3., F.S.

⁷⁰ Section 1002.421(1)(n), F.S.

⁷¹ Section 1002.421(1)(o), F.S.

⁷² Section 1002.421(1)(n), F.S.

related to reporting alleged misconduct by instructional personnel or school officials which affects the health, safety, or welfare of a student.⁷³ Additionally, the published policies and procedures must include the contact person to whom the report is made and the penalties that will be imposed for failure to report misconduct.⁷⁴

Effect of the Bill

Disqualification of Educational Personnel

The bill creates a disqualification list (DQ list) that includes individuals prohibited from employment in a school under certain circumstances. The DQ list is one of the employment screening tools available to school districts, charter schools and private schools that participate in a state scholarship program. The bill creates a duty on these employers to check the DQ list for prospective employees and send employees and their disqualifying conduct to the DOE for inclusion on the DQ list. The DQ list is maintained by the DOE and includes:

- The identity of any person who has been permanently denied an educator certificate or whose certificate was permanently revoked and has been placed on the list as directed by the EPC.⁷⁵
- The identity of any person who has been permanently disqualified by the Commissioner as an owner or operator of a private school participating in a state scholarship program.
- The identity of any person who has been terminated, or has resigned in lieu of termination, from employment as a result of sexual misconduct with a student.
- The identity of any person who is ineligible for educator certification or employment under s. 1012.315, F.S.

An individual may be removed from the DQ list if:

- a completed law enforcement investigation resulted in an exoneration or no conviction or finding of guilt, and a completed investigation and proceeding by the employer-school resulted in no finding that the person committed disqualifying conduct;
- the individual was not the subject of disqualifying conduct and was included on the DQ list as an error or as a result of mistaken identity; or
- the employer that submitted the individual for inclusion on the DQ list requests that he or she be removed and submits supporting documentation.

An individual on the DQ list is prohibited from serving or applying to serve as an employee or contracted personnel at any public school, charter school, or private school participating in a state scholarship program. Any individual who knowingly violates this prohibition commits a third degree felony.⁷⁶

The bill requires the SBE to adopt rules to implement the DQ list and the removal process.

The bill prohibits certificated (i.e. instructional and administrative personnel) and non-certificated (i.e. educational support employees and substitute teachers) individuals from employment in any position that requires direct contact with students in a district school system, charter school, or a private school participating in a state scholarship program if that individual is on the DQ list or is listed as a registered sex offender.⁷⁷ The bill expands the adjudication classifications that would disqualify an individual from certification or employment to include those individuals found guilty of, having had adjudication withheld for, or having pled guilty or nolo contendere to a specified offense.

Duties of District School Boards and Superintendents

⁷³ Section 1006.061(2), F.S.

⁷⁴ *Id.*

⁷⁵ See s. 1012.795, F.S., regarding the EPC's authority to discipline.

⁷⁶ See ss. 775.082 and 775.083, F.S.

⁷⁷ 42 U.S.C. s. 9858f.

The bill expands mandatory misconduct reporting and investigation policies adopted by school districts to include educational support personnel in addition to instructional personnel and administrators. For all personnel subject to the policy, investigations must be conducted regardless of whether the individual resigned or was terminated before the conclusion of the investigation. The district superintendent must notify the DOE of the result of an investigation and whether the misconduct warranted termination, regardless of whether the individual resigned or was terminated prior to the conclusion of the investigation.

The bill requires a superintendent to complete all investigations regarding an allegation of misconduct that affects the health, safety, or welfare of a student, that would be an offense against a student by an authority figure (i.e. sexual or lewd conduct; or a romantic relationship),⁷⁸ a disqualifying offense under s. 1012.315, F.S., or sexual misconduct with a student.

The bill limits the time a superintendent may suspend a certificateholder with pay to when a legally sufficient complaint is submitted. The bill limits all related proceedings and sanctions issuance, if any, to within 1 year of submission of such a complaint.

Duties of Charter Schools

The bill prohibits an individual on the DQ list from being employed by, or serving on, a charter school governing board. Additionally, a charter school must prohibit from employment, in a position requiring direct contact with students, any individual that is ineligible for such employment under s. 1012.315 or has been terminated, or resigned in lieu of termination, for sexual misconduct with a student.

The bill adds educational support employees to personnel subject to a charter school code of ethical conduct for instructional personnel and administrators.

The bill expands the requirements for charter schools to conduct employment history checks to cover all positions requiring direct contact with students instead of just instructional personnel and school administrators.

Duties of Private Schools Participating in a State Scholarship Program

The bill adds educational support employees to personnel subject to a private school participating in a state scholarship program's standards of ethical conduct for instructional and administrative personnel. The bill prohibits private schools from employing an individual whose educator certificate is revoked or who is barred from reapplying for an educator certificate.

The bill also authorizes the Commissioner to permanently deny or revoke the authority of an owner or operator to establish or operate a private school in Florida if the owner or operator is operating or has previously operated an educational institution in Florida or another state in a manner contrary to the health, safety, or welfare of the public. The Commissioner must include such individuals on the DQ list.

Employee Misconduct Reporting Policies

The bill adds educational support personnel to policies and procedures relating to mandatory reporting and discipline for failure to report regarding employee misconduct affecting the health safety or welfare of students. This requirement applies to school districts, charter schools, and private schools participating in a state scholarship program.

Department of Education Investigations of Alleged Misconduct

⁷⁸ See s. 800.101, F.S. A person who violates this section commits a felony of the second degree.

The bill prohibits the DOE from issuing a new educator certificate for a person whose educator certificate has expired and who committed an act that is the basis for a legally sufficient complaint while holding a certificate unless an investigation has been completed.

The bill creates a duty on the DOE to place an individual on the DQ list upon receiving a notification from a public school, charter school or its governing board, or private school participating in a state scholarship program that the individual is the subject of an investigation of sexual misconduct with a student and has resigned or was terminated before the conclusion of the investigation.

The bill clarifies that the DOE is not obligated to investigate non-certificated employees.

Education Practices Commission

The Commissioner is required to make a probable cause determination within 90 days after receiving a legally sufficient complaint that involves sexual misconduct by any certificated personnel. This time limitation may be tolled upon written request from a state attorney.

The bill adds placement on the DQ list as a penalty the EPC may impose for a felony conviction for a disqualifying offense under s. 1012.315, F.S., or an EPC finding related to sexual misconduct with a student.

Employment History Check

Present Situation

Florida law requires a district superintendent to, before employing an individual in any position that requires direct contact with students, conduct employment history checks of each of the individual's previous employers, screen instructional personnel and school administrators⁷⁹ through the use of educator screening tools,⁸⁰ and document the findings.⁸¹ If the district superintendent is unable to contact a previous employer, he or she must document efforts to do so.⁸²

Federal law requires State Education Agencies (SEA) and Local Education Agencies (LEA) to have policies in place that address employment screening and recommendations for individuals alleged to have committed sexual misconduct with students.⁸³ Specifically, the policies must prohibit any individual who is a school employee, contractor, or agent, or any SEA or LEA, from assisting a school employee, contractor, or agent in obtaining a new job 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.⁸⁴ States are authorized to adopt additional protections above the federal prohibition.⁸⁵

Effect of the Bill

The bill creates an affidavit of separation that public schools must execute when an employee separates from employment due to termination or resigns in lieu of termination. The affidavit must include the facts and reasons for the separation. The affidavit must expressly disclose when the

⁷⁹ See ss. 1012.02(2)(a)-(e) and 1012.02(3)(a)-(c), F.S.

⁸⁰ See s. 1001.10(5)(a)-(b), F.S.

⁸¹ Section 1012.27(6), F.S.

⁸² *Id.*

⁸³ Pub. L. No. 114-95, 129 Stat. 1802 (Dec. 10, 2015); 20 U.S.C. s. 7926.

⁸⁴ 20 U.S.C. s. 7926(a).

⁸⁵ 20 U.S.C. s. 7926(d).

separation is due to a report of sexual misconduct with a student. The affidavit is executed under oath and constitutes an official statement.⁸⁶ The affidavit of separation must also include language that intentional false execution of the affidavit constitutes a second degree misdemeanor. The DOE is provided rule-making authority to adopt a standardized form for the affidavit.

Before a district school superintendent employs an individual in any position that requires direct contact with students, the bill requires the employment history check to include a review of each affidavit of separation from the applicant's previous employers.

Notification of Arrest

Present Situation

When a public school employee is charged with a felony or misdemeanor involving the abuse of a minor child or the sale or possession of a controlled substance, law enforcement is required to notify the district school superintendent of the name and address of that employee within 48 hours of the arrest.⁸⁷ Law enforcement is also responsible for notifying other education providers including the Florida School for the Deaf and Blind, university lab schools, and private elementary and secondary schools.⁸⁸ Such notification must also include the specific charges for which the employee was arrested.⁸⁹

Effect of the Bill

The bill adds charter school governing boards to the listed entities receiving law enforcement notification. The bill changes the notification from charge to arrest of an employee for felony or misdemeanor child abuse or drug possession.

Upon notification by law enforcement, the bill requires the principal to, within 24 hours, notify parents of enrolled students who had direct contact with the perpetrator of the arrest and include, at a minimum, the employee's name and the specific charges against him or her. The bill authorizes the sharing of this information, notwithstanding the limitation on disclosure required by ss. 1012.31(3)(a)1. and 1012.796(4), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁸⁶ See s. 837.06, F.S.

⁸⁷ Section 1012.797(1), F.S.

⁸⁸ *Id.*

⁸⁹ *Id.*

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill does not appear to have a fiscal impact since any costs associated with the Department of Education maintaining a unified disqualification list can be absorbed within existing resources.