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Committee on Education Pre-K - 12

REVIEW OF THE CRIMINAL BACKGROUND SCREENING REQUIREMENTS FOR INSTRUCTIONAL AND NONINSTRUCTIONAL PERSONNEL IN SCHOOL DISTRICTS

SUMMARY

For the past three consecutive years the Legislature has increasingly required individuals who come in contact with students to submit to state and national criminal records checks conducted by the Florida Department of Law Enforcement and the Federal Bureau of Investigation respectively.

Instructional and noninstructional personnel with direct student contact must undergo state and national criminal history records checks and meet Level 2 background screening standards. Personnel who have access to or control of school funds and contractors who are on school grounds when students are present are also subject to these requirements.

Some school districts have not fully implemented the background screening requirements enacted in 2004. This report examines aspects of criminal background screening and contains recommendations for revisions to the law for improving compliance with the background screening requirements.

BACKGROUND

Instructional and noninstructional personnel with direct student contact must be of good moral character, undergo fingerprint-based state and national criminal history records checks, and meet Level 2 background screening standards.¹ Noninstructional employees and contractors who have access to or control of school

¹ Sections 1012.32, 1012.465, and 1012.56, F.S. Instructional personnel include kindergarten through grade 12 staff members whose functions include the provision of direct instructional services to students or who provide direct support in the learning process of students (e.g., classroom teachers, student personnel services personnel, other instructional staff, and education paraprofessionals, as defined in s. 1012.01(2), F.S.).

funds are also subject to these requirements.² The requirements must be met upon employment or upon engagement to provide services to a school district. Every five years thereafter a national criminal history records check must be conducted. The 2005 Jessica Lunsford Act provided that these requirements also apply to contractors who are on school grounds when students are present.³ The requirements specifically apply to personnel in school districts, charter schools, university lab schools, alternative schools under contract with school districts, student teachers, individuals participating in a field experience, teacher assistants, and adjunct educators certified by school districts, as well as members of the governing board of charter schools.⁴

Current law prohibits a person who is convicted of a crime involving moral turpitude from employment, engagement to provide services, or serving in any position requiring direct student contact.

METHODOLOGY

Committee staff conducted a survey of school districts, with the assistance of the Legislative Committee on Intergovernmental Relations (LCIR). Responses were received from 27 districts or approximately 40 percent of the 67 school districts surveyed. The questions on the survey focused on the following: the extent to which the school districts complied with current statutory screening requirements; the types of screening standards used for employees and other personnel; and the fees associated with criminal background screening requirements. For reference purposes, each school district was asked to comment on the criminal background screening process for personnel with direct student contact, access to school grounds when

² Sections 1012.32 and 1012.465, F.S.

³ Section 21 of ch. 2005-28, L.O.F.

⁴ Sections 1012.32, 1012.33, and 1012.57, F.S.

students are present, and access to or control of school funds. Staff also reviewed existing law to identify needed technical changes and consulted with the Florida Department of Education (DOE), the Florida Department of Law Enforcement (FDLE), and school districts.

FINDINGS

Responsibilities for Background Screening

The DOE implements the background screening requirements in ss. 1012.32 and 1012.56, F.S., for state certified instructional personnel. The school districts are responsible for implementing the requirements for other instructional personnel and noninstructional employees and contractors.

Certified Instructional Personnel

Chapter 1012, F.S., governs the education profession and provides for the certification of instructional and administrative personnel. The Education Practices Commission (Commission) is responsible for interpreting and applying the standard of professional practice established by the State Board of Education. The law provides for the Commission to take disciplinary action against instructional and administrative personnel for the following acts:⁵

- Obtaining or attempting to obtain an educator certificate by fraudulent means;
- Proving to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school;
- Having been found guilty of gross immorality or an act involving moral turpitude;
- Having an educator certificate sanctioned by revocation, suspension, or surrender in another state;
- Having been convicted of a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation;⁶

⁵ Sections 1012.79 and 1012.795, F.S. A violation of any of the principles of professional conduct in Rule 6B-1.006, F.A.C., also subjects an individual to disciplinary action, which includes probation, suspension or revocation of a certificate, imposition of an administrative fine, and restrictions on the scope of practice.

⁶ Section 1012.56(9)(b), F.S., provides that under penalty of perjury, a certificateholder must notify his or her employer within 48 hours if convicted of any disqualifying offense if he or she is employed in a position

- Upon investigation, having been found guilty of personal conduct which seriously reduces that person's effectiveness as an employee of the district school board;
- Having breached a contract, as provided in s. 1012.33(2), F.S.;
- Having been the subject of a court order directing the Commission to suspend a certificate as a result of a delinquent child support obligation;
- Violating the provisions of law, the penalty for which is the revocation of the educator's certificate;
- Violating any order of the Commission; and
- Having been the subject of a court order or plea agreement in any jurisdiction which requires the certificateholder to surrender or otherwise relinquish his or her educator's certificate.

Under s. 1012.796, F.S., the DOE must investigate a legally sufficient complaint that contains grounds for disciplinary action against a certificateholder. District school boards retain the authority to discipline teachers and administrators.⁷

An applicant for initial certification as an educator generally applies to the DOE through the district in which he or she wishes to be employed. Applicants must be of good moral character, meet all other requirements in law,⁸ and pay an application fee of \$56 for a temporary, professional, or renewed professional certificate.⁹ Applicants must also file a signed affidavit attesting that all information in the application is true, accurate, and complete. The affidavit includes a warning that giving false information to obtain or renew a certificate is a criminal offense and subjects the applicant to criminal prosecution as well as disciplinary action by the Commission.¹⁰

requiring certification. Section 1012.795(5), F.S., requires district school superintendents and the governing authority of university lab schools, state supported schools, and private schools to report to the DOE certificateholders' convictions and pleas of no contest to, a misdemeanor, felony, or any criminal charge except for minor traffic infractions. This section also requires reporting of individuals employed under s. 1012.39, F.S.

⁷ Section 1012.79(8)(b), F.S.

⁸ Section 1012.56, F.S., sets forth the eligibility criteria for initial certification, while s. 1012.585, F.S., sets forth the criteria for renewal.

⁹ A temporary certificate is valid for three years and a professional certificate is valid for five years.

¹⁰ Section 1012.56(2)(b), F.S.

The applicant’s fingerprints must be submitted to the FDLE for state criminal history records checks and to the Federal Bureau of Investigation (FBI) for national criminal history records checks. A certificate may not be issued until the background screening is completed and the results have been submitted to the DOE or the district.¹¹

If the results of the background screening indicate a criminal record or if the applicant acknowledges a criminal history, the applicant’s records must be referred to the DOE for review and determination of eligibility.¹² The DOE may deny a certificate to an applicant based on satisfactory evidence that the applicant committed an act that is grounds for revocation of a teaching certificate. An applicant may appeal the DOE’s denial of a certificate, pursuant to s. 1012.56(11), F.S.¹³

School districts renew state professional certificates for district employees, while the DOE renews state certificates for individuals who are not employed by a school district.¹⁴ Applicants for renewal must meet the criteria in s. 1012.585, F.S. When an applicant acknowledges a criminal history on a renewal application, the district forwards the application to the DOE to determine if disciplinary action against the individual’s certificate is warranted.¹⁵ The certificate of an individual who fails to meet Level 2 screening requirements is subject to immediate revocation or suspension.¹⁶ A certificateholder may appeal the action, pursuant to s. 1012.796, F.S.¹⁷

¹¹ Section 1012.56(9)(b), F.S. The FDLE provides the results of all criminal history records checks to the employing school district and the DOE.

¹² Section 1012.56(2)(d), F.S.

¹³ According to the DOE, the appellate process is governed by s. 1012.796, F.S. Subsequent to the appellate process, the Commission may approve issuance of a certificate with restrictions or deny a certificate for a specified time period.

¹⁴ The DOE does not require a national criminal history records check at the time a certificate is renewed.

¹⁵ Section 1012.21(1), F.S., allows the DOE, in cooperation with the FDLE, to periodically perform criminal history record checks on individuals who hold a certificate pursuant to s. 1012.56, F.S., or s. 1012.57, F.S.

¹⁶ Section 1012.56(9)(c), F.S.

¹⁷ The DOE notes that individuals who hold district certificates (e.g., adjunct and substitute teachers, pursuant to ss. 1012.57 and 1012.35, F.S., respectively) are not subject to disciplinary action by the Commission.

The DOE reported information related to the number of applicants and certificateholders. The following summarizes the number of applicants for certificates for school year 2005-2006:

APPLICANTS FOR PROFESSIONAL PERSONNEL CERTIFICATION			
2005-2006 School Year	Number of Applicants for Certificates through DOE	Number of Applicants for Certificates through School District/Other Certificate Action	Total Number of Applicants for Certificates
Temporary and Initial Professional Certificate¹⁸	63,357	0	63,357
Renewed Professional Certificate	5,254	29,867	35,121
Other Certificate Action¹⁹	0	10,253	10,253
Total	68,611	40,120	108,731

Source: Florida Department of Education, August 2006

The following summarizes the number of certificateholders for school years 2003 through 2005:

CERTIFICATEHOLDERS			
Total Certificateholders	Total Number of Certificates Issued²⁰		
	2003-2004	2004-2005	2005-2006
	78,361	75,866	80,208

Source: Florida Department of Education, September 2006

Other Instructional Personnel and Noninstructional Personnel

Section 1012.32, F.S., (2003) required all instructional and noninstructional personnel hired to fill positions having direct contact with students to submit fingerprints for criminal background checks conducted by the FDLE and the FBI. The DOE interpreted the term “personnel” to include contractors. Accordingly, contractors having direct contact with students would have to undergo state and national background checks.

¹⁸ The DOE does not disaggregate data on the number of initial temporary applicants and initial professional applicants for certification.

¹⁹ These actions relate to change in name, the addition of endorsement or subject area, and duplication of certificates.

²⁰ Includes temporary certificateholders, professional certificateholders, and certificateholders for Speech-Language Impaired and Athletic Coaching.

In 2004, the Legislature codified the DOE's interpretation by specifically requiring school district contractors with direct student contact to undergo Level 2 state and federal criminal history records checks.²¹ Failure to meet Level 2 standards is grounds for immediate suspension. The law also required noninstructional personnel, including contractors, to undergo a national criminal history records check every five years and to report convictions of disqualifying offenses to the employer or contractor within 48 hours, upon penalty of perjury.²² Section 1012.32, F.S., was amended to provide that persons found through fingerprint processing to have been convicted of a crime involving moral turpitude shall not be employed, engaged to provide services, or serve in any position requiring direct contact with students.

The 2005 Legislature enacted the Jessica Lunsford Act following the assault and murder of 9-year-old Jessica Lunsford in Homosassa Springs, Florida.²³ The crime was allegedly committed by a sexual offender who had worked as a subcontracted brick mason at Jessica Lunsford's elementary school. While the act focused primarily on measures to track, detain, and monitor sexual offenders and predators, it also specifically related to individuals with access to school grounds when students are present. Section 1012.465, F.S., was expanded to require Level 2 background checks not only for contractors with direct student contact, as required in 2004, but also for those who are on school grounds when students are present.²⁴

The practical impact of the legislation was to require school districts to conduct a fingerprint-based Level 2 background screening of contractors who visit schools during classes and determine whether the individual has been convicted of a crime involving moral turpitude. The cost associated with the background screenings has been borne by the district, the contractor, or the individual. Parents or guardians who visit school to pick up their children and volunteers were not addressed in the act, although ch. 2004-81, L.O.F., required government entities who use volunteers at places where children regularly congregate to conduct a search against the sex offender registry maintained by the FDLE.²⁵

After the passage of the Jessica Lunsford Act, the district school boards, the DOE, and the FDLE experienced implementation problems associated with the unexpected volume of contractors who needed Level 2 background checks. Numerous complaints arose from school officials, vendors, contractors, subcontractors, charter bus drivers, athletics officials, photographers, visiting performers, class ring sales personnel, engineers, architects, utility workers, food and health service personnel, and other affected contractors. Many of the complaints were as follows:

- School districts expressed concerns about the volume of fingerprinting and background screenings that were required under the new law;²⁶
- School districts expressed liability concerns about sharing criminal history information and failing to identify every possible person who is required to be fingerprinted;
- Contractors who work in multiple school districts opposed the costs for redundant Level 2 background checks;²⁷
- Contractors opposed the additional processing fees imposed by the school districts, as well as the varying Level 2 background check fees charged by the different school districts;
- Contractors expressed frustration over the differing standards for moral turpitude used by school districts;
- Contractors and school officials questioned whether Level 2 background checks were necessary for those contractors who are on school grounds for short or incidental visits or who are directly supervised for the duration of the visits; and
- Contractors who are already required to undergo a Level 2 background screening for employment, certification, or licensure expressed frustration over being required to undergo redundant Level 2 background checks.

The FDLE developed the Florida Shared School Results (FSSR) system, which became available to school districts on September 30, 2005.²⁸ This system

²¹ Sections 9 and 14, ch. 2004-295, L.O.F.

²² Section 14, ch. 2004-295, L.O.F.

²³ Chapter 2005-28, L.O.F.

²⁴ Contractual personnel include a vendor, individual, or entity under contract with a school board.

²⁵ Section 943.04351, F.S.

²⁶ The FDLE experienced a 196 percent increase for the month of September, and a 178 percent increase for the month of October for fingerprint submissions from school districts compared to 2004.

²⁷ The DOE notes that a student teacher who works in multiple school districts may be subject to multiple criminal history records checks.

²⁸ See http://www.fdle.state.fl.us/alerts/_jla_schools.html
The President of the Senate and Speaker of the House of

was designed to lessen the redundancy of background screenings for contractors who do business with multiple school districts.²⁹ However, districts are not required to use the system. After a school district requests a Level 2 criminal history records check from FDLE, the FDLE posts the results on a secure website that is accessible to the school districts. Other school districts can then access the results and view the same criminal history record and subsequent arrest notifications that were received by the original school district.

Background Screening Standards

Level 2 Background Checks

All employees required by law to undergo background screening or who are in positions of trust designated by law are required to undergo a specific level of employment screening as a condition of employment and continued employment.³⁰

Level 2 background checks address offenses prohibited by Florida law or under any similar statute in another jurisdiction and consist of security background investigations with state and federal checks of criminal and juvenile records.³¹ A person would fail to meet the background screening requirements if he or she was guilty, had adjudication withheld, or entered a plea of nolo contendere or guilty to any of the specified offenses listed in s. 435.04, F.S.

Level 2 requirements provide that under penalty of perjury, all employees must attest to meeting the requirements for qualifying for employment and agreeing to inform the employer immediately if convicted of any of the disqualifying offenses while employed by the employer.³²

Provisions of law that require personnel having contact with children to meet Level 2 background screening standards pursuant to ch. 435, F.S., include chapters 393, 394, 397, and 402, F.S., and s. 1002.55, F.S.,

Representatives requested that the FDLE implement an Internet-based system to allow for Level 2 background check results provided to the school districts to be shared with other school districts.

²⁹ While this system was designed for use with contractual personnel, it contains all responses to school district requests for criminal history records checks on instructional and other noninstructional personnel.

³⁰ Sections 435.03 and 435.04, F.S.

³¹ Section 435.04, F.S.

³² *Id.*

relating to developmental disabilities, mental health, substance abuse services, child care, and instructors employed by private prekindergarten providers, respectively.

Criminal or juvenile information may not be used for any purpose other than determining whether individuals meet the minimum standards for employment or for an owner or director of a covered service provider. Criminal and juvenile records obtained by an employer are exempt from the public records law.³³ Every employer of employees covered by chapter 435, F.S., must furnish copies of personnel records for employees or former employees to any other employer upon request. Employers releasing these records are considered acting in good faith and may not be held liable for information contained in the records, absent a showing of malicious falsification of records.³⁴

Standards Used by DOE

The DOE interprets Level 2 screening of individuals for certification to mean state and national fingerprint-based criminal history records checks that are based on a moral turpitude standard, as provided for in s. 1012.56(2)(d), F.S., and administrative rule, rather than the standards in s. 435.04, F.S.³⁵ This interpretation is based on s. 435.01, F.S., which provides that the standards in chapter 435, F.S., apply unless otherwise provided by law.³⁶

For the 2004-2005 school year, the Commissioner of Education found probable cause to deny certificates to 170 applicants for initial certification.³⁷ Of these, 138 applicants were issued certificates, subject to meeting certain conditions, while eight applicants were barred

³³ Section 435.09, F.S.

³⁴ Section 435.10, F.S.

³⁵ Rule 6A-4.009, F.A.C., defines moral turpitude as a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude. The rule defines immorality as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service in the community.

³⁶ Florida Department of Education response to Committee survey, August 2006.

³⁷ *Id.*

from applying for a certificate either permanently or for a specified period.³⁸ Twenty-three applicants were denied certificates by the Commissioner and did not appeal the decision. The following are the grounds for denial of certificates to the 23 applicants:³⁹

- Aggravated assault on a police officer, resisting an officer with violence, damaging property, assault, battery, and aggravated assault with a weapon;
- Aggravated battery, burglary, aggravated assault with a weapon, grand theft, and assault and battery;
- Assault, battery, and domestic violence;
- Failure to protect the safety and well being of a student;
- Fraud (public assistance and passport) and homicide (willful killing with a weapon);
- Grand larceny, disorderly conduct, aggravated assault with a weapon, disorderly intoxication, and domestic battery;
- Grand larceny;
- Grand theft;
- Inappropriate conduct;
- Obtaining medication illegally;
- Petit theft;
- Possession of cocaine, prostitution, burglary, possession of narcotics equipment, possession of marijuana, and battery;
- Possession of marijuana, possession of narcotic equipment, loitering and prowling, and possession of cocaine;
- Revocation of a license in another state;
- Submission of fraudulent information (educational matter) and petit theft;
- Submission of fraudulent information;
- Unlawful sexual activity with a minor;
- Unlawful transaction with a minor, resisting arrest, inappropriate conduct with a student, and revocation of a license in another state;
- Violation of standardized testing procedures;
- Violation of standardized procedures during the General Knowledge Test for certification; and

³⁸ Florida Department of Education, September 25, 2006. The grounds for denial of the eight applicants involved the following offenses: revocation of a license in another state; sexual battery; fraudulent information; multiple criminal charges; inappropriate testing procedures on General Knowledge Test for certification; inappropriate discipline of a student; driving under the influence (DUI); and under the influence on school grounds.

³⁹ *Id.* One additional applicant has an appeal pending.

- Worthless checks, petit theft, resisting an officer without violence, and violation of probation.

Standards Used by District School Boards

Many school districts report the use of a combination of Level 2 screening standards, pursuant to s. 435.04, F.S., and a moral turpitude standard for employment screening for instructional and noninstructional personnel (e.g., applicants for temporary, initial professional, and renewed certification, other instructional personnel, student teachers, teacher assistants, field experience participants, and noninstructional employees and contractors).⁴⁰ Each district determines whether an act constitutes moral turpitude.

The DOE advised school districts that they may not solely use the standards in s. 435.04, F.S., as disqualifying offenses for screening noninstructional employees and contractors. Instead, the DOE concluded that districts must use moral turpitude as the standard and may use additional disqualifying offenses, such as the offenses in s. 435.04, F.S.⁴¹ The DOE noted that the changes made to s. 1012.465, F.S., by the Jessica Lunsford Act hold all contractual employees to the same standards as the district's own employees with regard to background screening.⁴²

Fees

There are recurring and nonrecurring costs associated with state and national FBI criminal records checks. Charter schools, school districts, school district employees, or school district contractors incur costs

⁴⁰ District responses to Committee survey, September 2006. In addition, six districts reported the use of a combination of Level 2 screening standards, a moral turpitude standard, and another standard. The additional standards include specific offenses (e.g., pornography, probation for DUI offenses, all drug related felony convictions, rape, and crimes against children). One district reported the use of only Level 2 screening standards, pursuant to s. 435.04, F.S. While one district reported the use of Level 2 standards, it defines Level 2 standards as state and national criminal history records checks. This district has an agreement with three other districts to use a common definition of moral turpitude for noninstructional contractors.

⁴¹ Department of Education, Technical Assistance Paper, Jessica Lunsford Act, August 2005, See <http://info.fldoe.org/docushare/dsweb/Get/Document-3151/k12%2005-107a>

⁴² *Id.*

related to mandatory screening. The costs of the initial Level 2 screening total approximately \$47: \$23 for Florida records checks and \$24 for an FBI records checks, with an annual fee of \$6 to retain the fingerprints.

The following summarizes the costs associated with Level 2 screening:

Criminal History Records Checks	Level 2
Initial screening	
Florida records check	\$23
FBI records check	\$24
Annual fee to retain prints ⁴³	\$ 6
Re-screening (every 5 years)	\$24
FBI records check	

There is no need for resubmission of fingerprints for state re-screening if the Florida arrest records are screened against the retained prints on a regular basis. There is an annual fee for an FBI records re-check every five years.

Some background screening service providers and school districts charge additional processing fees that range from \$14 to \$24 or more for instructional and noninstructional personnel.⁴⁴ Some districts pay for the background screening of specific personnel. Monroe County School District pays the fees for all instructional personnel. Martin County School District pays for screening applicants for renewed professional certificates and other instructional personnel. Taylor and Lake County School Districts pay for screening applicants for renewed professional certificates.⁴⁵ Three districts (Martin, Monroe, and Taylor) pay for noninstructional personnel.

Compliance with Current Requirements

In 2004, the law was amended to require recurring national criminal history records checks every five years for certified instructional personnel and noninstructional employees and contractors with direct

student contact.⁴⁶ The law provided that this requirement must be met after obtaining initial certification for certified personnel. Noninstructional personnel must meet the requirement following employment or entering into a contract. Prior to July 1, 2004, fingerprints were not retained by the FDLE for existing school district employees and contractors.

Following the enactment of the legislation, the DOE issued a technical memorandum to school districts and noted that all existing employees would need to be re-fingerprinted to meet the new requirement.⁴⁷ The DOE recommended that, due to the large number of affected employees, school districts phase in the five-year re-fingerprint requirement. Specifically, the DOE recommended the following plan:⁴⁸

- Re-fingerprint certified personnel at the time of renewal or when a temporary certificateholder applies for an initial professional certificate;⁴⁹ and
- Re-fingerprint, on an annual basis, approximately 20 percent of noninstructional personnel for five years until all employees are entered into the FDLE database by July 1, 2009.

Subsequent to July 1, 2004, the FDLE began retaining all fingerprints for individuals subject to the criminal history records checks and entered them into the statewide automated fingerprint identification system.⁵⁰ Arrest records are now searched by the FDLE, using the retained prints.⁵¹ The districts are responsible for notifying the FDLE of any changes to the employment or contractual status for all personnel whose prints are retained.

Currently the FDLE has a user agreement for criminal history records checks with the DOE, all school districts, university lab schools, Florida School for the Deaf and the Blind, and the Florida Virtual School. The Florida Virtual Academy and Florida Connections

⁴⁶ Chapter 2004-295, L.O.F., amended s. 1012.56(9), F.S., and created s. 1012.465(2), F.S.

⁴⁷ Florida Department of Education, Memorandum, June 25, 2004. See

<http://info.fldoe.org/docushare/dsweb/GetRendition/Document-2182/html>

⁴⁸ *Id.*

⁴⁹ The DOE does not require a national criminal history records check at the time a certificate is renewed.

⁵⁰ There is an exception. The fingerprints of applicants for certification who apply directly to the DOE rather than through districts are submitted in hard copy form and are not retained by the FDLE.

⁵¹ FDLE response to Committee survey, August 2006.

⁴³ The annual fee is set by FDLE administrative rule.

⁴⁴ LCIR survey of school districts, September 2006.

According to a 2005 survey of school districts, 16 school districts charged noninstructional contractors \$67 or more for the background screening. The fees ranged widely with three districts charging over \$90. School districts reported that these fees were used to cover district administrative costs and contractor identification badges.

⁴⁵ LCIR survey of school districts, September 2006.

Academy, which provide direct Internet communications with students in school districts throughout the state, had not submitted fingerprints to the FDLE, as of August 2006.⁵²

In response to the Committee's survey, most school districts disaggregated information on the numbers and types of personnel who were screened for school year 2005-2006.⁵³ However, three school districts reported the inability to retrieve and report information about personnel who were actually screened.

Conclusion

Not all school districts have fully implemented the criminal history records requirements enacted in 2004. Some districts have developed multi-year background screening schedules for existing staff and are screening new employees. However, several audits issued in 2006 by the Auditor General identified districts that had not met the screening requirements for paraprofessionals, educational support staff, contractors with direct student contact, substitute teachers, charter school personnel, and applicants for renewed teaching certificates. These audits noted that without an adequate process for performing background screenings on a timely basis, there is an increased risk that instructional and noninstructional personnel and contractors may have backgrounds that are not suitable for direct contact with students.

Some provisions of law do not clearly define the background screening requirements or specify the entities responsible for ensuring that the requirements are met. For example, a substitute teacher's fingerprints must be filed as required by s. 1012.32, F.S., but the law does not specifically require the teacher to meet Level 2 requirements, specify the entity responsible for screening criminal history records results, or subject the teacher to re-screening every five years.⁵⁴ Other provisions of law, such as s. 1012.39(3), F.S., relating to certain students assigned to clinical field experience, are silent on the background screening requirements

that must be met. The provisions of s. 1012.465, F.S., for noninstructional personnel do not specify the entity responsible for taking fingerprints, initially filing fingerprints, or reporting and screening the results of the initial criminal history records checks.

RECOMMENDATIONS

The Legislature may wish to amend the law to make the following technical and minor substantive changes:

- Specify in statute the entities responsible for fingerprinting personnel, filing fingerprints, screening the results of criminal history records checks, and paying for background screening, including searching arrest records;
- Allow fingerprints to also be taken by an employee of a private company who is trained to take fingerprints; and
- Provide for electronically submitting fingerprints.

The Legislature may also wish to consider making the following substantive changes to the law:

- Clarify which screening standards should be used by the DOE to determine eligibility for educator certification and those that should be used by school districts to make decisions relating to employment of instructional and noninstructional personnel;
- Clarify the background screening requirements that apply to student teachers, teacher assistants, individuals participating in field experiences, and certain students assigned to clinical field experience;
- Amend s. 1012.465, F.S., to expand the definition of contractual personnel to include those who contract with a school, such as athletic officials; and
- Require school districts to use the FDLE's Florida Shared School Results system, with appropriate safeguards.

⁵² *Id.*

⁵³ LCIR survey of school districts, September 2006.

⁵⁴ Section 1012.35, F.S. See s. 1012.32(2)(a), F.S., relating to noncertified instructional personnel, s. 1012.32(2)(d), F.S., relating to student teachers, teaching assistants, and individuals participating in a field experience; ss. 1012.37 and 1012.38, F.S., relating to education paraprofessionals; and s. 1012.39, F.S., relating to part-time and full-time adult education teachers and non-degreed career education teachers.