

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: Proposed Committee Bill 7038

INTRODUCER: Education Pre-K-12 Committee

SUBJECT: Ethical Standards for Educators

DATE: February 3, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carrouth</u>	<u>Matthews</u>	<u>ED</u>	<u>Pre-meeting</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill establishes comprehensive changes at the state and local level regarding the screening, hiring, and termination policies for educators and the reporting procedures related to allegations of educator misconduct.

Educator Certification

The bill establishes a list of crimes or delinquent acts that would serve as an absolute bar against any individual, if convicted, from obtaining or retaining a teaching certificate or employment involving direct contact with students and requires each school district to adopt a list of crimes to include at minimum, those at the state level.

Educator Employment and Screening Policies

School districts would be required to adopt stringent and effective policies for screening potential employees and terminating existing employees for misconduct. The superintendent would be held responsible for communicating to all employees the expected ethical standards of the teaching profession and the procedures for reporting allegations of teacher misconduct. In addition, every school district would be required to notify the Department of Education (DOE) of the termination of any employee, regardless of cause, and the DOE in turn must include this information on a secured website accessible by the districts.

The bill prohibits school districts from entering into any form of confidentiality agreement when terminating an employee, requires the district to contact the previous employer of every candidate for employment, and to access the DOE certification website to determine if a teaching candidate's certificate has been sanctioned or is under review or investigation.

The bill contains provisions for significant financial penalties and certification sanctions for non-compliance.

Schools of Choice

The Florida School for the Deaf and Blind and private school providers that accept students under state-supported scholarship programs would be held to the same standards as those required in the bill of local school districts. Private providers that fail to comply with the provisions of the bill would be prohibited from accepting students or any state funding for the period of one calendar year.

Education Practices Commission

The bill revises the membership of the Education Practices Commission to include sworn law enforcement officers and parents of public school students. The authority of the Commission is also expanded to allow for discipline of an educator who knowingly fails to report suspected or actual misconduct by an educator or any violation of the Principles of Professional Conduct for the Education Profession.

Retirement Benefits

Finally, the bill requires that any public officer or employee convicted of certain crimes involving minors would forfeit their right to any state retirement benefits.

This bill substantially amends the following sections of the Florida Statutes: 24.121, 112.3173, 121.091, 1001.03, 1001.10, 1001.32, 1001.42, 1001.452, 1001.51, 1001.54, 1002.32, 1002.36, 1002.421, 1002.55, 1002.61, 1002.63, 1002.65, 1003.413, 1003.53, 1004.92, 1006.061, 1007.21, 1007.23, 1008.33, 1008.345, 1010.215, 1011.18, 1012.27, 1012.33, 1012.34, 1012.56, 1012.79, 1012.795, 1012.796, 1012.98, and 1013.03.

II. Present Situation:

Complaints Against Educators

Under s. 1012.796, F.S., the Department of Education (DOE) is required to investigate any legally sufficient complaint filed before it or called to its attention if the complaint contains grounds for a sanction against an educator's certificate.¹ Grounds for sanction against a teaching certificate include, but are not limited to, sexual misconduct, inappropriate student discipline, drug use, credential fraud, and standardized testing violations.² The Bureau of Professional Practices Services (PPS) in the DOE investigates legally sufficient complaints of alleged violations by individuals who currently hold a Florida teaching certificate or by those seeking a teaching certificate. The local school districts maintain jurisdiction over lesser infractions, such as chronic tardiness or minor acts of insubordination.

Provided that an allegation is legally sufficient and the PPS finds that there is probable cause that teacher misconduct has occurred, the PPS will forward its report to the Education Practices Commission (EPC), an appointed board whose members include teachers, administrators, and lay members, many of whom are former educators. If there are disputed issues of material fact,

¹ Rule 6B-1.001, F.A.C.

² s. 1012.795, F.S., includes a complete list of punishable infractions.

the case is assigned to an administrative law judge in the Division of Administrative Hearings who, after a determination of the merits of the complaint, makes a recommendation to the EPC to either dismiss the complaint or to impose a sanction against the teaching certificate.³ Following its review, the EPC will issue a final order, either clearing the educator or imposing one of several sanctions against the educator's certificate.⁴ Section 1012.796(1)(c), F.S., requires each school district to file all legally sufficient complaints in writing with the DOE within 30 days after the date on which the school district becomes aware of the subject matter of the complaint.⁵

Current Screening Requirements

Florida statutes require all educators to submit fingerprints to the Florida Department of Law Enforcement for criminal background checks to screen for criminal offenses,⁶ and pursuant to s. 1002.42, F.S., all private school owners, not staff, are required to submit fingerprints as well. Private schools receiving state funds under the Corporate Tax Scholarship Program, the Voluntary Prekindergarten Program, or the John M. McKay Scholarships for Students with Disabilities Program must submit and adhere to the background screening provisions required of all public school employees.⁷

Recent Studies and Findings

Multiple news reports have recently been published alleging inconsistent practices and inadequate reporting policies that allow unfit educators who have committed violations of law or professional practices standards to have access to students. Following an investigative series published by a Florida newspaper, the Commissioner of Education conducted a review of professional practice procedures.⁸ The State Board of Education (SBE) subsequently appointed an advisory council in March, 2007, to review professional practices in Florida and other states and to recommend to the SBE improvements to Florida's professional practices educator system. The advisory council, comprised of educators, law enforcement officials, child protection services staff, school district human resource personnel, school board attorneys, and professional education association representatives, conducted a survey of other states to gather information on best practices and presented recommendations to the SBE in an effort to strengthen Florida's policies.⁹ Three of the 13 states that responded to the advisory council's survey require local school districts to check a teaching candidate's background with the previous employer,¹⁰ a practice not currently required in Florida law.

The DOE currently provides access by eligible district staff to the Florida Educator Certification database, a secure website that includes what are often referred to as red flags: pending investigations, sanctions against a certificate, or notes of previous allegations of unethical behavior.¹¹ While this site provides invaluable information to potential and existing employers,

³ The EPC has the authority to contest the recommendation of the administrative law judge.

⁴ Referral to the Recovery Network Program; written reprimand; restriction of scope of practice; probation; administrative fine up to \$2,000; suspension of certificate; revocation of certificate; or denial of certificate application. See s. 1012.796(7), F.S.

⁵ s. 1012.796(1)(c), F.S.

⁶ ss. 1012.32 and 1012.56, F.S.

⁷ ss. 1002.421 and 1002.55, F.S.

⁸ See <http://www.heraldtribune.com> (March 27, 2007).

⁹ State Board of Education meetings on June 19, 2007 and August 14, 2007.

¹⁰ Colorado, Connecticut, and Michigan

¹¹ See http://www.fldoe.org/meetings/2007_06_19/Report_Florida.pdf, Slides 22-28.

no statutory provisions are currently in place to require districts to access this information, nor are there systematic procedures in place to ensure that local staff are aware of the screening system.

Senate Interim Report 2008-118

The Committee on Education Pre-K-12 was tasked to prepare an Interim Report on educator misconduct and as part of the study conducted a survey of local school districts to assess current policies and practices. Of the 28 school districts that responded to the committee survey, seven districts reported that they do not access the DOE's secure website when screening new employees. Additionally, three districts reported that they do not contact previous employers and four do not question potential employees about any previous allegations. All districts responding to the survey reported having adopted school board policies; however, few included due diligence on rigorous pre-screening and hiring procedures. While there is no guarantee that an individual will be forthcoming, providing false information to a prospective employer can be grounds for termination.¹²

Automatic Grounds for Termination and Certificate Sanctions

Several states specifically define in law offenses that are grounds for dismissal or an absolute bar from employment in the public school system.¹³ While Florida has a list of disqualifying offenses, the offenses are not a complete bar, with districts retaining some discretion to employ an individual notwithstanding a disqualifying offense.

Confidentiality Agreements with Terminated Employees

Some reports have suggested that school districts often enter into confidentiality or non-disclosure agreements, allowing educators to resign without cause in order to spare the district potentially prohibitive litigation costs and public disgrace.¹⁴ This can result in an unfit educator moving from one location to another. Florida, however, has no provisions currently in law to prohibit such agreements.

Vaguely Defined Legal Terms - Gross Immorality and Moral Turpitude

A complaint against an educator is deemed legally sufficient if it contains ultimate facts that show a violation has occurred as provided in s. 1012.795, F.S., which includes infractions such as obtaining a teaching certificate through fraudulent means, incompetence, conduct which seriously reduces the employee's effectiveness, gross immorality, and acts involving moral turpitude. The determination of action for purposes of reporting a certificate-holder for unethical conduct has been complicated by the use of the terms "gross immorality" and "moral turpitude" in describing acts that meet the legally sufficient standard. These terms are vaguely defined in rule,¹⁵ and consequently the determination to report unethical conduct varies from district to

¹² s. 1012.56(2), F.S., requires notice to an applicant for a teaching certificate that giving false information on his or her affidavit subjects the applicant to criminal prosecution.

¹³ Ten of the 13 states responding to the advisory council's survey operate under a list of specific offenses that trigger automatic action on the teaching certificate or deny eligibility for employment (Arizona, California, Colorado, Connecticut, Illinois, Kentucky, Michigan, Minnesota, Ohio, and Oregon).

¹⁴ See Education Week, December 9, 1998.

¹⁵ Rule 6B- 4.009, F.A.C., in turn references Rules 6B-1.001 and 6B-1.006, F.A.C., which address the Code of Ethics of the Education Profession in Florida and the Principles of Professional Conduct for the Education Profession in Florida.

district. This lack of uniformity may undermine attempts to notify prospective employing districts of educator misconduct.

Jurisdictional Oversight Provisions

Many school districts may not clearly understand the magnitude of their jurisdictional power over the employment, suspension, or termination of an educator alleged to have committed unethical conduct. The local school district retains the ability to suspend the educator from student contact or to terminate the employee; however, school districts often defer to the final order of the EPC before making a final employment decision on an accused educator. Although the Education Practices Commission may at times be constrained in its efforts to discipline the certificate-holder because of due process rights, some school districts take immediate action in response to an educator accused of misconduct, suspend the educator from student contact, or terminate the educator altogether.

Review of Previous Employment

Additionally, school districts with prudent screening and employment policies look diligently at prospective employees for any prior evidence that may signal a breach of conduct such as unexplained mid-year employment changes, individuals holding multiple positions over a short period of time, and questionable lapses in employment.

III. Effect of Proposed Changes:

The bill establishes comprehensive changes at the state and local level regarding the screening, hiring, and termination policies for educators and the reporting procedures related to allegations of educator misconduct. These reforms are intended to minimize opportunities for unethical educators to have contact with students, support the integrity of the teaching profession, and ensure the safety and welfare of students.

Crimes or Delinquent Acts as a Bar Against Teaching

The bill requires the State Board of Education to establish a list of crimes or delinquent acts that would serve as an absolute bar against any individual, if convicted, from obtaining or retaining a teaching certificate or employment involving direct contact with students. Under the bill, the list must include, but is not limited to, the following:

- Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct;
- Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting such sexual misconduct;
- Section 782.04, F.S., relating to murder;
- Section 787.01, F.S., relating to kidnapping of a child under 13;
- Section 787.02, F.S., relating to false imprisonment and false imprisonment of a child under 13;
- Section 787.025, F.S., relating to luring or enticing a child;
- Section 794.011, F.S., relating to sexual battery;
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 810.14, F.S., relating to voyeurism;

- Section 810.145, F.S., relating to video voyeurism;
- Section 827.03, F.S., relating to abuse, aggravated abuse, and neglect of a child;
- Section 827.071, F.S., relating to sexual performance by a child;
- Section 847.0133, F.S., relating to protection of minors and prohibition of certain acts in connection with obscenity;
- Section 847.0135, F.S., relating to computer pornography and traveling to meet minor;
- Section 847.0137, F.S., relating to transmission of child pornography by electronic device;
- Section 847.0138, F.S., relating to transmission of material harmful to minors by electronic device; and
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs.

The locally established list must include at a minimum those infractions established by the SBE and included in the new provisions outlined in the bill.

In order to further strengthen a school district's autonomy to screen and terminate unethical educators based upon local community standards, the bill grants authority for the local school board to determine thresholds for immorality and provisions for just cause termination.

Confidentiality Agreements Prohibited

The bill prohibits school districts from entering into any form of confidentiality agreement when terminating an employee and provides significant financial penalties and certification sanctions for non-compliance. These provisions would prohibit efforts to conceal unethical conduct by educators or allowing them to be passed from one school district to another unsuspecting site.

Forfeiture of State Retirement Benefits

Under the bill, any public officer or employee who commits a felony pursuant to Chapter 800, F.S.,¹⁶ against a child under the age of 16, or a felony against a child under the age of 18 pursuant to Chapter 794, F.S.,¹⁷ shall forfeit his or her right to state retirement benefits. Under these provisions, taxpayers will no longer bear financial responsibility for an individual who commits one of these crimes against a child.

Stringent Screening, Hiring, and Termination Policies

The bill requires school districts to contact the previous employer of every candidate for employment, to access the secure DOE certification website to determine if a teaching candidate's certificate has been sanctioned or is under review or investigation, and to document findings. The bill also requires the immediate removal of an educator from assigned duties that involve direct contact with students, when allegations involving misconduct with a student arises. Removal from contact with students would continue, pending the outcome of an investigation either by local law enforcement or the Bureau of Professional Practices.

Stringent Reporting Requirements

The bill requires school districts to establish ethical standards for educators, policies and procedures for reporting suspected or actual misconduct, and assurances of liability protections to those who report. The bill also prohibits districts and schools from providing a favorable

¹⁶ ch. 800, F.S., relates to sexual battery.

¹⁷ ch. 794, F.S., relates to lewdness and indecent exposure.

employment recommendation for any individual who resigns in lieu of termination. In addition, all employee terminations must be reported to the DOE, regardless of cause, so that all instances of educator misconduct can be documented and shared using secure methods with other schools and districts. This information would also be documented for non-certificated personnel and considered when an application for a teaching certificate is made at a future date.

Non-Compliance and Accountability Provisions

Failure to comply with the provisions for ethical standards, policies, and procedures outlined in the bill would lead to sanctions against an educator's teaching certificate, financial penalties, and ineligibility of applicable private schools from accepting students or state funds for a period of one calendar year.

The bill provides that a district superintendent or school board member who fails to investigate and report all instances of alleged teacher misconduct shall forfeit their right to a salary for a period of one year. The superintendent is held accountable in the bill for communicating the policies and procedures to all employees.

Education Practices Commission – Authority and Oversight

The bill revises the membership of the Education Practices Commission to include sworn law enforcement officers and parents of public school students, thus providing their input as to whether a teacher should be allowed back in the classroom. The authority of the commission is also expanded in the bill to allow for disciplinary or financial actions against an educator, superintendent, or school board member who knowingly fails to report suspected or actual misconduct by an educator or any violation of the Principles of Professional Conduct for the Education Profession.

Application to Schools of Choice

Under the bill, the Florida School for the Deaf and Blind and private school providers that accept students under state-supported scholarship programs are held to the same statutory provisions as those required of local school districts.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may require certain private school providers to conduct more extensive background screening on potential employees, with an indeterminate fiscal effect.

C. Government Sector Impact:

The bill may require certain local school districts to develop more stringent employment screening policies and procedures; however, the fiscal effect is indeterminate.

The expanded membership of the Education Practices Commission would require additional travel funds, estimated by the DOE at approximately \$20,000.00.

The Department of Administration estimates that approximately 250 individuals forfeit their right to state retirement benefits annually; however, the resulting financial savings to the state are currently indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.