

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Education Committee

BILL: SB 1004

INTRODUCER: Senator Bullard

SUBJECT: Personnel Discipline/Public Schools

DATE: February 3, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill revises the grounds for disciplinary action against certified instructional personnel and administrators to include a certificateholder who knowingly obtains or attempts to fraudulently obtain an educator certificate.

This bill substantially amends section 1012.795, Florida Statutes.

The effective date of the bill is upon becoming a law.

II. Present Situation:

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. While assigned to the Department of Education (DOE), the Commission is not subject to the department's control, supervision, or direction.

Disciplinary Action

Applicants for certification must 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.¹

¹ Section 1012.56(2)(b), F.S.

Section 1012.79, F.S., provides for the Commission to take disciplinary action against instructional and administrative personnel for the following acts:

- 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;²
- 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.

Florida administrative rule sets forth the principles of professional conduct for the education profession.³ A violation of any of these principles subjects an individual to disciplinary action. The principles include the following:

- Misrepresenting professional qualifications;
- Submitting fraudulent information on any document in connection with professional activities;
- Making any fraudulent statement; and
- Failing to disclose a material fact in one's own or another's application for a professional position.

Disciplinary Proceedings

Under s. 1012.796, F.S., the DOE must investigate a legally sufficient complaint that contains grounds for disciplinary action against a certificateholder. Each school district must file with the DOE all legally sufficient complaints within 30 days after the date on which the subject matter of the complaint comes to the attention of the district.

The DOE investigates and prosecutes complaints related to the practice of the education profession, while the Department of Legal Affairs provides legal counsel to the Commission.

² Section 1012.795(5), F.S., requires district school superintendents to report to the DOE certificateholders' convictions and pleas of no contest to any criminal charge except for minor traffic infractions.

³ Rule 6B-1.006, F.A.C.

At the conclusion of the DOE's investigation, the Commissioner of Education (Commissioner) determines whether probable cause exists and, if found, files a formal administrative complaint. A panel of the Commission reviews the administrative law judge's recommended order and issues a final order either dismissing the complaint or imposing one or more of the following penalties:

- Denial of an application for a teaching certificate or an administrative or supervisory endorsement on a certificate;
- Revocation or suspension of a certificate;
- Imposition of an administrative fine or sanction;
- Probation;
- Restriction of the authorized scope of practice;
- Issuance of a written reprimand; and
- Referral to the impaired practitioner's program.⁴

Under the disciplinary guidelines adopted by the Commission, probation and suspension are within the range of penalties for a certificateholder who fraudulently obtains a certificate.⁵ The Commission may deviate from the recommended penalty, based upon aggravating and mitigating factors present in an individual case. During suspension or revocation of a certificate, a person may not teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students.

District school boards retain the authority to discipline teachers and administrators.⁶ The law allows a superintendent, in consultation with a school principal, to temporarily suspend and reassign a certificateholder when necessary to protect the health, safety, and welfare of a minor student. However, upon request of the Commissioner, a superintendent must temporarily suspend the certificateholder to protect the student. The certificateholder is suspended until the completion of disciplinary proceedings and the imposition of sanctions.

Other Professions

Some practice acts specify that it is grounds for disciplinary action for an individual to *knowingly* obtain a professional license by fraudulent means;⁷ however, other practice acts do not include this element.⁸

III. Effect of Proposed Changes:

The bill revises the grounds for disciplinary action against certified instructional personnel and administrators to include a certificateholder who knowingly engages in fraudulent conduct to obtain an educator certificate. Current grounds for disciplinary action do not require a determination that a person knowingly engaged in this conduct.

⁴ See s. 1012.798, F.S., related to the Educator's Recovery Network.

⁵ Rule 6B-11.007, F.A.C., enumerates the range of penalties applicable to each ground for disciplinary action and provides a list of aggravating and mitigating factors.

⁶ Section 1012.79(8)(b), F.S.

⁷ See s. 458.327(1)(c), F.S., relating to the practice of medicine.

⁸ See ss. 474.213(1)(h), relating to the practice of veterinary medicine, and 473.323(1)(b), F.S., relating to the practice of public accounting.

The courts have consistently required intent or knowledge to be proven as an element of fraud. For example, in *Charter Air Center, Inc. v. Miller*, the court stated that, “The elements of fraudulent representation are: a false statement pertaining to a material fact, knowledge that it is false, intent to induce another to act on it, and injury by acting on the statement.”⁹ Similarly, the DOE asserts that the addition of the requirement to prove knowledge may increase the burden of the prosecution; however, fraud by definition infers knowledge and as current protocol already considers the act as one of intent, the proposed changes may have minimal effects to the prosecution of individuals who commit fraud or attempt to obtain fraudulent documents or credentials associated with an educator's certificate. The DOE notes that the bill appears to add a burden of proof for the department to prove knowledge or intent on the part of the educator accused of fraudulently obtaining a certificate. According to the DOE, there is no procedure in place to provide for the collection of evidence of intent. DOE maintains that typically an individual would be charged with willful and knowingly obtaining or attempting to obtain a certificate by fraudulent means.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

To establish a violation of s. 1012.795(a), F.S., the DOE now requires proof that a certificateholder not only fraudulently obtained or attempted to obtain an educator certificate, but also that he or she knowingly did so. According to the DOE, the bill has no fiscal impact on the department and has no fiscal effect upon the Commission. The Department of Legal Affairs provides legal counsel to the Education Practices

⁹*Charter Air Center, Inc. v. Miller*, 348 So. 2d 614 (Fla. 2d DCA 1977). See also *Madness, L.P. v. DiTocco Konstruktion, Inc.* 873 So.2d 427, (Fla. 4th DCA 2004) and *State v. Wolland* 902 So.2d 278, (Fla. 3rd DCA 2005).

Commission. While the department notes that the changes proposed in the bill may require a higher standard of proof for violations related to fraudulently obtaining a certificate, the bill has no fiscal impact on the Department of Legal Affairs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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