

The Florida Senate
PROFESSIONAL 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: Children, Families, and Elder Affairs Committee

BILL: SB 1442

INTRODUCER: Senator Baker

SUBJECT: Background Screening of Employees of Transitional Education Programs

DATE: April 17, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Favorable
2.			ED	
3.			CJ	
4.				
5.				
6.				

I. Summary:

Senate Bill 1442 provides an exemption from the educator background screening requirements for professional staff and employees of a licensed Comprehensive Transitional Education Program that serves persons with developmental disabilities. The exemption applies to the extent the staff and employees have already met the level 2 screening requirements of ch. 435, F.S.

This bill substantially amends the following section of the Florida Statutes: 393.0655.

II. Present Situation:

Comprehensive Transitional Education Program

Section 393.18, F.S., defines a Comprehensive Transitional Education Program (CTEP) as:

a group of jointly operating centers or units, the collective purpose of which is to provide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors . . . All such services shall be temporary in nature and delivered in a structured residential setting, having the primary goal of incorporating the principle of self-determination in establishing permanent residence for persons with maladaptive behaviors in facilities that are not associated with the comprehensive transitional education program . . .

Section 393.18, F.S., provides that CTEP staff shall include teachers as appropriate. CTEPs are licensed by the Agency for Persons with Disabilities (APD), pursuant to

s. 393.067, F.S. According to APD, licenses are issued for two CTEPs; both licenses are held by AdvoServe Corporation. AdvoServe operates the Carlton Palms program in Mount Dora, Florida.¹ Carlton Palms includes a private school, employing approximately 20 certified teachers.²

Background Screening

Pursuant to s. 393.0655, F.S., individuals who provide direct service to developmentally disabled consumers must meet the level 2 screening requirements of s. 435.04, F.S., and the screening must also include an employment history check and a local law enforcement check.³ This screening requirement applies to any CTEP employee who works directly with developmentally disabled individuals.

Section 435.04, F.S., requires “[a]ll employees in positions designated by law as positions of trust or responsibility . . . to undergo security background investigations as a condition of employment and continued employment.” The security background investigations must include statewide criminal and juvenile records checks through the Florida Department of Law Enforcement (FDLE), as well as federal criminal records checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies. Section 435.04(2), F.S., provides a list of offenses which disqualify an individual from employment.⁴ An employee is required to agree to immediately inform his or her employer if he or she has been convicted of a disqualifying offense while employed.

Section 1012.32, F.S., requires school personnel who are hired or contracted to fill positions requiring direct contact with students to undergo criminal background screening.⁵ If an individual is found to have been convicted of a crime involving moral turpitude, he or she is not eligible for employment.⁶ The statute provides that the cost of screenings may be borne by the employee or by the school district.

All fingerprints submitted to the FDLE in connection with background screening pursuant to s. 1012.32, F.S., are retained by FDLE and entered in the statewide automated fingerprint identification system. FDLE is mandated to search all arrest fingerprint cards against the fingerprints retained in the statewide automated fingerprint identification system, and report any matches to the employing school district.

¹ <http://www.advoserv.com/florida.html> (last visited April 16, 2007).

² http://www.privateschoolreview.com/school_ov/school_id/6067 (last visited April 16, 2007).

³ Section 435.03, F.S., provides that a level 1 background screening must include an employment history check and a local law enforcement check. Section 435.04, F.S., requires an FDLE and an FBI check for level 2 screenings, but does not mandate either an employment history check or a local law enforcement check.

⁴ An individual is disqualified from employment if he or she has been found guilty of (regardless of adjudication), or has entered a plea of *nolo contendere* or guilty to certain offenses, including, *inter alia*, sexual misconduct, abuse, neglect, or exploitation of an elderly or disabled adult or a child, murder, manslaughter, assault and battery (if the victim of the offense was a minor), kidnapping, false imprisonment, sexual battery, lewd and lascivious behavior, arson, felony theft, and domestic violence.

⁵ Pursuant to s. 1012.32(2)(d), F.S., applicant fingerprints are submitted to FDLE for state processing and to the Federal Bureau of Investigation for federal processing.

⁶ Black's Law Dictionary (8th ed. 2004), defines moral turpitude as “Conduct that is contrary to justice, honesty, or morality.”

Section 1012.56, F.S., describes the requirements for educator certification in Florida, including the requirement that any individual seeking certification must meet the screening requirements of s. 1012.32, F.S.⁷ In addition, s. 1012.56, F.S., requires that certified educators who are required to meet initial screening requirements must be rescreened every five years in order to remain eligible for employment and must agree to inform his or her employer within 48 hours of being convicted of any disqualifying offense while employed.

III. Effect of Proposed Changes:

The bill amends s. 39.0655, F.S., providing that professional staff and employees of a CTEP may not be required by a district school board to undergo background screening in addition to the level 2 screening already required pursuant to s. 39.0655, F.S., and s. 435.04, F.S.

The bill requires that an individual seeking the exemption must submit to the district school board evidence that he or she meets the screening standards of s. 435.04, F.S. and that his or her certificate or license (as applicable) is in good standing.

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:

To the extent employees bear the cost of screening as permitted by ch. 1012, F.S., there will be a savings to those individuals who will not be required to undergo screening.

⁷ Section 1012.465, F.S., describes the eligibility requirements for noninstructional school district employees or contractors who are permitted access to school grounds when children are present, who have direct contact with students or who have access to school funds. Section 1012.465, F.S., requires that these individuals undergo the same background screening requirements as instructional personnel, but the section only applies to public school employees.

C. Government Sector Impact:

To the extent school districts bear the cost of screening as permitted by ch. 1012, F.S., there will be a savings to the districts that will not be required to pay for screenings of the exempted employees.

According to the Department of Education (DOE), each school district would need to develop procedures to identify, verify, and track the separate screening process proposed by the bill. The costs associated with the implementation are indeterminate.⁸

VI. Technical Deficiencies:

At page 2, line 12, the bill provides that “[p]rofessional staff and employees” of a CTEP may not be required to undergo additional screening. It is unclear if the bill is intended to apply to all CTEP employees or to certified educators who are employed by a private CTEP but are subject to the screening requirements for initial and continuing educator certification. The statutory requirements for noninstructional personnel do not apply to employees of private facilities.

VII. Related Issues:

According to DOE, screening by public school districts is more stringent than that required by ch. 435, F.S. This bill exempts educators who have access to some of the state’s most vulnerable students, subjecting them to screening that is less stringent than would be applied to a secretary working in a school district office. In addition, providing multiple exemptions to the screening process has the potential to create situational subjectivity and to result in a system of review that is complicated, disparate, insecure and vulnerable.⁹

Based on DOE’s analysis, it may be appropriate to instead exempt CTEP employees from the screening requirements of ch. 435, F.S., to the extent they have (and continue to) meet the screening requirements of ch.1012, F.S.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁸ Agency Bill Analysis, Florida Department of Education, SB 1442 (March 7, 2007).

⁹ *Id.*

VIII. Summary of Amendments:

None.

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