

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 131 Educator Conduct  
**SPONSOR(S):** Duggan  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1864

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Secondary Education & Career Development Subcommittee		Wolff	Sanchez
2) Early Learning & Elementary Education Subcommittee			
3) Education & Employment Committee			

### SUMMARY ANALYSIS

The bill improves the processes, at the state and local level, by which educational personnel who commit sexual misconduct with a student would be prohibited from further contact with students. Additionally, the bill prohibits employment of such individuals in positions that have direct contact with students in public schools, charter schools, and private schools participating in the state scholarship program.

#### Prohibition From Employment

The bill prohibits employment of an individual at these schools if he or she was previously terminated or resigned in lieu of termination for sexual misconduct with a student. If the prohibited conduct occurs while employed, the employer must report the employee and the disqualifying circumstance to the Department of Education (DOE) for inclusion on the disqualification (DQ) list maintained by DOE, which prohibits individuals who have committed sexual misconduct with a student from being employed. Additionally, the bill provides a process for removing individuals from the DQ list.

#### Process Improvements

The bill requires the Commissioner of Education to find probable cause within 90 days after receiving a legally sufficient complaint that involves sexual misconduct by any certificateholder (i.e. instructional personnel and administrators). Upon receiving a notification from an employer that the subject of a legally sufficient complaint resigns or is terminated before the conclusion of the investigation, the bill requires the DOE to place the person on the DQ list.

When an employee separates from employment due to termination or resignation in lieu of termination, the bill requires execution of an affidavit of separation explaining the facts and reasons for the separation and specifically a disclosure when the separation is due to sexual misconduct with a student. Before employing 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.

The bill adds charter schools and private schools, as applicable, to those educational entities law enforcement is required to notify when an employee is charged with a felony or misdemeanor involving the abuse of a minor child or the sale or possession of a controlled substance within 48 hours of the arrest.

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 provides an effective date of July 1, 2021.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

There have been cases in Florida in which school personnel, substitute teachers, or contractors have committed acts of moral turpitude and continued serving in positions that require direct contact with students.<sup>1</sup> Many times these individuals have 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.<sup>2</sup>

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.<sup>3</sup>

There also have been 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.<sup>4</sup> 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. While documented complaints of misconduct against the teacher dated back to 1998, he still found employment at other schools.<sup>5</sup>

Private, charter, and public schools can face challenges in identifying persons whose sexual misconduct should disqualify the individual for 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.<sup>6</sup> Despite being incarcerated, his teacher certification was not revoked until August 25, 2020, approximately three years after the initial allegations.<sup>7</sup>

The bill improves the processes that must be in place to review, investigate, and report complaints related to sexual misconduct with students. The bill provides for more open and direct communication between state and local entities in order to address, and minimize, situations such as those described above.

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<sup>1</sup> 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 Feb. 23, 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/](https://www.tampabay.com/news/education/k12/After-months-no-action-on-Hillsborough-s-substitute-teacher-problem_167477475/) (last visited Feb. 18, 2021).

<sup>2</sup> 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](https://www.tampabay.com/news/education/k12/Company-in-charge-of-Hillsborough-substitute-teachers-weighs-in-on-problem-cases_168478343) (last visited Feb. 23, 2021).

<sup>3</sup> 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 Feb. 23, 2021).

<sup>4</sup> 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-fpofntupzrg65kgbmew7nsnlbm-story.html> (last visited Feb. 23, 2021).

<sup>5</sup> 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 Feb. 18, 2021).

<sup>6</sup> Marc Valero, *Dewberry pleads guilty, sentenced to 25 years*, [https://www.yoursun.com/sebring/news/dewberry-pleads-guilty-sentenced-to-years/article\\_398e3ea0-86f6-11e9-917a-9f96fdcc8209.html](https://www.yoursun.com/sebring/news/dewberry-pleads-guilty-sentenced-to-years/article_398e3ea0-86f6-11e9-917a-9f96fdcc8209.html) (last visited Feb. 23, 2021).

<sup>7</sup> *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](https://www.doah.state.fl.us/FLAID/DOE/2020/DOE-EPC_20-0216-RT_09152020_084540.pdf).

## 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.<sup>8</sup> 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.<sup>9</sup> Education 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:<sup>10</sup>

- enumerated felony offenses such as, unlawful sexual activity with certain minors and lewdness and indecent exposure;<sup>11</sup>
- enumerated misdemeanor offenses relating to battery on a child, or luring, or enticing a child;<sup>12</sup>
- any criminal act committed in another state or under federal law which, if committed in Florida, constitutes a prohibited felony or misdemeanor offense;<sup>13</sup> 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.<sup>14</sup>

#### Teacher Certification and Disciplinary Databases

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 Department of Education (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.<sup>15</sup>
- The Department of Education's Teacher Certification Database.<sup>16</sup>

Both databases contain only information necessary for performing employment history checks of the certificated instructional personnel and school administrators included in the databases. The databases do not include educational support employees who are non-certificated employees, but whose work supports the educational process.<sup>17</sup>

#### 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.<sup>18</sup> The DOE must investigate or continue to investigate and take appropriate action on a complaint even though the original complainant withdraws the complaint or otherwise indicates a desire not to cause it to be investigated or prosecuted to completion.<sup>19</sup>

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<sup>8</sup> Section 1012.32(2)(a), F.S.

<sup>9</sup> 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.

<sup>10</sup> Section 1012.315(1)(a)-(v), (3), and (4), F.S.

<sup>11</sup> Section 1012.315(1)(a)-(v), F.S.

<sup>12</sup> Section 1012.315(2)(a)-(b), F.S.

<sup>13</sup> Section 1012.315(3), F.S.

<sup>14</sup> Section 1012.315(4), F.S.

<sup>15</sup> Section 1001.10(5)(a), F.S.

<sup>16</sup> Section 1001.10(5)(b), F.S.

<sup>17</sup> Section 1012.01(6), F.S.

<sup>18</sup> Section 1012.796(1)(a), F.S.

<sup>19</sup> *Id.*

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.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup> Once the OPPS finds probable cause, the case is turned over to the Education Practices Commission (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.<sup>24</sup> The EPC interprets and applies the principles to certificated educational personnel.<sup>25</sup> At least once each year, the EPC must report to and meet with the SBE.<sup>26</sup> The EPC is authorized to revoke or suspend an educator certificate or take other appropriate action as provided in law.<sup>27</sup>

Upon investigation and finding probable cause, the Commissioner of Education must file a formal complaint and prosecute the complaint according to administrative procedures.<sup>28</sup> 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.<sup>29</sup>

Specifically, the EPC may revoke or suspend an educator's certificate if a person has been:<sup>30</sup>

- 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 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:<sup>31</sup>

- Denial of an application, including prohibiting reapplication for a period of up to ten years or permanently.
- Revocation or suspension of a certificate.
- Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense.

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<sup>20</sup> Florida Department of Education, *Professional Practices*, <http://www.fldoe.org/teaching/professional-practices/> (last visited Feb. 23, 2021).

<sup>21</sup> Section 1012.796(1)(b), F.S.

<sup>22</sup> Section 1012.31(3)(a)1., F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Section 1012.795(1)(j), F.S.; rule 6A-10.081, F.A.C.

<sup>25</sup> Section 1012.79(7)(a), F.S.

<sup>26</sup> Section 1012.79(7)(c), F.S.

<sup>27</sup> Section 1012.79(7)(b), F.S.

<sup>28</sup> Section 1012.796(6), F.S.; see ch. 120, F.S.

<sup>29</sup> Section 1012.796(7); see s. 1012.796(7)(a)-(h), F.S.

<sup>30</sup> Section 1012.795(1), F.S.

<sup>31</sup> Section 1012.798, F.S.

- Probation.
- Restriction of the authorized scope of practice.
- Written reprimand.
- Referral to the recovery network program.

The DOE may deny 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.<sup>32</sup> 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.<sup>33</sup>

### 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 felony conviction for a disqualifying offense under s. 1012.315, F.S.<sup>34</sup> 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;<sup>35</sup> or
- the school board official knowingly fails to adopt policies that require:<sup>36</sup>
  - instructional personnel and administrative personnel to report alleged misconduct by other instructional personnel and administrative personnel;<sup>37</sup>
  - 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;<sup>38</sup> 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.<sup>39</sup>

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.<sup>40</sup>

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.<sup>41</sup> 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.<sup>42</sup> 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.

<sup>32</sup> Section 1012.56(12)(a), F.S.

<sup>33</sup> Section 1012.56(12)(b), F.S.

<sup>34</sup> Section 1001.42(7), F.S.; see s. 1012.315, F.S.

<sup>35</sup> Section 1001.42(7)(a), F.S.

<sup>36</sup> Section 1001.42(7)(b), F.S.

<sup>37</sup> Section 1001.42(7)(b)1., F.S.

<sup>38</sup> Section 1001.42(7)(b)2., F.S.

<sup>39</sup> Section 1001.42(7)(b)3., F.S.

<sup>40</sup> Section 1001.51(b), F.S.

<sup>41</sup> Section 1012.796(1)(d)1., F.S.

<sup>42</sup> Section 1012.796(1)(d)2., F.S.

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.<sup>43</sup> 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 administrators 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.<sup>44</sup> 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.

### Charter Schools

The governing board of a charter school must adopt policies establishing standards of ethical conduct for instructional personnel and school administrators.<sup>45</sup> 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; 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 screening<sup>46</sup> prior to employment by a charter school or serving on a charter school governing board.<sup>47</sup> 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.<sup>48</sup>

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.<sup>49</sup> The charter school must disclose the misconduct when providing an employment reference.

### 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.<sup>50</sup> 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; 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

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<sup>43</sup> Section 1012.796(1)(d)5., F.S.

<sup>44</sup> Section 1012.796(5), F.S.

<sup>45</sup> Section 1002.33(12)(g)3., F.S.

<sup>46</sup> See s. 1012.32(2)(b), F.S.

<sup>47</sup> Section 1002.33(12)(g)1., F.S.

<sup>48</sup> Section 1002.33(12)(g)2., F.S.

<sup>49</sup> Section 1002.33(12)(g)3. F.S.

<sup>50</sup> Section 1002.421(1)(n), F.S.

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.<sup>51</sup>

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.<sup>52</sup> When providing an employment reference, the private school must disclose employee misconduct relating the health safety, or welfare of a student.

## **Effect of Proposed Changes**

### *Disqualification of Educational Personnel*

The bill requires the DOE to maintain a disqualification list (DQ list) that includes the following:

- The identity of any person who has been permanently denied a certificate or whose educator certificate was permanently revoked and has been placed on the list as directed by the EPC.<sup>53</sup>
- 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 due to a felony conviction for a disqualifying offense under s. 1012.315.

The bill prohibits certificated (i.e. instructional and administrative personnel) and non-certificated (i.e. educational support employees) 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.<sup>54</sup> The bill also prohibits these educational entities, including a charter school's governing board, from employing a certificated or non-certificated individual if he or she was previously terminated or resigned in lieu of termination for sexual misconduct with a student. If the prohibited conduct occurs while employed, the bill creates a duty for the employing entity to report the employee and the disqualifying circumstance to the DOE for inclusion on the DQ list. However, the DOE is not obligated to investigate non-certificated employees.

The bill provides a process for removing an individual 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, as applicable, by the responsible education agency resulted in no finding that the person committed disqualifying conduct;
- the person 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 person for inclusion on the DQ list requests that he or she be removed and submits supporting documentation.

The bill requires the SBE to adopt rules to implement the DQ list and the removal process. The bill also adds the DQ list to the employment screening tools available to authorized staff of school districts, charter schools, the Florida School for the Deaf and the Blind, and private schools that accept scholarship students who participate in a state scholarship program.

### *Department of Education Investigations of Alleged Misconduct*

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<sup>51</sup> Section 1002.421(1)(o), F.S.

<sup>52</sup> Section 1002.421(1)(n), F.S.

<sup>53</sup> See s. 1012.795, F.S., regarding the EPC's authority to discipline.

<sup>54</sup> 42 U.S.C. § 9858f.

The bill prohibits the DOE from issuing a certificate to a person whose educator certificate has expired if he or she committed an act that is the basis for a legally sufficient complaint while that person possessed an educator certificate.

The bill creates a duty on the DOE to place the person 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 person is the subject of an investigation of misconduct affecting the health, safety, or welfare of a student and has resigned or was terminated before the conclusion of the investigation.

### Education Practices Commission

The bill requires the commissioner 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 misconduct due to a felony conviction for a disqualifying offense under s. 1012.315, F.S. or sexual misconduct with a student.

Additionally, the bill prohibits any individual on the DQ list 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.<sup>55</sup>

### Duties of District School Boards and Superintendents

The bill requires the forfeiture of 1 year's salary if an elected or appointed school board member knowingly fails to adopt a policy requiring the investigation of all reports of alleged misconduct by educational support employees and instructional and administrative personnel, if the misconduct affects the health, safety, or welfare of a student, regardless if the individual resigned or was terminated before the conclusion of the investigation. The policy must require the superintendent to notify the DOE of the result of the 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 the forfeiture of 1 year's salary if a district school superintendent fails to completely investigate any 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),<sup>56</sup> a disqualifying offense under s. 1012.315, F.S., or sexual misconduct with a student.

Currently, when an allegation of sexual misconduct is made against a certificateholder, the superintendent must place the certificateholder on administrative suspension until the conclusion of the EPC's disciplinary proceedings. The bill reduces the time a superintendent is required to suspend a certificateholder to the submission by the superintendent of a legally sufficient complaint. The school district must complete the proceedings and sanctions, if any, within 1 year of submission of the legally sufficient complaint.

### Duties of Private Schools Participating in a State Scholarship Program

The bill requires private schools participating in a state scholarship program to apply their standards of ethical conduct to educational support employees. 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

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<sup>55</sup> See ss. 775.082 and 775.083, F.S.

<sup>56</sup> See s. 800.101, F.S. A person who violates this section commits a felony of the second degree.



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.

## **Employment History Check**

### **Present Situation**

Before employing an individual in any position that requires direct contact with students, a district school superintendent is required to conduct employment history checks of each of the individual's previous employers, screen instructional personnel and school administrators<sup>57</sup> through the use of educator screening tools<sup>58</sup>, and document the findings.<sup>59</sup> If the district superintendent is unable to contact a previous employer, he or she must document efforts to do so.<sup>60</sup>

### **Effect of Proposed Changes**

In cases of an employee separating from employment due to termination or resignation in lieu of termination, the bill requires the public school employer to execute an affidavit of separation, on a form adopted by the DOE, explaining in detail the facts and reasons for the separation. The affidavit must expressly disclose when the separation is due to a report of sexual misconduct with a student. The affidavit is executed under oath and constitutes an official statement.<sup>61</sup> The affidavit of separation must also include language that intentional false execution of the affidavit constitutes a second degree misdemeanor.

Before a district school superintendent employs the 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.<sup>62</sup>

### **Effect of Proposed Changes**

The bill adds charter schools and private schools, as applicable, as educational entities law enforcement must notify when an employee is charged with a felony or misdemeanor involving the abuse of a minor child or the sale or possession of a controlled substance within 48 hours of the arrest.

## **B. SECTION DIRECTORY:**

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<sup>57</sup> See ss. 1012.02(2)(a)-(e) and 1012.02(3)(a)-(c), F.S.

<sup>58</sup> See s. 1001.10(5)(a)-(b), F.S.

<sup>59</sup> Section 1012.27(6), F.S.

<sup>60</sup> *Id.*

<sup>61</sup> See s. 837.06, F.S.

<sup>62</sup> Section 1012.797(1), F.S.

**Section 1.** Amends s. 1001.10, F.S., requiring the Department of Education to maintain a disqualification list of certain persons; providing for the removal of a person from the list under certain circumstances; requiring the State Board of Education to adopt rules; requiring the department to provide access to specified information to certain staff for specified purposes.

**Section 2.** Amends s. 1001.42, F.S., providing that certain provisions relating to conduct and prohibition from employment apply to educational support employees; prohibiting certain employees and personnel from employment under certain circumstances; requiring district school boards to report specified persons to the department for inclusion on the list; providing that a school board official forfeits his or her salary for 1 year under additional circumstances.

**Section 3.** Amends s. 1001.51, F.S., providing that a district school superintendent forfeits his or her salary for 1 year under additional circumstances.

**Section 4.** Amends s. 1002.33, F.S., prohibiting certain individuals from employment at a charter school; providing requirements for charter schools relating to employing certain individuals; requiring the governing board of a charter school to establish the duty of instructional personnel and school administrators to report specified alleged misconduct by certain individuals; prohibiting an individual on the list from employment in specified positions; requiring a charter school to report specified individuals to the department for inclusion on a certain list.

**Section 5.** Amends s. 1002.421, F.S., requiring certain private schools to include educational support employees in specified policies; requiring certain private schools to deny employment to certain persons; prohibiting the employment of certain employees and personnel under circumstances; requiring private schools to report specified persons to the department for inclusion on a certain list; authorizing the Commissioner of Education to permanently revoke an owner's or operator's authority to establish or operate a private school in the state under certain circumstances.

**Section 6.** Amends s. 1006.061, F.S., revising the contents of a sign certain educational entities are required to post to include information relating to reporting of certain criminal acts.

**Section 7.** Amends s. 1012.27, F.S., revising the requirements for certain employment history checks to include a specified affidavit.

**Section 8.** Amends s. 1012.31, F.S., requiring certain persons to execute and maintain an affidavit of separation form for specified purposes; providing requirements for such affidavit.

**Section 9.** Amends s. 1012.315, F.S., providing that certain persons are ineligible for an educator certification or specified employment.

**Section 10.** Amends s. 1012.795, F.S., revising acts that warrant a disciplinary action by the commission.

**Section 11.** Amends s. 1012.796, F.S., prohibiting the department from issuing a certificate to certain persons; requiring the commissioner to make a determination of probable cause within a specified timeframe for complaints relating to sexual misconduct with a student; providing for such timeframe to be held in abeyance under certain circumstances; providing construction; requiring certain individuals to be placed on a disqualification list; requiring the commissioner to remove certain suspended personnel or administrators from certain positions under specified circumstances; requiring a district school superintendent to immediately suspend certain individuals and take specified action as a results of alleged misconduct; prohibiting certain individuals from serving or applying to serve in specified positions at public schools and specified private schools; providing a timeframe for specified investigations; providing timeframe for administrative suspension; providing criminal penalties.

**Section 12.** Amends s. 1012.797, F.S., requiring certain law enforcement notification to charter and private schools.

**Section 13.** Provides an effective date of July 1, 2021.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None. See Fiscal Comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

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.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

The bill provides the SBE with rulemaking authority to implement the DQ list and removal process.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.