

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 131 Educator Conduct

**SPONSOR(S):** Education & Employment Committee, Secondary Education & Career Development Subcommittee, Duggan and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1864

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Secondary Education & Career Development Subcommittee	16 Y, 0 N, As CS	Wolff	Sanchez
2) Early Learning & Elementary Education Subcommittee	15 Y, 0 N	Wolff	Brink
3) Education & Employment Committee	21 Y, 0 N, As CS	Wolff	Hassell

### 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 make a probable cause determination 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 clarifies that charter schools are included in 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. Upon such notification, for employees that had direct contact with students, the school must then notify parents within 24 hours and include the employee's name and specific charges for which he or she was arrested.

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 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>

In May 2014, Broward County Public Schools fired and “disqualified from future employment” a substitute teacher following allegations from multiple children that he touched them inappropriately.<sup>3</sup> Despite this fact, the employee received a temporary teaching certificate from the Department of Education (DOE) in 2016 and began teaching at a charter school in Broward County.<sup>4</sup> In August 2018, the teacher was arrested and is currently facing multiple counts of sexual battery and molestation stemming from conduct at the charter school.<sup>5</sup> While his temporary teaching certificate expired in July 2019, the teacher was not permanently barred from certification until July 2020.<sup>6</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>7</sup> The teacher’s certification was not revoked by the DOE until March 15, 2021, following the teacher’s voluntary surrender of his certificate.<sup>8</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>9</sup> During the 2-year period following his arrest, he remained on administrative suspension with full

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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 March 16, 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 March 16, 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 March 16, 2021).

<sup>3</sup> NBC 6, *Former Substitute Teacher Gets State License After Being Fired*, (February 2, 2019), available at <https://www.nbcmiami.com/news/local/former-substitute-teacher-gets-state-license-after-being-fired/3867/> (last visited March 24, 2021).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* See also *Richard Corcoran v. Christopher Falzone*, Case No. 20-0041-TC, EPC Index No. 20-218-FOI, (Educ. Prac. Comm. July 14, 2020), [https://www.doah.state.fl.us/FLAID/DOE/2020/DOE-EPC\\_20-0041-TC\\_07212020\\_081139.pdf](https://www.doah.state.fl.us/FLAID/DOE/2020/DOE-EPC_20-0041-TC_07212020_081139.pdf) (last visited March 24, 2021).

<sup>7</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 March 16, 2021).

<sup>8</sup> Florida Education Practices Commission, *Final Order in Case 19-0187-RT*, (March 15, 2021), available at [http://www.myfloridateacher.com/discipline/icmsorders/178-1821\\_FO\\_031621-042118.pdf](http://www.myfloridateacher.com/discipline/icmsorders/178-1821_FO_031621-042118.pdf) (last visited March 24, 2021).

<sup>9</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-fpofntupzrg65kgbmew7nslbm-story.html> (last visited March 16, 2021).

salary, while assigned to the school district's book depository. Although documented complaints of misconduct against the teacher dated back to 1998, he still found employment at other schools.<sup>10</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>11</sup> Despite being incarcerated, his teacher certification was not revoked until August 25, 2020, approximately three years after the initial allegations.<sup>12</sup>

In March 2021, an elementary school physical education paraprofessional<sup>13</sup> employed by the Hernando County School District was arrested and removed from school grounds for three charges of sexual battery on a victim under 12 years of age and one charge of lewd and lascivious behavior.<sup>14</sup> He worked at the elementary school in a position that had direct contact with students for approximately 30 days prior to his arrest. According to an article in the Hernando Sun, although the school district performed a background check, because the charges arose from incidents in another county the district was unaware of prior allegations as the perpetrator had no formal criminal history.<sup>15</sup> After his arrest, the district notified parents, but did not include information relating to the allegations or the perpetrator's identity.<sup>16</sup>

## **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>17</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>18</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>19</sup>

- enumerated felony offenses such as unlawful sexual activity with certain minors and lewdness and indecent exposure;<sup>20</sup>
- enumerated misdemeanor offenses relating to battery on a child, or luring or enticing a child;<sup>21</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>22</sup> or

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<sup>10</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 March 16, 2021).

<sup>11</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 March 16, 2021).

<sup>12</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).

<sup>13</sup> Paraprofessionals are staff that provide instructional support in schools, such as, providing one-on-one tutoring, assisting with classroom management, and acting as a translator or providing instructional support services under the direct supervision of a highly qualified teacher. Paraprofessionals are not certified by the DOE. See Florida Department of Education, *Memorandum Regarding Revised Information - Assignment of Teachers and Paraprofessionals under Differentiated Accountability for Title I and Non-Title I Schools*, available at <https://info.fldoe.org/docushare/dsweb/Get/Rendition-13615/unknown> (last visited March 24, 2021).

<sup>14</sup> Pat Raia, *Suncoast Elementary employee charged with sexual assault*, (March 8, 2021), <https://www.hernandosun.com/article/suncoast-elementary-employee-charged-sexual-assault> (last visited March 24, 2021).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Section 1012.32(2)(a), F.S.

<sup>18</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>19</sup> Section 1012.315(1)(a)-(vv), (3), and (4), F.S.

<sup>20</sup> Section 1012.315(1)(a)-(vv), F.S.

<sup>21</sup> Section 1012.315(2)(a)-(b), F.S.

<sup>22</sup> Section 1012.315(3), F.S.

- 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>23</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 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>24</sup>
- The Department of Education's Teacher Certification Database.<sup>25</sup>

Both databases contain only information necessary for performing employment history checks of certificated instructional personnel and school administrators. The databases do not include educational support employees who are non-certificated employees, but whose work supports the educational process.<sup>26</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>27</sup> A complaint is considered legally sufficient if it contains ultimate facts which show a violation for which the Education Practices Commission (EPC) could discipline a certificated individual.<sup>28</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>29</sup>

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>30</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>31</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>32</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>33</sup> Once the OPPS finds probable cause, the case is turned over to the EPC for an administrative hearing.

### Education Practices Commission

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<sup>23</sup> Section 1012.315(4), F.S.

<sup>24</sup> Section 1001.10(5)(a), F.S.

<sup>25</sup> Section 1001.10(5)(b), F.S.

<sup>26</sup> Section 1012.01(6), F.S.

<sup>27</sup> Section 1012.796(1)(a), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Florida Department of Education, *Professional Practices*, <http://www.fldoe.org/teaching/professional-practices/> (last visited March 16, 2021).

<sup>31</sup> Section 1012.796(1)(b), F.S.

<sup>32</sup> Section 1012.31(3)(a)1., F.S., relating to public school personnel files; s. 1012.796(4), F.S., relating to EPC.

<sup>33</sup> Section 1012.31(3)(a)1., F.S.

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>34</sup> The EPC interprets and applies the principles to certificated educational personnel.<sup>35</sup> At least once each year, the EPC must report to and meet with the SBE.<sup>36</sup> The EPC is authorized to revoke or suspend an educator certificate or take other appropriate action as provided in law.<sup>37</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>38</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>39</sup>

Specifically, the EPC may revoke or suspend an educator's certificate if a person has been:<sup>40</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 under s. 1012.315, F.S., 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>41</sup>

- Revocation or suspension of a certificate.
- Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense.
- Probation.
- Restriction of the authorized scope of practice.
- Written reprimand.
- Referral to the recovery network program for impaired educators.

The DOE may deny initial 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>42</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>43</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>44</sup> An elected or appointed school board official forfeits his or her salary for 1 year if:

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<sup>34</sup> Section 1012.795(1)(j), F.S.; rule 6A-10.081, F.A.C.

<sup>35</sup> Section 1012.79(7)(a), F.S.

<sup>36</sup> Section 1012.79(7)(c), F.S.

<sup>37</sup> Section 1012.79(7)(b), F.S.

<sup>38</sup> Section 1012.796(6), F.S.; *see* ch. 120, F.S.

<sup>39</sup> Section 1012.796(7); *see* s. 1012.796(7)(a)-(h), F.S.

<sup>40</sup> Section 1012.795(1), F.S.

<sup>41</sup> Section 1012.796, F.S. The EPC is also authorized to deny an application, including prohibiting reapplication for a period of up to ten years or permanently.

<sup>42</sup> Section 1012.56(12)(a), F.S.

<sup>43</sup> Section 1012.56(12)(b), F.S.

<sup>44</sup> Section 1001.42(7), F.S.; *see* s. 1012.315, F.S.

- 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>45</sup> or
- the school board official knowingly fails to adopt policies that require:<sup>46</sup>
  - instructional personnel and administrative personnel to report alleged misconduct by other instructional personnel and administrative personnel;<sup>47</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>48</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>49</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>50</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>51</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>52</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.

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>53</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>54</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

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<sup>45</sup> Section 1001.42(7)(a), F.S.

<sup>46</sup> Section 1001.42(7)(b), F.S.

<sup>47</sup> Section 1001.42(7)(b)1., F.S.

<sup>48</sup> Section 1001.42(7)(b)2., F.S.

<sup>49</sup> Section 1001.42(7)(b)3., F.S.

<sup>50</sup> Section 1001.51(12)(b), F.S.

<sup>51</sup> Section 1012.796(1)(d)1., F.S.

<sup>52</sup> Section 1012.796(1)(d)2., F.S.

<sup>53</sup> Section 1012.796(1)(d)5., F.S.

<sup>54</sup> Section 1012.796(5), F.S.

The governing board of a charter school must adopt policies establishing standards of ethical conduct for instructional personnel and school administrators.<sup>55</sup> The policies must require all instructional personnel and school administrators to complete training on the standards; establish the duty of instructional personnel and school administrators to report, and 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>56</sup> prior to employment by a charter school or serving on a charter school governing board.<sup>57</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>58</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>59</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>60</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, and 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 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>61</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>62</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 provides that an individual is ineligible for educator certification or employment in any position requiring direct contact with students in a district school, charter school, or private school accepting state scholarships, not only if convicted of specified offenses, but also if they are found guilty of, have had adjudication withheld for, or have pled guilty or nolo contendere to a specified offense. This aligns the disqualification provision with the discipline authority of the EPC.

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<sup>55</sup> Section 1002.33(12)(g)3., F.S.

<sup>56</sup> See s. 1012.32(2)(b), F.S.

<sup>57</sup> Section 1002.33(12)(g)1., F.S.

<sup>58</sup> Section 1002.33(12)(g)2., F.S.

<sup>59</sup> Section 1002.33(12)(g)3. F.S.

<sup>60</sup> Section 1002.421(1)(n), F.S.

<sup>61</sup> Section 1002.421(1)(o), F.S.

<sup>62</sup> Section 1002.421(1)(n), F.S.

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>63</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 under s. 1012.315, F.S.

The bill prohibits certificated (i.e. instructional and administrative personnel) and non-certificated (i.e. educational support employees and substitute teachers) 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>64</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*

The bill specifies that, for a person whose educator certificate has expired and who committed an act that is the basis for a legally sufficient complaint while holding a certificate, the DOE may not issue a certificate unless an investigation has been completed.

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 sexual misconduct with a student and has resigned or was terminated before the conclusion of the investigation.

#### *Education Practices Commission*

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<sup>63</sup> See s. 1012.795, F.S., regarding the EPC's authority to discipline.

<sup>64</sup> 42 U.S.C. § 9858f.



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>65</sup>

### Duties of District School Boards and Superintendents

The bill requires that a school district's mandatory misconduct reporting and investigation policy apply to educational support personnel. For all personnel subject to the policy, investigations must be conducted regardless of whether 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 a superintendent 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>66</sup> a disqualifying offense under s. 1012.315, F.S., or sexual misconduct with a student.

The bill limits the time a superintendent is required to suspend a certificateholder with pay to when a legally sufficient complaint is submitted. The school district must complete all 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 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>67</sup> through the use of educator screening tools,<sup>68</sup> and document the findings.<sup>69</sup> If the district superintendent is unable to contact a previous employer, he or she must document efforts to do so.<sup>70</sup>

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<sup>65</sup> See ss. 775.082 and 775.083, F.S.

<sup>66</sup> See s. 800.101, F.S. A person who violates this section commits a felony of the second degree.

<sup>67</sup> See ss. 1012.02(2)(a)-(e) and 1012.02(3)(a)-(c), F.S.

<sup>68</sup> See s. 1001.10(5)(a)-(b), F.S.

<sup>69</sup> Section 1012.27(6), F.S.

<sup>70</sup> *Id.*

## 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>71</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 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.

## 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>72</sup> Such notification must also include the specific charges for which the employee was arrested.<sup>73</sup>

## Effect of Proposed Changes

The bill clarifies that charter schools are included in those 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.

Upon notification by law enforcement, the bill requires the principal to, within 24 hours, notify parents of enrolled students of the arrest and include, at a minimum, the employee's name and the specific charges against him or her. The bill authorizes the sharing of this information, notwithstanding the limitation on disclosure required by ss. 1012.31(3)(a)1. and 1012.796(4), F.S.

## B. SECTION DIRECTORY:

**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.

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<sup>71</sup> See s. 837.06, F.S.

<sup>72</sup> Section 1012.797(1), F.S.

<sup>73</sup> *Id.*

**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., revising provisions relating to notification by law enforcement of certain charges against employees; clarifying the entities who receive such notifications; requiring a school principal or designee to notify certain parents of such notifications within a specified timeframe; providing minimum requirements for parental notifications.

**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**

On March 10, 2021, the Secondary Education & Career Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides additional disposition categories that would disqualify an individual from educator certification or employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts state scholarships.

On March 24, 2021, the Education & Employment Committee adopted one amendment and reported the bill favorably as a committee substitute. For school personnel who have direct contact with students and are arrested for possession of a controlled substance or abuse of a minor, the amendment requires parental notification for such arrest. Within 24 hours of notification from law enforcement, the school principal, or a designee, must notify parents of enrolled students and include, at a minimum, the employee's name and the specific charges against him or her.

The bill analysis is drafted to the committee substitute adopted by the Education & Employment Committee.