

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Education

BILL: SB 1864

INTRODUCER: Senator Perry

SUBJECT: Education

DATE: April 7, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brick</u>	<u>Bouck</u>	<u>ED</u>	Favorable
2.	<u>Underhill</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1864 requires the Department of Education (DOE) to maintain a list of persons permanently disqualified from employment in a public school or a private school that participates in a state educational scholarship program (private scholarship school). The bill requires this disqualification list to include the identities of persons whose misconduct affects the health, safety, or welfare of a student and prohibits public schools, private scholarship schools, and approved virtual instruction providers from employing a person in a position with direct contact with students if the person is included on the disqualification list. The bill also:

- Requires that educational support employees be included to the same extent required for instructional personnel and school administrators in policies establishing standards of ethical conduct and procedures for investigating, reporting, and terminating personnel.
- Requires the complete investigation of complaints of misconduct by public school personnel and provides authority for the DOE to place a person on the disqualification list.
- Provides that a person commits a felony of the third degree for employing a person identified on the disqualification list.
- Provides authority for the DOE to remove a person from the disqualification list.
- Prohibits district school boards from rescreening an employee of an approved virtual instruction provider who has been screened in accordance with the rules for instructional and noninstructional personnel with direct contact with students in a district school system.

The bill does not require a state appropriation. While DOE may incur costs associated with maintaining the disqualification list, these costs can be absorbed within existing resources. See Section V.

The bill takes effect July 1, 2021.

II. Present Situation:

The Department of Education (DOE) is required to provide technical assistance to 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 (private scholarship schools) in the development of policies, procedures, and training related to employment practices and standards of ethical conduct for instructional personnel and school administrators. In addition, the DOE is required to provide authorized staff of school districts, charter schools, the Florida School for the Deaf and the Blind, and private scholarship schools with access to:

- The Professional Practices' Database of Disciplinary Actions Against Educators;
- The DOE's Teacher Certification Database; and
- Data necessary for performing employment history checks of the instructional personnel and school administrators included in the databases.¹

Disqualification from Employment

Before employing a person in any position that requires direct contact with students in a district school, charter school, or private scholarship school, the employer must conduct employment history checks of each of the person's previous employers, screen instructional personnel and school administrators using the Professional Practices' Database of Disciplinary Actions Against Educators and the DOE's Teacher Certification Database, and document the findings.²

A person is ineligible for an educator certification or employment in any position that requires direct contact with students in a district school system, charter school, or private scholarship school if the person has been convicted of certain offenses specified in law.³ District school boards and charter school governing boards must disqualify instructional personnel and school administrators from employment in any position that requires direct contact with students if the person is ineligible for employment due to a conviction of any of the specified offenses.

A school district or private scholarship school may not enter into a confidentiality agreement regarding terminated or dismissed instructional personnel or school administrators, or personnel or administrators who resign in lieu of termination. School districts and private scholarship schools must disclose misconduct that affects the health, safety, or welfare of a student when discussing performance with prospective employers in another educational setting. Any part of an agreement or contract that has the purpose or effect of concealing misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student is void, is contrary to public policy, and may not be enforced.⁴

Criminal History Background Screening

Public Schools

Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students in any public school, including a charter school, must file

¹ Section 1001.10(4) and (5), F.S.

² Sections 1002.33(12), 1002.421(1), and 1012.27(6), F.S.

³ Section 1012.315, F.S.

⁴ *Id.*

with the district school board a complete set of fingerprints, which are submitted to the Florida Department of Law Enforcement (FDLE), for statewide criminal and juvenile records checks, and to the Federal Bureau of Investigation (FBI), for national criminal records checks.⁵ The screening cost is borne by the district school board, the charter school, the employee, the contractor, or other person subject to the screening requirements.⁶ FBI criminal history record information may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities.⁷ The FDLE must retain the fingerprints and report any arrest record of a person that is identified with the retained fingerprints to the employing or contracting school district or the school district with which the person is affiliated.⁸ Employees and contracted personnel subject to these fingerprinting requirements must be rescreened every five years.⁹

Private Schools Accepting State Scholarship Students

A private scholarship school must require each employee, contracted personnel, and owner or operator with direct student contact to undergo a state and national background screening by electronically filing a complete set of fingerprints with the FDLE. The FDLE must retain the fingerprints and report any arrest record of a person that is identified with the retained fingerprints to the employing or contracting private scholarship school. Employees and contracted personnel subject to these fingerprinting requirements must be rescreened every five years.¹⁰

Approved Virtual Instruction Programs

An approved virtual instruction provider must require all instructional staff to hold certificates issued by the DOE and conduct background screening for all instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students, using state and national criminal history records. Instructional and noninstructional personnel of an approved virtual instructional provider who are contracted to fill positions that require direct contact with students in any public school must also satisfy the screening, fingerprint retention, and rescreening requirements of the public school with which the personnel are contracted.¹¹

Standards of Ethical Conduct for Education Personnel

District school boards, charter school governing boards, and private scholarship schools are required to adopt policies establishing standards of ethical conduct for instructional personnel and school administrators. The policies must require all instructional personnel and school administrators to complete training on the standards of ethical conduct, establish the duty of, and procedures for, instructional personnel and school administrators to report alleged misconduct by other instructional personnel and school administrators which affects the health, safety, or

⁵ Section 1012.32(2), F.S. This requirement is subject to limited exceptions for noninstructional contractors who meet the requirements specified in s. 1012.468, F.S.

⁶ Section 1012.32(2), F.S.

⁷ 28 C.F.R. s. 50.12(b).

⁸ Section 1012.32(3), F.S.

⁹ Sections 1012.465 and 1012.56(10), F.S.

¹⁰ Section 1002.421(1)(m) and (p), F.S.

¹¹ Section 1002.45(2)(a), F.S. and s. 1012.32, F.S.

welfare of a student.¹² These policies must also include an explanation of liability protections for reporting child abuse and disclosing information concerning former employees.¹³

District school board policies must require the superintendent to report to law enforcement misconduct by instructional personnel or school administrators that would result in disqualification from educator certification or employment.¹⁴

District school board officials and superintendents, charter schools, and private scholarship schools are subject to penalties for failing to adopt policies establishing standards of ethical conduct. Specifically:

- If a school board member knowingly fails to adopt policies that require instructional personnel and school administrators to report misconduct, the member forfeits his or her salary for one year.¹⁵
- A district school superintendent who knowingly fails to investigate or report such misconduct, or knowingly files a false report of misconduct, also forfeits his or her salary for one year.¹⁶
- The sponsor¹⁷ of the charter school must terminate the charter.¹⁸
- The DOE must suspend the payment of funds to a private scholarship school and shall prohibit the school from enrolling new scholarship students for one fiscal year and until the school complies. In the event the private scholarship school consistently fails to comply, the commissioner may determine that the private scholarship school is ineligible to participate in a scholarship program.

The commissioner may deny, suspend, or revoke a private school's participation in a scholarship program if the commissioner determines that:

- An owner or operator of the private scholarship school is operating or has operated an educational institution in this state or in another state or jurisdiction in a manner contrary to health, safety or welfare of the public; or
- The owner or operator has exhibited a previous pattern of failure to comply with the relevant law or specific requirements identified within respective scholarship program laws.¹⁹

Complaints against Teachers and Administrators

A person seeking employment at a public school as a school supervisor, principal, teacher, library media specialist, counselor, athletic coach, or in another instructional capacity must hold a certificate issued by the DOE.²⁰ If allegations arise against an employee who possesses an

¹² Sections 1001.42(6), 1002.33(12)(g), 1002.421(1)(n), and 1012.796(1)(d), F.S.

¹³ Section 1006.061, F.S.

¹⁴ Section 1001.42(6), F.S.

¹⁵ Section 1001.42(7)(b), F.S.

¹⁶ Section 1001.51(12), F.S.

¹⁷ The local district school board or a state university may sponsor a charter school. Section 1002.33(5), F.S.

¹⁸ Section 1002.33(12)(g)5., F.S.

¹⁹ Section 1002.421(3), F.S.

²⁰ Sections 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S. District school boards and charter school governing boards are authorized to hire non-certified individuals who possess expertise in a given field to serve in an instructional capacity. Rule 6A-1.0502, F.A.C.; ss. 1002.33(12)(f) and 1012.55(1)(c), F.S. Occupational therapists, physical therapists, audiologists, and speech therapists are not required to be certified educators. Rule 6A-1.0502(10) and (11), F.A.C.

educator certificate and is employed in an educator-certificated position in any public school, charter school, or private scholarship school, the school must file a legally sufficient complaint with the DOE within 30 days from the date the school had notice of the incident, regardless of whether the subject of the allegations is still employed by the school.²¹

The DOE is tasked with investigating any legally sufficient complaint filed before it or otherwise called to its attention which contains grounds for sanctions against an educator certificate and must immediately investigate any legally sufficient complaint that involves misconduct by any certificated personnel which affects the health, safety, or welfare of a student, giving the complaint priority over other pending complaints—even if the complainant withdraws the complaint. The DOE may investigate a complaint filed against a person whose educator certificate has expired if the act or acts that are the basis for the complaint were allegedly committed while that person possessed an educator certificate.²²

A school district superintendent must report to the DOE an arrest or conviction of any administrative or instructional personnel for certain offenses specified by the DOE within twenty-four hours of a matter coming to the attention of a school district. The same reporting requirements apply to substantiated allegations of misconduct by any administrative or instructional personnel that would constitute any of offenses specified by the DOE, regardless of whether there has been an arrest or conviction.²³

The Education Practices Commission

The Education Practices Commission (EPC) is a quasi-judicial body of peers, law enforcement and lay persons which interprets and applies the standards of professional practice established by the SBE.²⁴ The EPC is assigned to the DOE for administrative purposes but is not subject to control, supervision, or direction by the DOE.²⁵

The EPC may impose one or more of the following penalties against a person with an educator certificate:

- Suspend the educator certificate of any instructional personnel or school administrator, for up to five years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the person may return to teaching.
- Revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to law.
- Permanently revoke the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students.

²¹ Section 1012.796(1)(e), F.S.

²² Section 1012.796(1), F.S.

²³ Rule 6A-10.082, F.A.C.

²⁴ Section 1012.79, F.S.

²⁵ Section 1012.79(6)(a), F.S.

- Suspend an educator's certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or impose any other penalty provided by law.²⁶

III. Effect of Proposed Changes:

The Florida Department of Education

The bill requires the DOE to maintain a list of persons permanently disqualified from employment in a public school or a private scholarship school. The bill requires this disqualification list to include the identity of any person who has been:

- Permanently denied an educator certificate or whose educator certificate has been permanently revoked and has been placed on the list by the Education Practices Commission (EPC);
- Permanently disqualified by the commissioner as an owner or operator of a private scholarship school for a reason that reflects a risk of harm to the health, safety, or welfare of a student;
- Terminated, or has resigned in lieu of termination, from employment with a district school board as a result of misconduct that affects the health, safety, or welfare of a student; or
- Disqualified from employment due to a conviction of any of the offenses specified in law.

The bill authorizes the DOE to remove a person from the disqualification list if the person demonstrates that:

- 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; or
- The person was not the subject of the report of disqualifying conduct and was included on the disqualification list in error or as a result of mistaken identity.

The bill authorizes the EPC to direct the DOE to place employees or contractual personnel of any public school, charter school, charter school governing board, or private scholarship school on the disqualification list for conduct that would render the person ineligible for employment.

The bill requires the State Board of Education (SBE) to adopt rules to implement the disqualification list.

Disqualification from Employment

The bill requires that staff of school districts, charter schools, the Florida School for the Deaf and the Blind, and private scholarship schools conduct employment history checks on educational support employees to the same extent currently required for instructional personnel and school administrators. The bill also adds the disqualification list to the employment screening tools provided by the DOE to staff of school districts, charter schools, the Florida School for the Deaf and the Blind, and private scholarship schools.

²⁶ Section 1012.795(1), F.S.

The bill disqualifies a person included on the disqualification list from educator certification or employment in a position that requires direct contact with students²⁷ in a district school system, charter school, approved virtual instruction program, or private scholarship school.

The bill provides that a person commits a felony of the third degree if the person:

- Is included on the disqualification list and serves or applies to serve as an employee or contractual personnel at any public school or private scholarship school; or
- Hires a person who is included on the disqualification list to serve as an employee or contractual personnel at any public school or private scholarship school.

The bill requires a law enforcement agency to make certain notifications to the appropriate employer regarding the arrest of public school contractors and private school employees and contractors. This notification is in addition to the existing requirement that a law enforcement agency must, within 48 hours, notify the appropriate district school superintendent of the name and address of any employee of the school district who is charged with a felony or with a misdemeanor involving the abuse of a minor child or the sale or possession of a controlled substance.

Standards of Ethical Conduct for Education Personnel

Educational Support Employees

The bill requires district school boards, charter schools, and private scholarship schools to include educational support employees to the same extent required for instructional personnel and school administrators in policies establishing standards of ethical conduct and procedures for investigating, reporting, and terminating personnel.

Public Schools

The bill adds to existing requirements that subject a school board official to penalties for failing to adopt policies to investigate misconduct and report misconduct to the DOE. Specifically, the bill subjects a school board official to existing penalties if the school board official knowingly fails to adopt policies that require:

- The complete investigation of all reports of misconduct of specified personnel, regardless of whether the personnel resigned or is terminated before the conclusion of the investigation.
- The superintendent to notify the DOE of the result of the investigation and whether the misconduct warranted termination, regardless of whether the person resigned or was terminated prior to the conclusion of the investigation.

Approved Virtual Instruction Providers

The bill requires an approved virtual instruction provider to:

- Receive arrest reports for all employees or contracted personnel.
- Comply with the requirements in law for reporting complaints of misconduct against educational support employees, teachers, and administrators and designate at least one administrator to be responsible for the duties and requirements assigned to a district school board and superintendent pursuant to that section.

²⁷ Section 1012.315, F.S

- Inform the district school board of a complaint regarding misconduct or an arrest of instructional or noninstructional personnel of an approved virtual instruction provider.
- Participate in the fingerprint retention and arrest record search process by payment of an annual fee to the Florida Department of Law Enforcement (FDLE) and by informing FDLE of any change in the affiliation, employment, or contractual status or place of affiliation, employment, or contracting of its instructional and noninstructional personnel whose fingerprints are retained.
- Designate an administrator to be responsible for the duties and requirements related to background screening assigned to a district school board and superintendent under applicable laws that provide for rescreening.

The bill prohibits a district school board from requiring employees or contractual personnel of an approved virtual instruction provider to undergo additional background screening.

Private Schools

The bill authorizes the Commissioner of Education (commissioner) to permanently revoke or deny the authority of an owner or operator to establish or operate a private scholarship school if the commissioner decides that the owner or operator is operating or has operated an educational institution in this state or another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public. That owner or operator must be included on the disqualification list.

The Florida Department of Law Enforcement

The bill requires the FDLE to retain the fingerprints of instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students in a virtual instruction program and report any arrest record that is identified with the retained fingerprints to the employing or contracting approved virtual instruction provider.

The bill requires the FDLE to set the annual fees to be imposed on approved virtual instruction providers for performing searches of arrest records, the retention of fingerprints, and the dissemination of search results.

Complaints against Educational Personnel

The bill adds educational support employees to the list of personnel about whom the DOE receives and maintains reports of complaints. The bill requires district school boards and charter school governing boards to:

- Immediately investigate any legally sufficient complaint that involves misconduct by an educational support employee, instructional personnel, or administrative personnel which affects the health, safety, or welfare of a student and would result in termination.
- Report an investigation that results in termination, or the accused person's resignation in lieu of termination, to the DOE for inclusion on the disqualification list.

The bill clarifies that the duty of:

- School districts to maintain confidentiality of employee personnel files does not absolve the school district of any legally required notifications or duties to report allegations of misconduct to the DOE.

- District school boards to investigate complaints of misconduct and report findings and conclusions to the DOE is not limited by the district school board's notification to the DOE of the resignation or termination of the subject of a legally sufficient complaint prior to the conclusion of the school district's investigation.
- The DOE to maintain reports of misconduct as a public record in a personnel's certification files does not limit or restrict the power and duty of the DOE to investigate complaints regarding certificated personnel, nor does it create a duty for the DOE to investigate complaints regarding noncertificated personnel.

The bill requires charter schools to comply with the requirements in law for reporting complaints of misconduct against educational support employees, teachers, and administrators, and assigns the duties of a district school superintendent to charter school administrative personnel. The bill requires the district school superintendent to suspend with pay an educational support employee who is the subject of a complaint of misconduct.

The bill codifies the requirement that each school district superintendent immediately report to the DOE an arrest, conviction, or substantiated allegation of misconduct of any administrative or instructional personnel for certain offenses specified by the DOE. The bill expands this reporting requirement to include educational support employees and charter school governing boards, approved virtual instruction providers, and private scholarship schools.

The bill requires a complete investigation before the DOE may issue a new certificate to a person whose educator certificate has expired if the person is the subject of a complaint for which the act or acts that were the basis for the complaint were allegedly committed while that person possessed an educator certificate.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not require a state appropriation. However, school districts may incur costs associated with the provisions of the bill addressing the investigation of complaints of misconduct. In addition, DOE may incur costs to develop or update databases related to maintaining the disqualification list. Although these technology costs are unknown, DOE has previously indicated that the technology costs could be absorbed within existing resources.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.10, 1001.42, 1002.33, 1002.421, 1002.45, 1006.061, 1012.31, 1012.315, 1012.32, 1012.795, 1012.796, and 1012.797.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

²⁸ Department of Education, Senate Bill 1444 Agency Bill Analysis (March 14, 2019) (on file with the Senate Appropriations Subcommittee on Education).

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