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Committee on Education Pre-K - 12

REPORTING AND INVESTIGATING ALLEGATIONS OF TEACHER MISCONDUCT

SUMMARY

Because educators are entrusted with the safety and security of young children, they are held to a strict code of conduct and a higher standard of ethics.

As the result of a recent investigative series alleging problems in existing policies and reporting requirements of educator misconduct, the State Board of Education established an advisory council to assess and recommend improvements to current practices to provide a safe environment for students. Although the recommendations represent a marked improvement in detecting and preventing educator misconduct, school districts can adopt additional precautionary measures to protect students by strengthening their employment screening, hiring, and termination policies. Additionally, the Department of Education can provide technical assistance and information to support districts in their efforts and to clarify the complementary responsibilities of the Department, the Education Practices Commission, the local school districts, and individual educators.

BACKGROUND

The Bureau of Professional Practices Services (PPS) within the Florida Department of Education (DOE) investigates allegations of misconduct by educators, including, but not limited to, sexual misconduct, inappropriate student discipline, drug use, credential fraud, and standardized testing violations, all grounds for which an educator may have his or her certificate sanctioned. School districts maintain jurisdiction over lesser infractions, such as chronic tardiness.

Each school district is required to file all legally sufficient complaints in writing with the DOE within

30 days after the date on which the school district becomes aware of the subject matter of the complaint.¹

Under s. 1012.796, F.S., the DOE must investigate any legally sufficient complaint filed before it or called to its attention if the complaint contains grounds for a sanction against an educator's certificate. The Bureau of Professional Practices Services in the DOE investigates legally sufficient complaints of alleged violations by individuals who currently hold a Florida teaching certificate or those seeking a teaching certificate.²

The Sarasota Herald Tribune began publishing segments of an investigative report in March of 2007, alleging inconsistent practices and deficient reporting policies that allowed educators who may have committed violations of law or professional practices to have access to students. Following the report, the Commissioner of Education responded with a review of professional practice procedures.³ In accordance with the review, the State Board of Education (SBE) appointed an advisory council comprised of educators, law enforcement officials, child protection services staff, school district human resource personnel, school board attorneys, and professional education association representatives. The advisory council conducted a survey of other states to gather and evaluate information on best practices and presented recommendations to the SBE in an effort to strengthen Florida's practices relative to educator misconduct.⁴

METHODOLOGY

Committee staff reviewed the information provided to the SBE by the advisory council and interviewed council members, district human resources staff, school

¹ s. 1012.796(1)(c), F.S.

² Rule 6B-1.001, F.A.C.

³ See <http://www.heraldtribune.com> (March 27, 2007).

⁴ State Board of Education meetings on June 19, 2007 and August 14, 2007.

board attorneys, Education Practices Commission board members, and school district and state-level personnel in Florida and in other states.

In addition, Committee staff surveyed Florida school districts to assess current practice in light of existing law and rules, primarily those relating to the reporting of allegations of educator misconduct, procedures designed to detect unethical behavior, and the enforcement of laws to protect students from educators that should not have access to students.⁵

FINDINGS

Oversight by the Department of Education and the Education Practices Commission

The Bureau of Professional Practices Services is responsible for investigations of alleged teacher misconduct, provided that the allegations are legally sufficient.⁶ If the PPS finds that there is probable cause that teacher misconduct under s. 1012.795, F.S. has occurred, the PPS forwards its report to the Education Practices Commission (EPC), an appointed board whose members include teachers, administrators, and lay members, many of whom are former educators. If there are disputed issues of material fact, the case is assigned to an administrative law judge in the Division of Administrative Hearings who, after a determination of the merits of the complaint, makes a recommendation to the EPC to either dismiss the complaint or to impose a sanction against the certificate.⁷ Following its review, the EPC will issue a final order⁸ with one of the following sanctions against the educator's certificate:

- Referral to the Recovery Network Program;
- Written reprimand;
- Restriction of scope of practice;
- Probation;
- Administrative fine up to \$2,000;
- Suspension of certificate;
- Revocation of certificate; or

⁵ 28 school districts responded to the Senate committee survey.

⁶ Section 1012.796(1), F.S. defines the term "legally sufficient" as containing facts which show a violation of s. 1012.795, F.S., has occurred.

⁷ The EPC has the authority to contest the recommendation of the administrative law judge.

⁸ See

http://www.fldoe.org/meetings/2007_06_19/Report_Florida.pdf, Slide 6

- Denial of certificate application.⁹

The charts below represent the number of cases received by PPS, the type of allegations, and the disposition of those cases.¹⁰

Total Number of Cases Opened by the Bureau of Professional Practices (As of June 15, 2007)

2004-05	2005-06	2006-07
3,371	3,748	4,074

Types of Allegations

	2003-04	2004-05	2005-06
Conduct	335	327	318
Criminal	198	274	337
Discipline	92	91	113
Drugs	34	40	39
Sexual	27	33	36
Testing	24	29	31

Actions by the Department of Education

Action	2004-05 through June 15, 2007
Opened	11,114
No Further Action	1,833
No Probable Cause	7,080
Probable Cause	1,652

Recommendations of the Professional Practices Advisory Council on Teacher Misconduct

The SBE appointed an advisory council in April 2007, to review professional practices in Florida and other states and to recommend to the board improvements to Florida's professional practices educator system. After reviewing information regarding staffing and organization, reporting procedures, and data collection and analyses activities, the council forwarded their recommendations to the State Board of Education.¹¹

Clear Delineation of the Roles of the State and School Districts in Detecting and Preventing Teacher Misconduct

The advisory council recommended that the responsibilities of the state and the school districts be

⁹ s. 1012.796(7), F.S.

¹⁰ The figures are dynamic as individual cases demand different time frames for resolution.

¹¹ Professional Practices Advisory Council Recommendations. See

http://www.fldoe.org/meetings/2007_08_14/docs/ActionPlan.pdf

clearly defined regarding reporting and investigating allegations of teacher misconduct. This recommendation provides a framework for all suggested changes to the professional practice process and, as a result, areas of responsibility would be clearly articulated to the entire education community, including individual educators and all agencies and boards given oversight for educator ethics standards.

Detecting and preventing teacher misconduct should be a joint effort between the state and school districts. This joint effort would emphasize a school district's role in reporting teacher misconduct not only to the state, but to other districts, and to schools within the district. A school district's rigorous screening, hiring, and dismissal policies would then have an effect at the district level and statewide. In a complementary fashion, the state's role would be to vigorously investigate and prosecute district-reported teacher misconduct. If district and state roles and responsibilities were more clearly defined and effectively communicated, the state would benefit by preventing these teachers from having access to students.

Employment Screening Policies and Practices

Current statutes require all educators to submit to fingerprinting to screen for criminal offenses.¹² This screening, however, does not provide information relative to allegations of educator misconduct that fall short of criminal conduct but nonetheless represent unethical conduct. Three of the 13 states that responded to the PPS advisory council survey require local school districts to check the candidate's background with the previous employer.¹³ This practice strengthens educator screening at the local level and often provides for the disclosure of critical background information not readily shared on an application or provided through teacher certification data bases.

Private School Educator Background Checks

The owners of private institutions are responsible for all aspects of their educational programs and the DOE has limited jurisdiction of private schools in Florida.¹⁴ Under s. 1002.42, F.S., all private schools are required to register with the DOE and private school owners, not staff, must submit fingerprints to the Florida Department of Law Enforcement for criminal

background checks. While private schools must meet certain health and safety requirements, screening of all personnel is not mandatory. Many private school professional associations require extensive background screening for accreditation purposes; however membership in accreditation associations is voluntary. Current law requires that any private school receiving state funds under the Corporate Tax Scholarship Program, the Voluntary Prekindergarten Program, or the John M. McKay Scholarships for Students with Disabilities Program must submit and adhere to background screening provisions required of all public school employees.¹⁵ However, if a private school does not participate in a scholarship program under ch. 1002, F.S., teachers at the private school are not required by law to be screened.

Secured Access to the DOE Certification Website

The PPS provides access by eligible district staff to the Florida Educator Certification website. The secure certification website includes what are commonly referred to as red flags: pending investigations, sanctions against a certificate, or notes of previous allegations of unethical behavior.¹⁶ While this site provides invaluable information to potential and existing employers, no statutory provisions are currently in place to require districts to access this information, nor is there a systematic procedure to ensure that local staff are aware of the screening information. While this site is beneficial to districts in processing pending employment decisions, it cannot replace stringent screening procedures and hiring practices at the local level.

Of the 28 school districts that responded to the committee survey, seven districts reported that they do not access this website when screening new employees. Additionally, three districts reported that they do not contact previous employers and four do not question potential employees about any previous allegations. All districts responding to the survey reported having adopted school board policies; however, few included due diligence on rigorous pre-screening and hiring procedures. While there is no guarantee that an individual will be forthcoming, providing false information to a prospective employer can be grounds for termination.¹⁷

¹² ss. 1012.32 and 1012.56, F.S.

¹³ Colorado, Connecticut, and Michigan.

¹⁴ See

http://www.floridaschoolchoice.org/Information/PrivateSchools/general_requirements.asp

¹⁵ ss. 1002.421 and 1002.55, F.S.

¹⁶ See

http://www.fldoe.org/meetings/2007_06_19/Report_Florida.pdf, Slides 22-28

¹⁷ Section 1012.56(2), F.S., requires notice to an applicant for a teaching certificate that giving false information on his

National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse

Florida recruits and employs a large percentage of its teachers from other states¹⁸ and its capacity to effectively screen out-of-state applicants depends largely on the forthright disclosure of information provided by other states and jurisdictions. The DOE is a member of NASDTEC.¹⁹ This professional organization administers the NASDTEC clearinghouse, a searchable database restricted to registered users and administered by the education departments of NASDTEC members. Although a valuable screening tool for state-level administrators, the clearinghouse is only as effective as the educator ethics laws enacted in other states and other states' stringent adherence to accurate reporting of educator misconduct. It also falls short of its intended value if local school districts fail to access the information provided via the DOE.

Reporting Policies and Sharing of Critical Information

Under s. 1006.061, F.S., the district school board must post in a prominent place in each school a notice that all employees and agents of the district school board have an affirmative duty to report actual or suspected cases of child abuse. The notice must include the Florida Abuse Hotline number. The district school superintendent or the superintendent's designee must, at the request of the Department of Children and Family Services (DCF), act as a liaison to DCF and the child protection team when a case of child abuse, neglect, abandonment, or an unlawful sexual offense involving such a child is brought before them.

Section 1012.796, F.S., requires each school district to file all legally sufficient complaints in writing with the DOE within 30 days after the date on which the school district becomes aware of the subject matter of the complaint. In an effort to strengthen current law, the PPS advisory council recommended that school districts be required to report the termination of any educator for misconduct, even if the misconduct is not a basis for action against the certificate. If termination information was effectively reported and shared, this would supply tangible information to school districts on potential employees, provided the information was

or her affidavit subjects the applicant to criminal prosecution.

¹⁸ According to the DOE, approximately 29 percent of new teaching certificates are issued to teachers from other states.

¹⁹ See <http://www.nasdtec.org/>

immediately available and policies were in place to ensure that school districts were accessing the information.

The advisory council also recommended that school districts be required to report complaints against teachers who hold district-issued certificates so that misconduct would be on record when the teacher applies for a state-issued certificate. This would also enhance efforts to acquire and share important information regarding unethical behavior of educators and prevent districts from unwittingly hiring those educators.

Confidentiality Agreements with Terminated Employees

There are reports that suggest that school districts often enter into confidentiality or non-disclosure agreements, allowing educators to resign without cause in order to spare the district potentially prohibitive litigation costs and public disgrace.²⁰ This can result in an unfit educator moving from one location to another. In an effort to promote honest disclosure and to discourage costly litigation, many states, including Florida, have enacted some form of reference immunity legislation to provide protection from civil liability for individuals who disclose credible information about a current or former employee.²¹

Lack of Federal Requirements for Uniform State Standards

Currently, federal law does not provide for standard educator ethics laws or require reporting policies. Having established standards at the national level would clearly enhance states' ability to share information.²² This would require federal legislation similar to that enacted in 1984, which established the National Center for Missing and Exploited Children²³ and the National Child Protection Act of 1993.²⁴ The PPS advisory council indicated that the Commissioner of Education would advocate for this initiative at the national level; however, this would also require the

²⁰ See Education Week, December 9, 1998.

²¹ R. Shoop, *Sexual Exploitation in Schools, How to Spot It and Stop It*, p. 81. California: Corwin Press, (2003). See s. 768.095, F.S.

²² See

http://www.palmbeachpost.com/opinion/content/opinion/e/paper/2007/09/30/a2e_teacher_edit_0930.html

²³ 42 U.S.C. s. 5771 and 42 U.S.C. s. 11606. See also 22 C.F.R. s. 94.6.

²⁴ 42 U.S.C. s. 5119a, 42 U.S.C. s. 5119b, and 42 U.S.C. s. 5119c

support of the Governor and Cabinet and elected officials at the national level.

If a reporting requirement is instituted, there should be commensurate penalties for a failure to report. It may be advantageous, therefore, to attach at the state level appropriate penalties for non-disclosure, including financial penalties, similar to those cited in s. 1012.796(1)(c), F.S., and s. 1001.51(12), F.S.²⁵

DOE Enhancements

The DOE is introducing a parent-friendly website to allow the public to view disciplinary actions taken against educator teaching certificates.²⁶ For legal reasons, this site contains less detail than the secured certification website available to authorized district staff for the review of transcript information, communications involving allegations of misconduct (as opposed to actual findings of fact), and pending investigations.²⁷

Provisions for Training and Critical Information Updates

Of the 28 districts that responded to the committee survey, all reported providing some method of training for staff on ethical standards and behavior and legal reporting responsibilities of educators. Most districts provide the training annually and three reported that the training is provided on an on-going basis.

Research indicates that many educators are reluctant to believe that a colleague could sexually exploit a student and suggests that as a result many teachers dismiss the importance of professional development training in recognizing inappropriate behaviors.²⁸

Several explanations given by educators and others for not reporting suspected abuse are cited in the research. These include:

- Lack of recognition of characteristics associated with abuse;
- Lack of awareness of legal responsibilities;

- Fear of impairing the school or the educator's reputation;
- Lack of knowledge regarding legal procedures;
- Perception that abuse is a problem for the courts or social services system to address;
- Lack of sufficient evidence;
- Belief that the child will be more harmed than helped; and
- Fear of retaliation and litigation.²⁹

To date, there has been no systematic, targeted training provided to districts regarding the use of information available on the secure certification website. A key advisory council recommendation is to provide a consistent message to district employees statewide. This could be accomplished to a great extent by developing training based on model practices and emerging research and requiring school district staff to participate. Furthermore, systematic training of educators would also address other recommendations made by the advisory council and best practices outlined in the research.

Current Requirements for Ethics Education

Another key advisory council recommendation is to require ethics as a professional development component for certification renewal purposes. Current law requires the delivery of a uniform core curricula for all state-approved teacher preparation programs as outlined in the Florida Educator Accomplished Practices.³⁰ The core curriculum includes a component for educator ethics; however, this information is most often integrated into existing educator courses and should be given greater emphasis.³¹

The Applied Ethics Institute at St. Petersburg College has developed *Florida's Statewide Online Ethics Course for K-12 Teachers*, a college-level, tuition-based course.³² The course fulfills a requirement by the DOE and the EPC for educators whose certificates have been sanctioned and who are required to enroll as a condition for reinstatement. The course may potentially serve as a training tool, based on emerging research related to educator ethics and provided to a much larger audience of educators.

²⁵ Section 1001.51(12), F.S., refers only to financial penalties for transmission of false or incorrect reports. This may need to be amended to include failure to report educator misconduct.

²⁶ See

<http://www.myfloridateacher.com/discipline/summary.aspx>

²⁷ See

http://www.fldoe.org/meetings/2007_06_19/Report_Florida.pdf Slides 22-28

²⁸ R. Shoop, *Sexual Exploitation in Schools, How to Spot It and Stop It*, pp. 63-64 California: Corwin Press, (2003).

²⁹ *Id.*

³⁰ See

<http://www.fldoe.org/dpe/publications/professional4-99.pdf>

³¹ Rule 6A-5.065, F.A.C.

³² See http://appliedethicsinstitute.org/AEItxt06/1_0.htm

Technical Assistance to Support District Staff

Technical assistance to school districts is critical for all educators to assist them in detecting unethical conduct, and for administrators and district personnel responsible for actual investigations of unethical behavior. In order to stay abreast of new research findings in areas such as computer forensics and online predatory techniques, continual technical assistance must be provided to school districts and include the expertise of law enforcement and child protection professionals.

Seven of the thirteen states surveyed by the PPS advisory council require their state investigators to have prior investigative experience. While Florida does not require investigative experience, fifteen of the sixteen PPS investigators have, at minimum, a degree in criminology, prior law enforcement or investigative experience, or Council on Licensure, Enforcement and Regulation (CLEAR) certification.³³ School districts could benefit from PPS staff expertise as well as that of local and federal law enforcement officials.

Stringent Termination Policies and Practices

Precedent-setting cases have established that educators are held to a higher standard of ethics than most professions.³⁴ The Code of Ethics of the Education Profession and the Principles of Professional Conduct for the Education Profession in Florida are embedded in rule and reflect these standards.³⁵ The dilemma often presented to school districts is that of balancing a safe environment for children and the due process rights of an accused educator.

Jurisdiction of Local School Districts

The Department of Education, through the PPS and EPC, has jurisdiction over the application, renewal, and discipline of a certificate-holder. A school district has jurisdiction of the employment and termination of certificate-holders.

Section 1012.796 (1)(c), F.S., requires school districts to forward to the DOE for potential investigation any allegation that is deemed legally sufficient. A complaint is deemed legally sufficient if it contains ultimate facts that show a violation has occurred as provided in s. 1012.795, F.S. This section of law

includes, for example, violations such as obtaining a teaching certificate through fraudulent means, incompetence, conduct which seriously reduces the employee's effectiveness, gross immorality, and acts involving moral turpitude. The determination of action for purposes of reporting a certificate-holder for unethical conduct is complicated by the use of the terms "gross immorality" and "moral turpitude" in describing acts that meet the legally sufficient standard. Unfortunately, these terms are vaguely defined in rule,³⁶ and consequently the determination to report unethical conduct varies from district to district. This lack of uniformity could undermine attempts to notify prospective employing districts of educator misconduct.

Moreover, school districts may not be aware of their jurisdictional power over the employment, suspension, or termination of an educator alleged to have committed unethical conduct. School districts often defer to the final order of the EPC before making a final employment decision on an accused educator. However, the school district retains the ability to suspend the educator from student contact or terminating the employee. Although the Department of Education may be constrained in its efforts to discipline the certificate-holder because of due process rights, some school districts take immediate action to avoid hiring the accused educator, suspend the educator from student contact, or terminate the educator. Several districts stated that they employ prudent screening techniques and look diligently for any prior evidence that may signal a breach of conduct such as unexplained mid-year employment changes, individuals holding multiple positions over a short period of time, and questionable lapses in employment.

Hillsborough County, for example, has adopted stringent hiring practices, explicit conditions for continual employment, and the advantage of legally-binding employment policies that clearly define grounds for dismissal.³⁷ These board policies and rigorous screening procedures allow them to more expeditiously remove educators from the classroom prior to action by the EPC. Board policies that are developed and adopted under stringent legal scrutiny

³³ See <http://www.clearhq.org/training.htm>

³⁴ *Adams v. State Professional Practices Council*, 406 So. 2d 1170 (Fla. 1st DCA 1981) and *Tomerlin v. Dade County School Board*, 318 So. 2d 159 (Fla. 1st DCA 1975).

³⁵ Rule 6B-1.001, F.A.C., and Rule 6B-1.006, F.A.C.

³⁶ Rule 6B- 4.009, F.A.C., in turn references Rules 6B-1.001 and 6B-1.006, F.A.C., which address the Code of Ethics of the Education Profession in Florida and the Principles of Professional Conduct for the Education Profession in Florida.

³⁷ <http://www.sdhc.k12.fl.us/PolicyManual/sumpol/ch6pro.htm>

are much less likely to be subjected to undue or lengthy litigation and the process for terminating an employee is much less cumbersome. Therefore, it may be beneficial to require school districts to adopt strict policies with regard to screening, hiring, and terminating employees and to include specific definitions of moral turpitude and gross immorality as a standard for their educators.

Automatic Grounds for Termination and Certificate Sanctions

Several states specifically define in law offenses that are grounds for dismissal or an absolute bar from employment in the public school system.³⁸ While these serve as a valuable screening tool and legal grounds for dismissal, the act of citing specific offenses may inadvertently result in omission of egregious offenses, thus creating unintended loopholes.

The majority of school districts responding to the committee survey report that they disqualify educators from employment or terminate employment for specific offenses. Several districts included within their responses infractions such as immorality and crimes involving moral turpitude. As previously stated, these terms are subject to varying interpretations.³⁹ If the terms immorality and moral turpitude were clearly defined and included in school board policies, they could be used as a legal premise for screening, hiring, and terminating employees.

RECOMMENDATIONS

The Legislature may wish to consider the following recommendations to revise the professional practices system for educators and strengthen efforts to effectively screen, hire, remove, or terminate unethical educators:

■ Request that the State Board of Education continue the Professional Practices advisory council and expand its membership to include a representative from a federal law enforcement agency in order to promote changes at the national level. This recommendation

³⁸Ten of the thirteen states responding to the advisory council's survey operate under a list of specific offenses that trigger automatic action on the teaching certificate or deny eligibility for employment (Arizona, California, Colorado, Connecticut, Illinois, Kentucky, Michigan, Minnesota, Ohio, and Oregon).

³⁹ Rule 6B-4.009, F.A.C. See

<https://www.flrules.org/gateway/readFile.asp?sid=0&tid=1081567&type=1&file=6B-4.009.doc>

could assist in establishing support for a national notification system of educators that commit unethical conduct in other states.

■ Require the Department of Education to provide technical assistance training for school districts based on recommendations of the advisory council and updated research findings. Training should be developed at two complementary tiers: one for district level personnel tasked with investigations and the other tier to provide general information and professional responsibilities for all educators. This recommendation would ensure that school district personnel would know the latest detection and prevention practices of educator misconduct.

■ Require the Department of Education to disseminate model school board policies and procedures based on the most effective methods for screening, hiring, and terminating unethical educators. Based on survey results, this recommendation would assist districts in implementing best practices.

■ Require school districts to adopt stringent board policies based on the most effective methods for screening, hiring, and terminating unethical educators. This recommendation would prevent districts from unwittingly hiring or employing unethical educators.

■ Amend current laws to prohibit school districts from entering into confidentiality agreements when terminating employees for unethical behavior. This recommendation protects students across district lines.

■ Amend current laws to require school districts to report all instances of termination, access educator information available on the certification website and continue background checks when indications of concern are posted, and contact previous employers of potential candidates prior to employment. This recommendation requires districts to use information that is currently at their disposal to identify potential problems with a new hire.

■ Amend current laws to provide for financial penalties, suspension or revocation of a teaching certificate, or termination of employment if a district fails to report alleged or actual educator misconduct, fails to properly screen potential employees, or enters into confidentiality agreements that conceal unethical conduct. This recommendation would ensure compliance with the new law and rule.