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The Ethics in Education Act

Prepared by FEA Legal Department – August 2008

The Ethics in Education Act

Passed by the Florida Legislature in 2008 and signed by Governor Crist, the Ethics in Education Act became effective July 1, 2008 and will have a profound impact on both current and prospective instructional employees and administrators who have direct contact with students and who have been convicted of specific felonies and misdemeanors, specific federal offenses or offenses from other states or who are registered Juvenile Sex Offenders.

The Act establishes additional criteria for the employment and certification of educators, disciplinary actions and reporting of educator misconduct. Districts and school boards will have to establish policies and procedures for the implementation of the new requirements in addition to the need to carefully review multiple new procedures. All Florida public school districts, charter schools, laboratory schools, the Florida School for the Deaf and the Blind and private schools that accept scholarship students are impacted by this new law.

Unlike most new laws that are prospective in nature, employees can and will be penalized by termination and revocation of teaching certificates for some specific events that may have occurred prior to enactment of this legislation and even prior to one's employment with the District.

Any misdemeanor offense prohibited under the following statutes:

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| Section 784.03 | relating to battery, if the victim of the offense was a minor |
| Section 787.025 | relating to luring or enticing a child |

Federal or other state offenses:

Any criminal act committed in another state or under federal law which, if committed in this state, constitutes an offense prohibited under any statute listed in either of the preceding sections.

Registered Juvenile Sex Offenders:

Any delinquent act committed in this state or any delinquent or criminal act committed in another state or under federal law which, if committed in this state, qualifies an individual for inclusion on the Registered Juvenile Sex Offender List.

Section 825.102	relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
Section 825.103	relating to exploitation of an elderly person or disabled adult.
Section 825.1025	relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or adult.
Section 826.04	relating to incest.
Section 827.03	relating to child abuse, aggravated child abuse, or neglect of a child.
Section 827.04	relating to contributing to the delinquency or dependency of a child.
Section 827.071	relating to sexual performance by a child.
Section 843.01	relating to resisting arrest with violence.
Chapter 847	relating to obscenity.
Section 874.05	relating to causing, encouraging, soliciting, or recruiting another to join a criminal street gang.
Chapter 893	relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.
Section 916.1075	relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
Section 944.47	relating to introduction, removal, or possession of contraband at a correctional facility.
Section 985.701	relating to sexual misconduct in juvenile justice programs.
Section 985.711	relating to introduction, removal, or possession of contraband at a juvenile detention facility or commitment program.

While there will surely be challenges to determine if this legislation can pass constitutional muster, it is important to understand and be aware of how this law will affect instructional employees. A summary of the most important points follows.

Who is affected by this legislation?

The Act is directed at instructional employees and administrators who have direct contact with students. Instructional personnel is defined by section 1002.01, Fla. Stat. as classroom teachers, student personnel services, librarians/media specialists, education paraprofessionals, and other instructional staff such as learning resource specialists, instructional trainers, and adjunct educators.

How are these individuals affected by this legislation?

Individuals in these categories who have been convicted (not arrested or charged) of one of the specific offenses listed will be disqualified from employment that requires direct student contact or from receiving or maintaining a Florida Educator Certificate.

An employee who has been charged but not convicted of one of the offenses referred to in this Act will not automatically be disqualified from employment or certification; the information will be reviewed and possibly investigated by the district and **most likely be** reported to Professional Practices Services for further investigation.

What are the specific convictions which can lead to termination of employment or revocation of a teaching certificate?

Please see **Table A** beginning on page 8.

Is there any impact on retirement benefits?

Yes, when a specified offense is committed on or after October 1, 2008 retirement benefits can be forfeited for the conviction of a felony which is defined as lewd and lascivious offenses committed upon or in the presence of persons under 16 or for unlawful sexual activity with certain minors. For the forfeiture of retirement benefits for these convictions, the person must be a public officer or employee when the offense was committed; the person must have committed the offense through the use or attempted use of power, rights, privileges, duties or position of the person’s public office or employment position; and the victim had to be younger than 18 when the offense occurred.

What happens if there is an allegation of misconduct?

When there is an allegation of misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student, the superintendent, in consultation with the principal, or upon the request of the Commissioner of Education, must immediately suspend the educator with pay and reassign the suspended educator or administrator to a position that does not require direct contact with the students.

The suspension will continue until the completion of the proceedings and the determination as to if there will be sanctions against the certificate is made. The completion of proceedings means that DOE has closed the case without a finding of Probable Cause or that a Final Order disciplining the employee’s certificate has been issued by the Education Practices Commission.

Has this legislation altered the terms for termination?

Yes. This legislation now creates “immorality” as a ground for termination; however, as a ground for discipline against a certificate there must be a showing of “gross immorality or an act involving moral turpitude.”

In addition, where the statute previously stated that a “conviction of a crime involving moral turpitude” was just cause for

- Section 787.04(3)** relating to leading, taking enticing or removing a minor beyond the state limits or concealing the location of a minor with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.
- Section 790.115(1)** relating to exhibiting firearms or weapons at a school sponsored event, on school property or within 1,000 feet of a school
- Section 790.115(2)(b)** relating to possessing an electric weapon or device, destructive device, or other weapon at a school sponsored event or on school property.
- Section 794.011** relating to sexual battery.
- Fmr Section 794.041** relating to sexual activity with or solicitation of a child by a person in familial or custodial authority.
- Section 794.05** relating to unlawful sexual activity with certain minors.
- Section 794.08** relating to female genital mutilation.
- Chapter 796** relating to prostitution.
- Chapter 800** relating to lewdness and indecent exposure.
- Section 806.01** relating to arson.
- Section 810.14** relating to voyeurism.
- Section 810.145** relating to video voyeurism.
- Section 812.014(6)** relating to coordinating the commission of theft in excess of \$3,000.
- Section 812.0145** relating to theft from persons 65 years of age or older.
- Section 812.019** relating to dealing in stolen property.
- Section 812.13** relating to robbery.
- Section 812.131** relating to robbery by sudden snatching.
- Section 812.133** relating to carjacking.
- Section 812.135** relating to home-invasion robbery.
- Section 817.563** relating to fraudulent sale of controlled substances.

TABLE A

Instructional personnel or administrators who have been convicted of any of the following offenses are ineligible to be certified and are further ineligible to be employed in any position requiring direct student contact. The DOE will deny or revoke certification from any person convicted of the following disqualifying offenses, regardless of the date of the prior offense or conviction

Any felony offense prohibited under the following statutes:	
Section 393.135	relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
Section 394.4593	relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
Section 415.111	relating to adult abuse, neglect, or exploitation of aged persons or disabled adults
Section 782.04	relating to murder.
Section 782.07	relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child or aggravated manslaughter of an officer, a firefighter, an emergency medical technician or a paramedic.
Section 784.021	relating to aggravated assault.
Section 784.045	related to aggravated battery.
Section 784.075	relating to battery on a detention or commitment facility staff member or juvenile probation officer.
Section 787.01	relating to kidnapping.
Section 787.02	relating to false imprisonment.
Section 787.025	related to luring or enticing a child.
Section 787.04(2)	relating to taking, enticing, or removing a child beyond the state limits or concealing the location of a minor with criminal intent pending custody proceedings.

termination, it has now been amended to say that “being convicted, or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime of moral turpitude is just cause for termination.

What will happen if a disqualifying conviction is discovered through a background screening or disciplinary proceeding?

If a disqualifying conviction is discovered through a background screening, the applicant or educator is ineligible for certification.

If the disqualifying conviction is found through a disciplinary proceeding, a person who is employed in a position that requires certification and has not been screened or who is ineligible for certification will be immediately suspended from any position requiring a certificate; additionally his or her certificate will be suspended if he/she has not been screened or, if the individual has a certificate, the certificate will be revoked if the instance is a disqualifying offense.

What responsibilities do the Districts and School Boards have under this new legislation?

The district school boards are required to adopt and communicate policies and procedures setting forth ethical standards for instructional personnel and administrators. Specifically, the Board must:

- establish ethical standards;
- require instructional or administrative staff to complete training on the standards;
- establish the duty of instructional personnel and school administrators to report alleged misconduct of instructional personnel and school administrators;
- include an explanation of liability protections; and
- prohibit confidentiality agreements regarding instructional personnel or school administrators who are terminated, dismissed or resign in lieu of termination.

Are there any penalties for Superintendents or School Boards that do not comply with this legislation?

Yes. Any elected or appointed school board official will forfeit one year of salary if he or she knowingly fails to adopt policies and procedures for the reporting and investigation of misconduct or if he or she knowingly transmits a false or incorrect report of alleged misconduct.

A superintendent will lose a year's salary for failing to investigate alleged misconduct, fails to report legally sufficient allegations of misconduct by certified educators to the Office of Professional Practices Services or fails to submit true and accurate information.

What can an employee terminated under this Act expect?

Any instructional employee or administrator who is terminated or resigns in lieu of termination from employment based in whole or in part on unethical conduct that affects the health, safety or welfare of a student must understand that the District will not be able to give a neutral recommendation to a potential employer. The District is further prohibited from providing a recommendation of an individual to another educational setting without disclosing the misconduct for which the employee was terminated. The District is also prohibited from entering into agreements or contracts that have the purpose or effect of concealing the misconduct.

Do school districts have specific requirements for checking the background of potential employees?

Yes. Prior to appointment in an instructional or school administrator position that involves direct student contact a district must contact each candidate's previous employer and screen the candidate. The district must document results from the Professional Practices Database of

Disciplinary Actions, the Teacher Certification Database and the candidate's previous employer. If unable to contact the previous employer, the district must document the efforts made to do so.

Who is responsible for reporting suspected or actual misconduct?

The Act makes everyone responsible for reporting suspected or actual misconduct by instructional personnel or school administrators that affects the health, safety, or welfare of a student. Each school site is required to post on its website the policies and procedures for reporting, to whom a report should be made and the penalties for failing to report.

Additionally, postings must be placed in prominent places advising that all employees and agents of the school board have a duty to report all actual or suspected cases of child abuse, abandonment or neglect to the Department of Children and Families.