

**FRANKLIN COUNTY SCHOOL BOARD
WORKSHOP
WILLIE SPEED BOARD ROOM
NOVEMBER 7, 2016
5:30 PM
AGENDA**

I. CALL TO ORDER

II. BOARD INFORMATION COMMENTS/DISCUSSION ITEMS

A. Employment Eligibility

- Felony Charges
- Disqualification from employment
- Qualification of personnel
- Criminal background and employment history checks
- Substitute Teachers

The reason for this workshop is to discuss employment eligibility of individuals with certain criminal backgrounds.

This issue arose following a meeting with an applicant who reported to me that there were others working in our school with felony charges. I was unaware of the history of employees hired prior to me, but this knowledge obligated me to review all records in our system for compliance. When I spoke with Ms. Sanders she advised that I should absolutely review all background histories.

Florida statute 1012.315 lists specific offenses which prohibit employment if convicted. Florida law allows a judge to withhold the adjudication of guilt. That means a person is not “convicted” even though the person admitted in a plea that there are sufficient facts to convict them. The question to you today is whether the District should look only at a legal conviction or whether you want to set the policy to provide that an applicant is disqualified even if the adjudication of guilt was withheld?

There are other statutes which disqualify employees when adjudication is withheld. See for example Section 943.0435 (registration of sexual offenders).

A second question is whether the Board wishes to disqualify an applicant when the criminal background check shows a prior criminal history, whether convicted or adjudication withheld, when the criminal activity involves moral turpitude? All of the crimes listed in Section 1012.315 would meet the definition of “moral turpitude.”

If there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld, should this person be employed to work in our school system?

State Board of Education Rule 6A-10.083(3) from the Florida Administrative Code speaks of moral turpitude related to teachers. (attach) In a teacher discipline case before the Education Practices Commission, a withholding of adjudication is not relevant. It is the criminal behavior which is relevant.

It is my recommendation that the Board draw a line which specifies if there was a determination of guilt for a charge which would be disqualifying if convicted they should be disqualified from employment based on moral turpitude, regardless of adjudication, and that the same rule apply to all employees, instructional and non-instructional, administrative, etc.

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1012.315 Disqualification from employment.—A person is ineligible for educator certification, and instructional personnel and school administrators, as defined in s. 1012.01, are ineligible for employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts scholarship students under s. 1002.39 or s. 1002.395, if the person, instructional personnel, or school administrator has been convicted of:

- (1) Any felony offense prohibited under any of the following statutes:
 - (a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
 - (b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
 - (c) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
 - (d) Section 782.04, relating to murder.
 - (e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
 - (f) Section 784.021, relating to aggravated assault.
 - (g) Section 784.045, relating to aggravated battery.
 - (h) Section 784.075, relating to battery on a detention or commitment facility staff member or a juvenile probation officer.
 - (i) Section 787.01, relating to kidnapping.
 - (j) Section 787.02, relating to false imprisonment.
 - (k) Section 787.025, relating to luring or enticing a child.
 - (l) Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.
 - (m) 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.
 - (n) 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.
 - (o) 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.
 - (p) Section 794.011, relating to sexual battery.
 - (q) Former s. 794.041, relating to sexual activity with or solicitation of a child by a person in familial or custodial authority.
 - (r) Section 794.05, relating to unlawful sexual activity with certain minors.
 - (s) Section 794.08, relating to female genital mutilation.
 - (t) Chapter 796, relating to prostitution.
 - (u) Chapter 800, relating to lewdness and indecent exposure.

- (v) Section 806.01, relating to arson.
- (w) Section 810.14, relating to voyeurism.
- (x) Section 810.145, relating to video voyeurism.
- (y) Section 812.014(6), relating to coordinating the commission of theft in excess of \$3,000.
- (z) Section 812.0145, relating to theft from persons 65 years of age or older.
- (aa) Section 812.019, relating to dealing in stolen property.
- (bb) Section 812.13, relating to robbery.
- (cc) Section 812.131, relating to robbery by sudden snatching.
- (dd) Section 812.133, relating to carjacking.
- (ee) Section 812.135, relating to home-invasion robbery.
- (ff) Section 817.563, relating to fraudulent sale of controlled substances.
- (gg) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- (hh) Section 825.103, relating to exploitation of an elderly person or disabled adult.
- (ii) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.
- (jj) Section 826.04, relating to incest.
- (kk) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- (ll) Section 827.04, relating to contributing to the delinquency or dependency of a child.
- (mm) Section 827.071, relating to sexual performance by a child.
- (nn) Section 843.01, relating to resisting arrest with violence.
- (oo) Chapter 847, relating to obscenity.
- (pp) Section 874.05, relating to causing, encouraging, soliciting, or recruiting another to join a criminal street gang.
- (qq) Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.
- (rr) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- (ss) Section 944.47, relating to introduction, removal, or possession of contraband at a correctional facility.
- (tt) Section 985.701, relating to sexual misconduct in juvenile justice programs.
- (uu) Section 985.711, relating to introduction, removal, or possession of contraband at a juvenile detention facility or commitment program.
- (2) Any misdemeanor offense prohibited under any of the following statutes:
 - (a) Section 784.03, relating to battery, if the victim of the offense was a minor.
 - (b) Section 787.025, relating to luring or enticing a child.
- (3) 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 subsection (1) or subsection (2).
- (4) 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 under s. 943.0435(1)(h)1.d.

History.—s. 26, ch. 2008-108; s. 18, ch. 2010-24; s. 24, ch. 2016-24; s. 15, ch. 2016-104.

6A-10.083 Standards Relating to Gross Immorality and Acts of Moral Turpitude.

(1) For the purpose of Section 1012.795(1)(d), F.S., the term gross immorality shall be defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that is serious, rather than minor in nature, and which constitutes a flagrant disregard for proper moral standards. Further, the conduct brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community.

(2) Without limiting the conduct here defined, conduct listed below in paragraphs (2)(a)-(c), shall prompt review for gross immorality. In determining whether the conduct, act or omission meets the definition of gross immorality, the factors found in subsection (4) shall be considered.

(a) An act or omission, regardless of whether the individual is charged with or convicted of any criminal offense, which would constitute a felony or a first degree misdemeanor under the laws of the State of Florida or equivalent law in another state or U.S. Territory, or laws of the United States of America.

(b) An act or omission which results in the intentional falsification of any document or information submitted by an educator for the purpose of inducing the Florida Department of Education to issue, reissue, or renew a Florida educator's certificate.

(c) An intentional violation of test or exam security protocols with the purpose of altering the results for the personal benefit of the educator or which results in a negative impact upon a student or school, such as the invalidation of a student's results/score or requiring a student to re-take a test or use an alternate assessment measure.

(3) For the purpose of Sections 1012.795(1)(d) and 1012.796, F.S., an act of moral turpitude shall be defined as a crime, regardless of whether the individual is charged or convicted, that is a felony or a first degree misdemeanor under the laws of the State of Florida or equivalent law in another state or U.S. Territory, or laws of the United States of America, that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time, a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

(4) The following factors shall be considered in determining whether an act or omission rises to the level of gross immorality or moral turpitude under subsections (1), (2), and (3):

- (a) The educator's dishonesty or deception;
- (b) The educator's use, attempted use or threatened use, of violence;
- (c) The educator's malice or cruelty;
- (d) The educator's deliberation, premeditation, or contemplation of an act;
- (e) The educator's repeated behavior that displays a disregard for law, order, or human safety;
- (f) The harm, injury or insult to the victim;
- (g) The age, ability or limitation of the victim;
- (h) The benefit derived by the educator;
- (i) The presence or absence of mitigating factors, such as the educator's age, experience, mental illness, or actions in self-defense.

(5) Accidental, negligent or reckless conduct alone, does not meet the definition of an act of moral turpitude or gross immorality.

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1012.32 Qualifications of personnel.—

(1) To be eligible for appointment in any position in any district school system, a person must be of good moral character; must have attained the age of 18 years, if he or she is to be employed in an instructional capacity; must not be ineligible for such employment under s. [1012.315](#); and must, when required by law, hold a certificate or license issued under rules of the State Board of Education or the Department of Children and Families, except when employed pursuant to s. [1012.55](#) or under the emergency provisions of s. [1012.24](#). Previous residence in this state shall not be required in any school of the state as a prerequisite for any person holding a valid Florida certificate or license to serve in an instructional capacity.

(2)(a) Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students in any district school system or university lab school must, upon employment or engagement to provide services, undergo background screening as required under s. [1012.465](#) or s. [1012.56](#), whichever is applicable.

(b) Instructional and noninstructional personnel who are hired or contracted to fill positions in any charter school and members of the governing board of any charter school, in compliance with s. [1002.33\(12\)\(g\)](#), must, upon employment, engagement of services, or appointment, undergo background screening as required under s. [1012.465](#) or s. [1012.56](#), whichever is applicable, by filing with the district school board for the school district in which the charter school is located a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.

(c) Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students in an alternative school that operates under contract with a district school system must, upon employment or engagement to provide services, undergo background screening as required under s. [1012.465](#) or s. [1012.56](#), whichever is applicable, by filing with the district school board for the school district to which the alternative school is under contract a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.

(d) Student teachers and persons participating in a field experience pursuant to s. [1004.04\(5\)](#) or s. [1004.85](#) in any district school system, lab school, or charter school must, upon engagement to provide services, undergo background screening as required under s. [1012.56](#).

Fingerprints shall be submitted to the Department of Law Enforcement for statewide criminal and juvenile records checks and to the Federal Bureau of Investigation for federal criminal records checks. A person subject to this subsection who is found ineligible for employment under s. [1012.315](#), or otherwise found through background screening to have been convicted of any crime involving moral turpitude as defined by rule of the State Board of Education, shall not be employed, engaged to provide services, or serve in any position that requires direct contact with students. Probationary persons subject to this subsection terminated because of their criminal record have the right to appeal such decisions. The cost of the background screening may be borne by the district school board, the charter school, the employee, the contractor, or a person subject to this subsection.

(3)(a) All fingerprints submitted to the Department of Law Enforcement as required by subsection (2) shall be retained by the Department of Law Enforcement in a manner provided by rule and entered in the statewide

automated biometric identification system authorized by s. [943.05\(2\)\(b\)](#). Such fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprints entered in the statewide automated biometric identification system pursuant to s. [943.051](#).

(b) The Department of Law Enforcement shall search all arrest fingerprints received under s. [943.051](#) against the fingerprints retained in the statewide automated biometric identification system under paragraph (a). Any arrest record that is identified with the retained fingerprints of a person subject to the background screening under this section shall be reported to the employing or contracting school district or the school district with which the person is affiliated. Each school district is required to participate in this search process by payment of an annual fee to the Department of Law Enforcement and by informing the Department of Law Enforcement 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 under paragraph (a). The Department of Law Enforcement shall adopt a rule setting the amount of the annual fee to be imposed upon each school district for performing these searches and establishing the procedures for the retention of instructional and noninstructional personnel fingerprints and the dissemination of search results. The fee may be borne by the district school board, the contractor, or the person fingerprinted.

(c) Personnel whose fingerprints are not retained by the Department of Law Enforcement under paragraphs (a) and (b) must be reprinted and rescreened in accordance with subsection (2) upon reemployment or reengagement to provide services in order to comply with the requirements of this subsection.

History.—s. 706, ch. 2002-387; s. 9, ch. 2004-295; s. 27, ch. 2008-108; s. 69, ch. 2013-116; s. 6, ch. 2013-185; s. 380, ch. 2014-19.

3121.01 - CRIMINAL BACKGROUND AND EMPLOYMENT HISTORY CHECKS

The safety of its students is of paramount importance to the District. Consistent with this concern for student safety, and in compliance with Florida law, the District requires that, prior to initial employment or re-employment if there has been a break in service, all candidates for all positions shall be subject to a criminal background check to determine eligibility for employment.

The application for employment shall inform the applicants that they are subject to criminal background and employment history checks.

The cost of the background screening related to initial employment or re-employment after a break in service will be borne by the candidate for employment.

Fingerprints of candidates for employment or re-employment if there has been a break in service shall be 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 Federal criminal records checks. A person who is found ineligible for employment under F.S. 1012.315, or otherwise found through background screening to have been convicted of any crime involving moral turpitude as defined by rule of the State Board of Education, shall not be employed, engaged to provide services, or serve in any position that requires direct contact with students. Probationary persons subject to this section who are terminated because of their criminal record have the right to appeal such decisions.

Individuals whose fingerprints have not been retained by the FDLE must be re-fingerprinted and re-screened upon re-employment or re-engagement to provide services as an instructional staff member in order to comply with the law.

Furthermore, before employing instructional personnel in any position that requires direct contact with students, the Superintendent shall conduct employment history checks of each of the candidate's previous employer(s), screen the candidate through use of the educator screening tools described in F.S. 1001.10(5), and document the findings. If unable to contact a previous employer, the Superintendent shall document efforts to contact the employer (F.S. 1012.27(6)).

Pursuant to State law, all instructional staff members employed by the District must self-report arrests for serious offenses (see AP 3121.01).

Additionally, the fingerprints of all instructional staff members who are employed by the District and have no break in service must be re-submitted to the FDLE and to the FBI every five (5) years so that subsequent Statewide criminal and juvenile records checks and Federal criminal records checks can be completed as required by law.

The cost of this subsequent background screening will be borne by the School Board.

The information contained in reports received from the FDLE and the FBI is confidential.

Although permissible by State law, the District will not share information received as the result of the criminal history background check with other school districts.

Furthermore, if information received as a result of the criminal history records check indicates that a certificated instructional staff member has been convicted of certain crimes enumerated by law, the Superintendent must report this information to the Florida Department of Education per Policy 8141 - Mandatory Reporting of Misconduct by Certificated Employees.

F.S. 435.09, 943.0585(4)(a), 943.059(4)(a), 1001.10(5), 1012.27(6), 1012.315

F.S. 1012.32, 1012.56

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1012.35 Substitute teachers.—

(1) Each district school board shall adopt rules prescribing the compensation of, and the procedure for employment of, substitute teachers.

(a) The procedure for employment must include, but is not limited to, the filing of a complete set of fingerprints as required in s. [1012.32](#); documentation of a minimum education level of a high school diploma or equivalent; and completion of an initial orientation and training program in district policies and procedures addressing school safety and security procedures, educational liability laws, professional responsibilities, and ethics.

(b) Candidates who have no prior teaching experience, as determined by the employing school district, must complete an additional training program that includes classroom management skills and instructional strategies.

(c) The required training programs for substitute teachers may be provided by Florida College System institutions, colleges of education, district school boards, educational consortia, or commercial vendors.

(d) It is recommended that ongoing training and access to professional development offerings be made available to substitute teachers by the employing district.

(2) The Department of Education shall develop web-based resources to enhance district substitute orientation programs.

(3) Districts shall develop performance appraisal measures for assessing the quality of instruction delivered by substitutes who provide instruction for 30 or more days in a single classroom placement.

History.—s. 710, ch. 2002-387; s. 12, ch. 2004-295; s. 183, ch. 2011-5.