

STATE BOARD OF EDUCATION
Action Item
January 21, 2014

SUBJECT: Approval of New Rule 6A-14.099, Failure of Florida College System Administrator or Law Enforcement Agency to Report Child Abuse, Abandonment or Neglect

PROPOSED BOARD ACTION

For Approval

AUTHORITY FOR STATE BOARD ACTION

Section 39.205(10), Florida Statutes

EXECUTIVE SUMMARY

In 2012, the legislature amended the statute that provides penalties for the failure to report child abuse so that it includes a penalty of \$1 million for the failure of an administrator of a university, college, or nonpublic educational entity to report child abuse that occurs on the campus or at an event sponsored by these entities.

In 2013, the legislature amended the statute to require rulemaking by the Board of Governors, the Board of Education and the Commission for Independent Education for the educational entities under the jurisdiction of these Boards and the Commission.

This rule establishes State Board of Education penalty procedures for assessing fines for Florida College System (FCS) institutions that fail to report child abuse as required by Section 39.205(10), F.S. Once established, FCS institutions are subject to a fine of \$1,000,000 per failure if the institution's administrator (as defined by proposed rule) or law enforcement agency fail to report child abuse taking place on campus or at a college-sponsored event or function.

Supporting Documentation Included: Proposed Rule 6A-14.099, Failure of Florida College System Administrator or Law Enforcement Agency to Report Child Abuse, Abandonment or Neglect and Section 39.205, Florida Statutes

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6A-14.099 Failure of Florida College System Administrator or Law Enforcement Agency to Report Child

Abuse, Abandonment or Neglect

(1) Definitions. For purposes of this section:

(a) The terms “abuse,” “abandonment,” and “neglect” shall have the same meaning as in Section 39.01, Florida Statutes.

(b) The term “Administrator” means high level personnel who have been assigned the responsibilities of college-wide or campus-wide academic or administrative functions, such as: college presidents, campus presidents, provosts, senior/executive vice presidents, vice presidents, associate vice presidents, associate/vice provosts, chief human resource officer, deans, chief of police, campus safety officer, equal opportunity programs director, intercollegiate athletics director, internal auditor, Title IX coordinator and college compliance officer.

(c) The term “college” means a Florida College System institution.

(d) The term “Law Enforcement Agency” means the unit of the college which is vested with the authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic or highway laws of the state.

(e) The term “State Board” means the State Board of Education.

(2) Investigation of an Allegation of a Failure to Report.

(a) Upon receipt of a credible allegation that a college Administrator or Law Enforcement Agency knowingly and willfully failed to report information of known or suspected child abuse, abandonment, or neglect as required by Section 39.205, Florida Statutes, the Florida Department of Education’s Office of Inspector General shall conduct an investigation to determine if sufficient evidence exists to support the allegation and the assessment of the \$1 million fine pursuant to Section 39.205, Florida Statutes.

(b) The Inspector General shall submit the investigatory findings to the Chair of the college’s District Board of Trustees or the Chair’s designee, and the college shall have twenty (20) business days after receipt to submit a written response to the Inspector General. The Inspector General shall provide a rebuttal, if any, to the college within twenty (20) business days after receipt of the college’s response. The college’s response and the Inspector General’s rebuttal to the response, if any, shall be included in the final investigative report presented to the State Board and the Chair of the college’s District Board of Trustees.

(3) Action by the State Board. The State Board shall issue a written order determining whether or not to assess the \$1 million fine against the college pursuant to Section 39.205, Florida Statutes.

(4) Additional Proceedings. Within twenty-one (21) business days after receipt of the State Board's written order, the college may file a petition challenging the State Board of Education's determination in an administrative proceeding conducted pursuant to Section 120.57, Florida Statutes.

Rulemaking Authority 39.205(10), 1001.02(1) FS. Law Implemented 39.205 FS. History - New

39.205 Penalties relating to reporting of child abuse, abandonment, or neglect.—

(1) A person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#). A judge subject to discipline pursuant to s. 12, Art. V of the Florida Constitution shall not be subject to criminal prosecution when the information was received in the course of official duties.

(2) Unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist, a person who is 18 years of age or older and lives in the same house or living unit as a child who is known or suspected to be a victim of child abuse, neglect of a child, or aggravated child abuse, and knowingly and willfully fails to report the child abuse commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(3) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. [1000.21](#) or s. [1005.02](#), whose administrators knowingly and willfully, upon receiving information from faculty, staff, or other institution employees, fail to report known or suspected child abuse, abandonment, or neglect committed on the property of the university, college, or school, or during an event or function sponsored by the university, college, or school, or who knowingly and willfully prevent another person from doing so, shall be subject to fines of \$1 million for each such failure.

(a) A Florida College System institution subject to a fine shall be assessed by the State Board of Education.

(b) A state university subject to a fine shall be assessed by the Board of Governors.

(c) A nonpublic college, university, or school subject to a fine shall be assessed by the Commission for Independent Education.

(4) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. [1000.21](#) or s. [1005.02](#), whose law enforcement agency fails to report known or suspected child abuse, abandonment, or neglect committed on the property of the university, college, or school, or during an event or function sponsored by the university, college, or school, shall be subject to fines of \$1 million for each such failure assessed in the same manner as subsection (3).

(5) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. [1000.21](#) or s. [1005.02](#), shall have the right to challenge the determination that the institution acted knowingly and willfully under subsection (3) or subsection (4) in an administrative hearing pursuant to s. [120.57](#); however, if it is found that actual knowledge and information of known or suspected child abuse was in fact received by the institution's administrators and was not reported, a presumption of a knowing and willful act will be established.

(6) A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline or in the records of any child abuse, abandonment, or neglect case, except as provided in this chapter, commits a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(7) The department shall establish procedures for determining whether a false report of child abuse, abandonment, or neglect has been made and for submitting all identifying information relating to such a report to the appropriate law enforcement agency and shall report annually to the Legislature the number of reports referred.

(8) If the department or its authorized agent has determined during the course of its investigation that a report is a false report, the department may discontinue all investigative activities and shall, with the consent of the alleged perpetrator, refer the report to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. [39.01](#). During the pendency of the investigation, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning children in that same family in accordance with s. [39.301](#). If the law enforcement agency believes that there are indicators of abuse, abandonment, or neglect, it must immediately notify the department, which must ensure the safety of the children. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

(9) A person who knowingly and willfully makes a false report of child abuse, abandonment, or neglect, or who advises another to make a false report, is guilty of a felony of the third degree, punishable as provided in s. [775.082](#) or s. [775.083](#). Anyone making a report who is acting in good faith is immune from any liability under this subsection.

(10) The State Board of Education shall adopt rules to implement this section as it relates to Florida College System institutions; the Commission for Independent Education shall adopt rules to implement this section as it relates to nonpublic colleges, universities, and schools; and the Board of Governors shall adopt regulations to implement this section as it relates to state universities.

History.—ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 28, ch. 88-337; s. 56, ch. 90-306; s. 10, ch. 91-57; s. 21, ch. 91-71; s. 251, ch. 91-224; s. 10, ch. 93-25; s. 276, ch. 96-406; s. 4, ch. 98-111; s. 35, ch. 98-403; s. 6, ch. 99-168; s. 3, ch. 2000-217; s. 4, ch. 2002-70; s. 29, ch. 2006-86; s. 25, ch. 2008-245; s. 2, ch. 2012-155; s. 5, ch. 2012-178; s. 3, ch. 2013-51.

Note.—Former ss. 828.041, 827.07(18); s. 415.513.