

RECOMMENDATIONS ON
SELF-REPORTING OF
ARRESTS AND CONVICTIONS
BY
EDUCATORS

A REPORT OF THE
FLORIDA EDUCATION STANDARDS COMMISSION

SUBMITTED TO:

THE STATE OF FLORIDA BOARD OF EDUCATION
AND
THE FLORIDA LEGISLATURE

FLORIDA DEPARTMENT OF EDUCATION
November, 1997

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EXECUTIVE SUMMARY

In 1995, the Honorable Frank T. Brogan, Commissioner of Education, Florida Department of Education, convened three task forces to review issues affecting educator professionalism and develop recommendations to that end. The three task forces were:

- Educator Preparation and Certification,
- Educator Contracts and Performance, and
- Educator Standards of Conduct and Practice.

The Educator Standards of Conduct and Practice Task Force made several major recommendations, one of which was that educators should self-report arrests and convictions. Commissioner Frank T. Brogan through Betty Coxe, Division Director, Human Resource Development, Florida Department of Education, directed the Education Standards Commission to develop standards from the recommendations of the task force.

In carrying out this directive, the following procedures/methodology were undertaken:

- Reviewed self-reporting requirements in a sample of professions in Florida. The sample included: Law, Accounting, Dentistry, Pharmacy, Medicine, Construction, Speech Language Pathology and Audiology, Architecture, Nursing, and Psychology.
- Reviewed self-reporting requirements for educators in a sample of states. These included: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Idaho, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Nebraska, New Jersey, New York, and Texas.
- Reviewed language in Section 230.335(1)(a), Florida Statutes:

Notwithstanding the provisions of s. 39.045(8) or any other provision of law to the contrary, a law enforcement agency shall, within 48 hours, notify appropriate superintendent of schools 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.
- Reviewed language on arrests and convictions currently on the initial and renewal application forms for the Florida Professional Educator's Certificate.
- Collaborated with the General Counsel's Office, Florida Department of Education, on clarification of constitutional rights and other legal questions.

- Held six (6) regional public hearings for additional input from the education profession and the public at large.
- Reviewed and deliberated testimonies/data received from the regional hearings and made final recommendations.

Recommendations

After extensive data collection through review of current statutes, review of literature, telephone surveys, and regional public hearings, and analyses of all data, the Education Standards Commission modified the initial recommended language. The following are the final recommendations of the Education Standards Commission:

1. That a new standard of conduct dealing with educators self-reporting arrests and convictions be added to the Principles of Professional Conduct of the Education Profession in Florida, State Board of Education Rule (SBER) 6B-1.006,FAC.

2. That the final recommendation and the new standard of conduct read:

Shall self-report within 48 hours to appropriate authorities (as determined by district) any arrests/charges involving the abuse of a child or the sale and/or possession of a controlled substance. Such notice shall not be considered an admission of guilt nor shall such notice be admissible for any purpose in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory. In addition, shall self-report any conviction, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering of a plea of guilt or Nolo Contendere for any criminal offense other than a minor traffic violation within 48 hours after the final judgement. When handling sealed and expunged records disclosed under this rule, school districts shall comply with the confidentiality provisions of Sections 943.0585(4)(c) and 943.059(4)(c), Florida Statutes.

3. That the new standard of conduct stated in Recommendation #2 be specifically placed in SBER 6B-1.006(5)(m), FAC., The Principles of Professional Conduct of the Education Profession in Florida, and that other principles in SBER 6B-1.006(5), FAC from current parentheses (m) through (p) be relettered accordingly.

New Standard Added to: (SBER) 6B-1.006(5), FAC., The Principles of Professional Conduct of The Education Profession in Florida

(5) Obligation to the profession of education requires that the individual:

(a) Shall maintain honesty in all professional dealings.

(b) Shall not on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition if otherwise qualified, or social and family background deny to a colleague professional benefits or advantages or participation in any professional organization.

(c) Shall not interfere with a colleague's exercise of political or civil rights and responsibilities.

(d) Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

(e) Shall not make malicious or intentionally false statements about a colleague.

(f) Shall not use coercive means or promise special treatment to influence professional judgments of colleagues.

(g) Shall not misrepresent one's own professional qualifications.

(h) Shall not submit fraudulent information on any document in connection with professional activities.

(i) Shall not make any fraudulent statement or fail to disclose a material fact in one's own or another's application for a professional position.

(j) Shall not withhold information regarding a position from an applicant or misrepresent an assignment or conditions of employment.

(k) Shall provide upon the request of the certificated individual a written statement of specific reason for recommendations that lead to the denial of increments, significant changes in employment, or termination of employment.

(l) Shall not assist entry into or continuance in the profession of any person known to be unqualified in accordance with these Principles of Professional Conduct of the Education Profession in Florida and other applicable Florida Statutes and State Board of Education Rules.

(m) Shall self-report within 48 hours to appropriate authorities (as determined by district) any arrests/charges involving the abuse of a child or the sale and/or possession of a controlled substance. Such notice shall not be considered an admission of guilt nor shall such notice be admissible for any purpose in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory. In addition, shall self-report any conviction, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering of a plea of guilt or Nolo Contendere for any criminal offense other than a minor traffic violation within 48 hours after the final judgement. When handling sealed and expunged records disclosed under this rule, school districts shall comply with the confidentiality provisions of Sections 943.0585(4)(c) and 943.059(4)(c), Florida Statutes.

(n)(m) Shall report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 231.28(1), Florida Statutes.

(o)(m) Shall seek no reprisal against any individual who has reported any allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 231.28(1), Florida Statutes.

(p)(m) Shall comply with the conditions of an order of the Education Practices Commission imposing probation, imposing a fine, or restricting the authorized scope of practice.

(q)(p) Shall, as the supervising administrator, cooperate with the Education Practices Commission in monitoring the probation of a subordinate.

Rationale

The Educator Standards of Conduct and Practice Task Force indicated that while the majority of educators in Florida are exemplary, those who violate the standards of professional conduct or commit criminal acts should be provided a mechanism through which to report those acts in a timely manner to an appropriate authority. The task force feels that since other professions self-report themselves, educators should also be required to self-report.

The Florida Education Standards Commission reviewed a sample of other professions in Florida, a sample of states' Departments of Education require their licensed practitioners to self-report arrests and convictions, and used other methodologies. This initiative raised a lot of issues. The Education Standards Commission discussed whether or not both arrests and convictions should be reported; whether requiring self-reporting of arrests could violate an individual's constitutional rights, particularly the fifth amendment rights. The more critical issue was one of "timing". Educators in Florida currently self-report arrests and convictions records every five years when they renew their Professional Educators Certificate. The question in the forefront of the discussion was "where should the persons charged with the physical, mental, and emotional health of our children self-report arrests and convictions sooner than five years. The Education Standards Commission contends that the five year renewal time frame was too long for self-reporting arrests and convictions. The next issue therefore was if five years was too long, what is an appropriate time frame within which to self-report? Currently, section 230.335(1)(a), FS., requires law enforcement agencies to report, within 48 hours, to the superintendent of schools the name and address of any employee of the school district who is charged with a felony or a misdemeanor involving the abuse of a minor child or the sale or possession of a controlled substance. The Education Standards Commission used this statutory language to resolve the issue of appropriate time to self-report by recommending 48 hours after final judgement.

The Education Standards Commission also discussed whether or not the only felonies and misdemeanors to be self-reported must only involve the health and safety of children. The Standards Commission concluded that self-reporting should involve all acts of misconduct. The recommended standards are consistent with the Florida Department of Education's Strategic Goals. In order to ascertain a safe learning environment for every student and a high performing education workforce, all educators are called to uphold the integrity of the profession, and to be responsible and accountable for their professional and personal conduct. Educators who will not uphold this level of professionalism will jeopardize their certificate and possibly their employment.

HISTORY

In 1995, the Honorable Frank T. Brogan, Commissioner of Education, Florida Department of Education, convened three task forces to review issues affecting educator professionalism in the state and to develop recommendations which will improve and strengthen the education profession in Florida. The three task forces were:

- Educator Preparation and Certification
- Educator Contracts and Performance
- Educator Standards of Conduct and Practice

The Educator Preparation and Certification Task Force chaired by Phoebe Raulerson, Principal, Okeechobee High School, reviewed issues and made recommendations dealing with preservice teacher preparation, teacher certification, and inservice. Currently, Raulerson is the Assistant Superintendent for Instructional Services in Okeechobee County School District.

The Educator Contracts and Performance Task Force chaired by Ronald Wright, Director of Professional Standards, Broward County School District and member, Florida Education Practices Commission. The task force reviewed and made recommendations on issues of employment contracts and all processes related to employment: hiring, performance evaluation, remediation, and termination.

The Educator Standards of Conduct and Practice Task Force was chaired by Keith Yarbrough, parent, Brevard County and member, Florida Education Practices Commission. The purpose of this task force was to review the standards of professional conduct for the education profession in Florida and make recommendations which will further strengthen higher standards of conduct.

Educators in Florida are traditionally held to a high moral standard. It is only about .2% of educators who have cases adjudicated by Education Practices Commission for violation of the Principles of Profession Conduct, and other provisions of law in section 231.28(1), FS. The Task Force in its deliberations sends a clear message to these small percentage of educators that they will be dealt with quickly and severely when they violate standards of professional conduct. In order to secure a safe learning environment for Florida's students and a high performing education work force, the Task Force made several recommendations. For the purpose of this study, we will focus on the following recommendations:

- Distribute the "Code of Ethics and Principles of Professional Conduct" to a broader audience, including parents and community leaders.
- Require educators to self-report arrests and convictions that are felonies or misdemeanors involving the health and safety of children to both state and school districts.

The Education Standards Commission was directed to further develop the recommendations of the Educator Standards of Conduct and Practice Task Force requiring educators to self-report arrests and convictions.

PROCEDURES/METHODOLOGY

In carrying out this directive, the following procedures/methodology were undertaken:

- *Reviewed self-reporting requirements in a sample of professions in Florida via a telephone survey.*

The Education Standards Commission's staff contacted the Boards of the following professions in Florida:

- 1) Law (Florida Bar)
- 2) Accounting
- 3) Dentistry
- 4) Pharmacy
- 5) Medicine
- 6) Construction
- 7) Speech Language Pathology and Audiology
- 8) Architecture
- 9) Nursing
- 10) Psychology

Names of persons contacted at each Professional Board and their responses regarding self-reporting includes:

1) LAW

CONTACT: Mr. Toni Boggs, Director
Lawyer Regulation
Florida Bar Association
904/561-5774

Mr. Boggs noted that attorneys are required to self-report convictions. He referred Education Standards Commission to language in RULE 3-7.2 (c) below dealing with notice of determination or judgment of guilt.

(c) Notice of Determination or Judgment of Guilt.

Upon the entry of a determination or judgment of guilt against a member of the Florida Bar by a court of competent jurisdiction upon trial of or plea to any offense that is a felony under the laws applicable to such court, **such convicted attorney shall within 30 days of such determination or judgment notify the executive director of The Florida Bar of such determination or judgment.** Notice shall include a copy of the order(s) whereby such determination or judgment was entered.

RULE 3-7.2(c), The Florida Bar Journal/September 1996, pg. 583

2) ACCOUNTING

CONTACT: Ms. Martha Willis, Director
Board of Accountancy
Department of Business and Professional Regulation
904/955-2165

Ms. Willis reported that licensed accountants are required to self-report convictions. She noted, however, that this rule was repealed by mistake a couple of years ago and the Board is trying to reenact it. The repealed policy reads:

The following acts shall constitute grounds for which authorized and appropriate actions may be taken by the Board:

(21) The licensee fails to notify the department within 30 days of any conviction or finding of guilt regardless of adjudication of a crime in any jurisdiction which directly relates to his practice of public accounting;

(22) A firm or licensee fails to notify the department within 30 days of any adverse judgment or settlement in a civil suit the basis of which is grounded upon an allegation of negligence, incompetence, misconduct, fraud or deceit in the firm's or the licensee's practice of public accounting.

RULE 21A-36.01(21) & (22)

3) DENTISTRY

CONTACT: Mr. Audie B. Williamson, Sr.
Program Administrator
Board of Dentistry
Agency for Health Care Administration
904/488-6015

Mr. Williamson, Sr. said that the concept of self-reporting is directly related to the profession of dentistry. He referred Education Standards Commission staff to the following language:

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(ii) Failing to report to the board, in writing, within 30 days if action is taken against one's license to practice dentistry in another state, territory, or country.

Chapter 466.028(1)(ii), Florida Statutes

4) PHARMACY

CONTACT: Mr. Edwin Bayo, Assistant Attorney General
Board of Pharmacy
Agency for Health Care Administration
904/488-1891

Mr. Bayo said that he believes that the concept of self-reporting is implicit in section 465.016(1)(p), Florida Statutes:

(1) The following acts shall be grounds for disciplinary action set forth in this action:

(p) Failing to notify the Board of Pharmacy in writing within 20 days of the commencement or cessation of the practice of the profession of pharmacy in Florida when such commencement or cessation of the practice of the profession of pharmacy in Florida was a result of a pending or completed disciplinary action or investigation in another jurisdiction.

5) MEDICINE

CONTACT: Ms. Denise Love, Program Administrator
Board of Medicine
Agency for Health Care Administration
904/487-9813

Ms. Love was very cautious in responding to whether physicians are required to self-report or not. She noted that we need to get the General Counsel's Office, Florida Department of Education, look into whether self-reporting could infringe on the practitioner's Fifth Amendment Rights. The second issue she raised was that if the records in a conviction has been expunged, the practitioner does not have any legal obligation to report that conviction. Education Standards Commission staff asked her under what conditions could convictions be expunged. She said that was an issue for the General Counsel's Office. She, however, referred Education Standards Commission staff to the following language:

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(kk) Failing to report to the board, in writing, within 30 days if action as defined in paragraph (b) has been taken against one's license to practice medicine in another state, territory, or country.

Section 458.0331(1)(kk), Florida Statute

6) CONSTRUCTION INDUSTRY

CONTACT: Mr. Stuart F. Wilson-Patton, Assistant Attorney General
Board of Construction
Department of Business and Professional Regulations
904/487-6591

Mr. Wilson-Patton said that the Board of Construction does not require its licensed practitioners to self-report arrests and convictions.

7) SPEECH LANGUAGE PATHOLOGY AND AUDIOLOGY

CONTACT: Mr. Stuart F. Wilson-Patton, Assistant Attorney General
Board of Speech Language Pathology and Audiology
Department of Business and Professional Regulations
904/487-6591

Mr. Wilson-Patton said that the Board of Speech Language Pathology and Audiology does not require its licensed practitioners to self-report arrests and convictions.

8) ARCHITECTURE

CONTACT: Ms. Vicky Booher, Program Administrator
Board of Architecture
Department of Business and Professional Regulations
904/487-9501

Ms. Booher noted that the board of architecture does require self-reporting. However, she cited the following language on convictions:

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(d) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of architecture or the ability to practice architecture.

Section 481.225(1)(d), Florida Statutes

9) NURSING

CONTACT: Mr. Tim O'Brien, Nurse Consultant
Ms. Lee Ann Gustasson, Assistant Attorney General
Board of Nursing
Agency for Health Care Administration
904/488-1891

Ms. Lee Ann Gustasson noted that licensed nurses are not required to self-report. However, they are required to report any licensed nurse who is in violation of the policies of the board. She cited the language in section 464.018(1)(k), Florida Statutes:

(1) The following acts shall be grounds for disciplinary action set forth in this section:

(K) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board;

10) PSYCHOLOGY

CONTACT: Ms. Ivy Shivers, Director
Complaint Section
Board of Psychology
904/922-6728

Ms. Shivers noted that licensed psychologists are not required to self-report. She cited the following language on convictions:

(2) The following acts of a licensee or applicant are grounds for which the disciplinary actions listed in subsection (1) may be taken:

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of his profession or the ability to practice his profession. A plea of nolo contendere creates a rebuttable presumption of guilt of the underlying criminal charges. However, the board shall allow the person who is the subject of the disciplinary proceeding to present any evidence relevant to the underlying charges and circumstances surrounding the plea.

Section 490.009(2)(c), Florida Statutes

- *Reviewed self-reporting requirements for educators in a sample of States via a telephone survey.*

The following states were contacted:

- | | |
|-------------------------|--------------------|
| 1. Alabama | 11. Idaho |
| 2. Alaska | 12. Illinois* |
| 3. Arizona | 13. Indiana |
| 4. Arkansas | 14. Kentucky |
| 5. California | 15. Maryland |
| 6. Colorado | 16. Massachusetts* |
| 7. Connecticut | 17. Nebraska* |
| 8. Delaware | 18. New Jersey* |
| 9. District of Columbia | 19. New York* |
| 10. Georgia | 20. Texas* |

*States which did not reply to our telephone calls.

1) **ALABAMA**

CONTACT: Ms. June Mabry, State Teacher Certification Officer and Coordinator
Teacher Certification
334/242-9977

The state does not have a requirement for educators to self-report arrests and convictions.

2) **ALASKA**

CONTACT: Mr. July Orsborn, Teacher Certification Supervisor
Teacher Education and Certification
907/465-2831

Mr. Orsborn said they do not require educators to self-report. He said that they are currently revising the certification application form, and follow-up on the concept of self-reporting for inclusion on the certification form.

3) **ARIZONA**

CONTACT: C. E. Emmanuel, Investigative Unit Supervisor
Investigative Unit
602/542-2972

Mr. Emmanuel noted that they do not have a self-reporting policy for educators. However, Rule 15-514 requires educators to report other educators for immoral or unprofessional conduct.

4) **ARKANSAS**

CONTACT: Mr. Skip Hibblen, Coordinator
Teacher Education and Licensure
501/682-4342

The state does not have a requirement for educators to self-report arrests and convictions.

5) **CALIFORNIA**

CONTACT: Richard Fisher, Attorney
Commission on Teacher Credentialing
916/445-7254
916/445-0243 Legal Section

Mr. Fisher noted that they do not currently have a self-reporting requirement for educators. He said, however, that there is a proposed self-reporting regulation in California. The proposed language reads:

80303 Reports of Change in Employment Status

(a) Whenever a credential holder, working in a position requiring a credential: is dismissed; resigns; is suspended for more than 10 days; retires; or is otherwise terminated by a decision not to employ or re-employ; as a result of an allegation of misconduct, the holder and the superintendent of the employing school district shall each report such change in employment status to the Commission within 30 days.

6) **COLORADO**

CONTACT: Mr. Eric Yoder, Complaint Investigator
Educator Licensing
303/866-6628

The state does not have a requirement for educators to self-report arrests and convictions.

7) **CONNECTICUT**

CONTACT: Mr. Lee Williamson, Attorney
Bureau of Certification and Professional Development
203/566-8712
860-566-2135

The state does not have a requirement for educators to self-report arrests and convictions.

8) **DELAWARE**

CONTACT: Dr. William Barkley, Education Associate
Professional Standards and Certification
302/739-4686

The state does not have a requirement for educators to self-report arrests and convictions.

9) **DISTRICT OF COLUMBIA**

CONTACT: Alma Page, Central Office Assistant
Labor Relations
202/724-4011

The state does not have a requirement for educators to self-report arrests and convictions.

10) **GEORGIA**

CONTACT: Kelly Shaw, Information Specialist
Georgia Professional Standards Commission
404/657-9000

There may be a strong implication for self-reporting in the application forms for both initial and renewal. The specific language includes:

	Yes	No
Have you resigned or been discharged from any position, including the armed forces, while under suspicion of having engaged in criminal, immoral, or unprofessional conduct, or are you under investigation for any such charge?		
Have you been convicted of a felony or misdemeanor, including <i>nolo contendere</i> , or are you now under investigation for any such offense, other than a minor traffic offense?		
Have you ever surrendered a teaching certificate/credential/license/permit, or had one denied, revoked or suspended, or is any investigation or adverse action now pending against you?		

11) **IDAHO**

CONTACT: Roger Henshoe, Supervisor, Teacher Certification, and Director
Professional Standards Commission
208/332-6887

The state does not have a requirement for educators to self-report arrests and convictions.

12) **INDIANA**

CONTACT: Elizabeth Schurtz, Director
Teacher Licensing
Professional Standards Board
317/232-9010

The state does not have a requirement for educators to self-report arrests and convictions.

13) **KENTUCKY**

CONTACT: Tom Hanes, Principal Assistant
Teacher Education and Certification
502/573-4606

The state does not have a requirement for educators to self-report arrests and convictions.

14) **MARYLAND**

CONTACT: Jeannette Marsh, Chief
Bureau of Teacher Education and Certification
410/767-0100

There is strong implication for self-reporting on Maryland's certificate. The specific questions include:

Have you had a certificate or license revoked, suspended, or voluntarily surrendered?

YES ___ NO ___

If YES, Name of State _____ Date _____

Have you ever resigned or been dismissed after notice of allegations of misconduct involving a student?

YES ___ NO ___

If YES, Name of State _____ Date _____

Have you ever been convicted of, plead guilty or nolo contendere with respect to, or received probation before judgment with respect to a crime against children or a crime of violence?

YES ___ NO ___

If YES, Name of State _____ Date _____

- ***Reviewed language in section 230.335(1)(a), Florida Statutes:***

Notwithstanding the provisions of s. 39.045(8) or any other provision of law to the contrary, a law enforcement agency shall, within 48 hours, notify appropriate superintendent of schools 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.

The Education Standards Commission discussed this language at length and how some of its requirements and language can be used in its recommendations for educators to self-report arrests and convictions.

- ***Reviewed language on arrests and convictions on the initial and renewal application forms for the Florida Professional Educator's Certificate.***

The Education Standards Commission reviewed the following arrests, convictions, and revocation questions in the application form for Florida Educator's Certificate (Initial):

SEALED/EXPUNGED

 YES NO Have you ever had any record sealed or expunged in which you were convicted, found guilty, had adjudication withheld, entered a pretrial diversion program, or pled guilty or nolo contendere (no contest) to a criminal offense other than a minor traffic violation (DUI is NOT a minor traffic violation)? Failure to answer this question accurately could cause denial of certification.

A YES or NO answer is required by Florida Law. If you check the YES box, you must give the information required for each charged. Please attach a separate sheet if you need more space.

SEALED or EXPUNGED records MUST BE REPORTED pursuant ss.943.0585 and 943.059, FS. However, the existence of such records WILL NOT BE DISCLOSED nor made a part of your certification file which is public record.

City Where Arrested State Date of Arrest Charges Dispositions

ARREST RECORD

 YES NO Have you ever been convicted, found guilty, had adjudication withheld, entered a pretrial diversion program, or entered a plea of guilty or nolo contendere (no contest) to a criminal offense other than a minor traffic violation (DUI is NOT a minor violation)? Failure to answer this question accurately could cause denial of certification.

A YES or NO answer is required by Florida Law. If you check the YES box, you must give the information required for each charged. Please attach a separate sheet if you need more space.

Report any record other than SEALED or EXPUNGED records in this section.

City Where Arrested State Date of Arrest Charges Dispositions

REVOCATION

YES NO

Have you ever had a teaching certificate revoked, suspended, or denied by any state, or is there any action pending against your certificate or application? (A determination of academic ineligibility is not considered denial of a certificate.) If YES, you must give the state, reason, and year in which your certificate was revoked, suspended denied, or in which action is pending against your certificate or application

STATE:_____ YEAR:_____ REASON:_____

The following language were reviewed in the Application for Renewal of a Professional Florida Educator’s Certificate:

ARREST/REVOCATION RECORD

YES NO

Have you ever been convicted, found guilty, entered a plea of nolo contendere (no contest), or had adjudication withheld in a criminal offense other than traffic violation (DUI is NOT a minor traffic violation); or are there any criminal charges now pending against you? SEALED or EXPUNGED records must be reported pursuant to ss. 943.0585 and 943.059, FS. Failure to answer this question accurately could cause denial of certification.
A YES or NO answer is required by Florida Law. If you check the YES box, you must give the information requested for each charge. Please attach a separate sheet if you need more space.

City Where Arrested State Date of Arrest Charges Dispositions

YES NO

Have you ever had a teaching certificate revoked, suspended, or denied by a state other than Florida; or is there any action pending against your certificate or application in another state? (A determination of academic ineligibility is not considered denial of a certificate.) If YES, you must give the state where your certificate was revoked, suspended, denied, or where action is pending against your certificate or application.

State:_____

- ***Collaborated with the General Counsel's Office, Florida Department of Education, on clarification on constitutional rights and other legal questions.***

The Education Standards Commission worked closely with Carl Zahner, Assistant General Counsel, General Counsel’s Office, Florida Department of Education on the issue of violation of constitutional rights. Specifically, one of the issues that was raised was whether self-reporting could infringe on the practitioner's Fifth Amendment Rights. Zahner assured the Education Standards Commission that requiring educators to self-report arrests and convictions will not violate an individual’s Fifth Amendment Rights. The Education Standards Commission members and staff also worked closely with Michael Olenick, General Counsel for the Department of Education and the State Board

of Education, and Margaret O’Sullivan Parker, Assistant General Counsel, Department of Education (see pages 27 & 28).

- ***Held six (6) regional public hearings for additional input from the education profession and the public at large:***

The Education Standards Commission invited representatives of the education profession and the public at large to provide input on the initial recommendations on Self-Reporting Arrests and Convictions by Educators. The following was the initial recommendation taking to six regional public hearings:

Shall self-report within 48 hours to appropriate authorities any arrests involving the abuse of a child or the sale or possession of a controlled substance and any such conviction, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering of a Nolo Contendere for any criminal offense other than a minor traffic violation. The individual shall also self-report to appropriate authorities any personal violation of the Florida School Code or State Board of Education Rules as defined in Section 231.28 (1), Florida Statutes.

The language above is recommended for inclusion in The Principles of Professional Conduct of the Education Profession n Florida, State Board of Education Rule, 6B-1.006 (5)(m), FAC.

The following are the dates, times, and locations for the six hearings:

DATES & TIMES

LOCATIONS

May 27, 1997
3:30 p.m. - 5:30 p.m.

School Board of Santa Rosa County, Conference Room 234
603 Canal Street
Milton, Florida 32570
(904) 983-5010

May 27, 1997
3:30 p.m. - 5:30 p.m.

Ralph Turlington Building, Conference Room 1724
325 West Gaines Street
Tallahassee, Florida 32399-0400
(904) 488-1523

May 28, 1997
3:30 p.m. - 5:30 p.m.

School Board of Seminole County, School Board Training Room
Educational Support Center
400 E. Lake Mary Boulevard
Sanford, Florida 32773
(407) 320-0000

May 29, 1997 School Board of Hillsborough County, Conference Room 283
901 E. Kennedy Boulevard
Tampa, Florida 33601
(813) 272-4000

May 29, 1997 School Board of Dade County, Conference Room 559
1450 NE 2nd Avenue
Miami, Florida 33132
(813) 995-2380

June 2, 1997 School Board of Duval County, Conference Room 613
1701 Prudential Drive
Jacksonville, Florida 32207
(904) 390-2115

- ***Reviewed and deliberated testimonies/data received from the regional public hearings and made final recommendations.***

The testimonies/data from the public hearings on the initial recommendations were presented to Education Standards Commission members at its June 13, 1997 meeting which was held at the College of Education, University of Florida. After extensive deliberations, the initial recommendations were modified to read:

Shall self-report within 48 hours to appropriate authorities (as determined by district) any arrests/charges involving the abuse of a child or the sale and/or possession of a controlled substance. In addition, shall self-report any conviction, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering of a plea of guilt or Nolo Contendere for any criminal offense other than a minor traffic violation within 48 hours after the final judgement.

Additional testimonies were received after the June 13, 1997 meeting of the Commission. The testimonies raised a number of legal concerns. Specifically, the constitutionality of requiring a person to report himself/herself without convictions was questioned. Several legal cases in which the courts ruled against self-incrimination were cited. These issues were shared with Standards Commission members who instructed staff to share those issues with Michael Olenick, General Counsel for the Department of Education and the State Board of Education for legal opinion. Dr. Charlotte Minnick-Boroto and Dr. Adeniji A. Odutola, staff of the Standards Commission met with General Counsel Olenick and Margaret O'Sullivan Parker, Assistant General Counsel, Department of Education on these legal issues. The Office of the General Counsel studied the issues and worked with the staff of the Commission and the parties who raised the legal issues.

On November 13, 1997, General Counsel Olenick presented the outcome of their review and study to the Commission. The General Counsel noted that arrests and convictions are often not discovered until an educator files an application for renewal of the Professional Educator's Certificate. The self-reporting recommendation will ensure that arrests and convictions are brought to the attention of school district officials without delay. The recommendation also addresses the inherent assumption in Section 230.335, Florida Statutes, that the arrestee's occupation is known and disclosed to the arresting agency. Through intentional or unintentional omissions, this is not always the case.

The General Counsel reported that his office concluded that the initial recommendations of the Commission will not violate the Fifth Amendment. He said that under the Fifth Amendment of the United States Constitution and Article 1, Section 9 of the Florida Constitution, a person cannot be forced to be a witness against himself or herself in a criminal matter. The Fifth Amendment protection extends to civil and administrative proceedings, but only to the extent that a witness cannot be forced to provide information that could lead to criminal prosecution. The protection is not absolute, and is generally held by courts to adhere to situations where criminal charges are pending or likely. The following cases were cited: State ex rel Vining v. Florida Real Estate Commission, 281 So.2d 487 (Fla. 1973), Nach v. Department of Profession Regulation, Bd. Of Medical Examiners, 528 So.2d 908 (Fla. 2d DCA, 1988), McDonald v. Department of Professional Regulations, Bd. Of Pilot Commissioners, 582 So.2d 660 (Fla. 1st DCA, 1991), and Herre v. State Department of Revenue, 617 So.2d 390 (Fla/ 3d DCA, 1993).

General Counsel concluded by affirming that:

- The disclosure of an arrest cannot subject the educator to criminal prosecution.
- An arrest itself cannot lead to discipline against a certificate. In order to take any action against a certificate, or to deny an application, the Department must have evidence that the individual has been convicted or entered a plea of nolo contendere to a criminal offense, or have other evidence of misconduct. The mere reporting of an arrest is not grounds for termination of employment or revocation of a license.
- The recommendation requires the reporting of an event to the district, but does not require a teacher to provide additional information, or make a statement regarding the circumstances of the arrest.

After his presentation, Education Standards Commission members asked questions for clarifications and had discussions. The Education Standards Commission members modified its recommendations based on the additional testimonies. The final recommendations were unanimously accepted by the full Commission.

The final recommendations read:

Shall self-report with 48 hours to appropriate authorities (as determined by district) and arrests/charges involving the abuse of a child or the sale and/or possession of a controlled substance. Such notice shall not be considered an admission of guilt nor shall such notice be admissible for any purpose in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory. In addition, shall self-report any conviction, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering of a plea of guilty or Nolo Contendere for any criminal offense other than a minor traffic violation with 48 hours after the final judgement. When handling sealed and expunged records disclosed under this rule, school districts shall comply with the confidentiality provisions of Sections 943.0585(4)(c) and 943.059(4)(c), Florida Statutes.

**FOR FURTHER INFORMATION
CALL, WRITE OR EMAIL:**

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Tallahassee, Florida 32399-0400
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