

6A-10.084 Disqualification List.

(1) Purpose. The purpose of this rule is to set forth the criteria for placement on the Disqualification List and removal from the list, as well as the responsibilities of entities that report persons for inclusion on the list.

(2) Definitions. In this rule, the terms are defined as follows:

(a) “Applicant” means a person who is applying for an initial athletic coaching, temporary or professional certificate, as provided in subparagraph (1)(a)1. of Rule 6A-4.0012, F.A.C.;

(b) “Clear and convincing evidence or material” means evidence relied upon at hearing, or the material or information relied upon in the absence of a hearing, such as videos, witness statements, and admissions, is of such weight and credibility that they produce a firm belief, without hesitancy of a fact;

(c) “Commissioner” means the Commissioner of Education as set forth in section (s.) 1001.10, Florida Statutes (F.S.);

(d) “Conviction” means an adjudication of guilt by a court, after a determination of guilt by verdict or a plea of guilt; as well as where a person is found guilty, plead guilty or plead nolo contendere and adjudication of guilt is withheld;

(e) “Covered position” means a position held by instructional personnel, administrative personnel and educational support persons, as defined by s. 1012.01(2), (3) and (6), F.S., and as determined by the employing school district, charter school or private scholarship school;

(f) “Department” means the Department of Education;

(g) “Education Practices Commission” (EPC) means the commission established under s. 1012.79, F.S.;

(h) “Educator certificate” means any certificate awarded under s. 1012.55, F.S., and identified in Rule 6A-4.002, F.A.C.;

(i) “Employment” or “employed” means any person performing services in a covered position for a school district, charter school or private scholarship school, regardless of whether the person is hired and paid directly by the district, charter school or private scholarship school, or hired and paid through a contract the school district, charter school or private scholarship school has with a third party;

(j) “Private scholarship school” means a school participating in an educational scholarship program established in chapter 1002, F.S.;

(k) “Reporting entity” means the following entities that report a person for the Disqualification List: a school district, charter school, private scholarship school, the EPC and the Commissioner;

(l) “Resigned in lieu of termination” means the voluntary separation or retirement by the employee after receiving any notice, whether formal or informal, that the school district intends to dismiss or seek removal of the employee for circumstances that constitute cause, or resignation or retirement by the employee while under investigation for sexual misconduct with a student;

(m) “Separated due to termination” means termination of the employment relationship by the school district for cause. It does not include non-renewal of a professional, annual or probationary contract unrelated to cause, to a workforce reduction or to another separation instituted by a school district unrelated to cause; and

(n) “Sexual misconduct with a student” means any behavior or act, whether physical, verbal or electronic, by a person in a covered position with a prekindergarten through 12th grade student, regardless of the age or consent of the student, which is intended to erotically stimulate either person or which is likely to cause such stimulation. Examples of sexual misconduct with a student may include all of the following conduct:

1. Making lewd or lascivious remarks to a student or performing such acts in the presence of a student;
2. Kissing a student, intentionally touching a student's breast(s) or sexual organs, regardless of whether the student is clothed;
3. Sending, providing or exchanging nude or semi-nude pictures with a student or a request for the same; and
4. Any attempt to engage, or offer to engage, a student in any behavior or act which would constitute sexual misconduct with a student, if completed.

(3) The Roles of the Department and Reporting Entities.

(a) The Disqualification List serves as an employment screening resource for school districts, charter schools and private scholarship schools, along with the Department’s Teacher Certification Database referenced in s. 1001.10(5), F.S.

(b) It is the responsibility of a reporting entity to:

1. Ensure that only persons subject to the list as set forth in this rule are submitted to the Department for placement on the Disqualification List;
2. Designate a person responsible for providing information and responding to Department inquiries related to the Disqualification List; and

3. Provide written notice to any person submitted for inclusion on the Disqualification List of the following statement:

ANY PERSON ON THE DISQUALIFICATION LIST MAINTAINED BY THE FLORIDA DEPARTMENT OF EDUCATION UNDER S. 1001.10(4), F.S., MAY NOT SERVE OR APPLY TO SERVE AS AN EMPLOYEE OR CONTRACTED PERSONNEL AT A PUBLIC SCHOOL OR PRIVATE SCHOOL THAT PARTICIPATES IN A STATE SCHOLARSHIP PROGRAM UNDER CHAPTER 1002, F.S. A PERSON WHO KNOWINGLY VIOLATES THIS PROVISION COMMITS A FELONY OF THE THIRD DEGREE, PUNISHABLE AS PROVIDED IN S. 775.082, F.S., OR S. 775.083, F.S.

(c) It is the responsibility of the Department to:

1. Host the site for the Disqualification List and serve as the administrator for the list;
2. Notify reporting entities of any additional information needed in order for the Department to include a person on the list; and
3. Consider requests for removal from the list in accordance with subsection (9) of this rule.

(d) The Department, as the List Administrator, will not reweigh the underlying facts which results in placement of a person on the list as a result of action by a reporting entity.

(4) Reporting Requirements for Final Order or Report.

(a) In order for a person to be included on the Disqualification List, reporting entities must issue a final order or report as described in this subsection.

1. Where the reporting entity is a school district, the EPC or the Commissioner, a final order, issued under the provisions of chapter 120, F.S., must be issued.

2. Where the reporting entity is a charter school, in order to submit a person for inclusion on the Disqualification List, the governing authority of the school must issue and maintain a written report adopted in accordance with the procedures set forth in subsection (7) of this rule.

3. Where the reporting entity is a private scholarship school, in order to submit a person for inclusion on the Disqualification List, the governing authority of the school must issue and maintain a written report adopted in accordance with the procedures set forth in subsection (6) of this rule.

(b) In order for a school district, charter school or private scholarship school to report a person for inclusion on the Disqualification List, the final order or report must include the following information:

1. A determination that the person is ineligible for employment with the entity;

2. This determination is based upon a finding, supported by clear and convincing evidence or material, that the person committed either sexual misconduct with a student, as defined by this rule, or has been convicted, as defined by this rule, of one of the crimes listed in s. 1012.315, F.S.; and

3. The sexual misconduct or crime occurred on or after June 1, 2022, while the person was employed by the reporting entity in a covered position.

(c) In order for the Commissioner to report a person for inclusion on the Disqualification List, the final order must include the following information:

1. The authority to own or operate a private school in this state is permanently denied or revoked on or after June 1, 2022; and

2. This action is based upon a finding, supported by clear and convincing evidence or material, that the person, while in the capacity of an owner or operator of an educational institution, is operating or has operated an educational institution in a manner contrary to the health, safety or welfare of the public.

(d) In order for the EPC to report a person who holds an educator certificate for inclusion on the Disqualification List, the final order must include the following information:

1. The ability of the person to hold an educator certificate is permanently denied or revoked on or after June 1, 2022;

2. This penalty is based upon a finding, supported by clear and convincing evidence or material, that the person committed either sexual misconduct with a student, as defined by this rule, or has been convicted, as defined by this rule, of one of the crimes listed in s. 1012.315, F.S.; and

3. The sexual misconduct or crime occurred on or after June 1, 2022.

(e) In order for the EPC to report a person who is an applicant for an educator certificate, as defined in this rule, for inclusion on the Disqualification List, the final order must include the following information:

1. A determination that the person is ineligible for an educator certificate, made on or after June 1, 2022; and

2. This determination is based upon a finding, supported by clear and convincing evidence or material, that the person committed either sexual misconduct with a student, as defined by this rule, or has been convicted, as defined by this rule, of one of the crimes listed in s. 1012.315, F.S.

(5) Reporting a Person for the Disqualification List. In order to submit a person for the Disqualification List, all reporting entities must utilize the online reporting tool accessible at <http://fldoe.org/disqualificationlist> and provide the following information:

(a) The name, date of birth and last four numbers of the social security number of the person to be included on the list;

(b) The date and number of the final order or report;

(c) The information that must be included in the final order or report, as set forth in paragraphs (4)(b) – (e), of this rule; and

(d) Confirmation that the person was provided written notice of the consequence of placement on the Disqualification List, as set forth in the capitalized language found in subparagraph (3)(b)3. of this rule.

(6) Procedures Specific to Private Scholarship Schools. In order to ensure that any person submitted for inclusion on the Disqualification List by a private scholarship school receives a level of process comparable to persons submitted by a school district, prior to submission of a person for the list, the school or its governing authority must adopt procedures which, at a minimum, provide:

(a) Notice to the individual that the school intends to submit the person for inclusion on the Disqualification List;

(b) Notice of the opportunity to contest the intended action and the procedures for doing so;

(c) The opportunity for a determination by a neutral person where the intended action is contested;

(d) Issuance of a written report that includes the information and findings which caused the person to be included on the Disqualification List, as described in paragraph (4)(b) of this rule;

(e) Notice to any individual submitted for inclusion on the Disqualification List of the consequences of inclusion on the list, as found in the capitalized language set forth in subparagraph (3)(b)3. of this rule; and

(f) For permanently maintaining records related to the determination to submit a person for inclusion on the Disqualification List.

(7) Procedures Specific to Charter Schools. In order to ensure that any person submitted for inclusion on the Disqualification List by a charter school receives a level of process comparable to persons submitted by a school district, prior to submission of a person for the list, the school or its governing authority must adopt procedures which, at a minimum, provide:

(a) Notice to the individual that the school intends to submit the person for inclusion on the Disqualification List;

(b) Notice of the opportunity to contest the intended action and the procedures for doing so;

(c) The opportunity for a determination by a neutral person where the intended action is contested;

(d) Issuance of a written report that includes the information and findings which caused the person to be included on the Disqualification List, as described in paragraph (4)(b) of this rule;

(e) Notice to any individual submitted for inclusion on the Disqualification List of the consequences of inclusion on the list, as found in the capitalized language set forth in subparagraph (3)(b)3. of this rule; and

(f) For permanently maintaining records related to the determination to submit a person for inclusion on the Disqualification List.

(8) Procedures Specific to School Districts – Affidavit of Separation.

(a) When an employee is “separated due to termination” as defined in paragraph (2)(m) in this rule or when an employee “resigned in lieu of termination” as defined in paragraph (2)(l) of this rule from a school district, the school district must complete and maintain a form entitled, Affidavit of Separation from School District Employment Due to Termination or Resignation in Lieu of Termination. This form requires the following information:

1. The separated employee’s name, last four numbers of the social security number, and the date of separation;

2. The type of separation (separated due to termination or resigned in lieu of termination);

3. Whether separation is due to a report of sexual misconduct with a student by the separated employee; and

4. Details surrounding the separation.

(b) The requirement to complete an Affidavit of Separation applies regardless of whether or not the person is submitted for inclusion on the Disqualification List.

(9) Removal from Disqualification List. The process for submitting, considering and ruling upon a request for removal from the Disqualification List is set forth below.

(a) Submission of Removal Request. A request for removal may be submitted by the person included on the list or the reporting entity that submitted the person for the list and must:

1. Be in writing and submitted to the list accessible at <http://fldoe.org/disqualificationlist>;

2. Identify which paragraph of s. 1001.10(4)(c), F.S., is relied upon for the request for removal and provide details demonstrating the basis of removal;

3. Include a copy of the final order or report which resulted in placement on the list and the current address of the reporting entity or entities; and

4. Include certified or notarized documentary evidence supporting the request.

(b) Consideration of Removal Request. Upon receipt of a request for removal, the Department will:

1. Review the request for removal and notify the requestor of any supplemental information or documentation needed in order to process the request;

2. Provide notice to entities that reported the person for inclusion on the list, of the removal request; and

3. Provide a written decision.

(c) Department Decision on Removal Request.

1. Requests under s. 1001.10(4)(c)1., F.S. (completed law enforcement investigation), and s. 1001.10(4)(c)2., F.S. (mistaken identity). Where the request demonstrates that grounds for removal as described in s. 1001.10(4)(c)1. or 2., F.S., exist, the Department will grant the request for removal.

2. Requests under s. 1001.10(4)(c)3., F.S. Where the employing school district, charter school or private scholarship school that submitted a person for inclusion on the Disqualification List requests removal from the list, the Department will grant the request when the request for removal demonstrates the following:

a. The person on the list is not ineligible for employment as a result of a conviction of one of the crimes listed in s. 1012.315, F.S., and is not under law enforcement investigation for one of the crimes listed in s. 1012.315, F.S.;

b. A district or school intends to employ the individual if the person is removed from the list; and

c. Good moral character and rehabilitation, considering the circumstances surrounding the misconduct, the time period that has elapsed since the misconduct, the nature of the harm to any victim, the history of employment with the reporting entity and any other circumstances relevant to character.

(10) Documents Incorporated by Reference. The following documents are incorporated by reference and may be obtained at <http://fldoe.org/disqualificationlist>:

(a) EPC Certification of Final Determination of Eligibility for the Disqualification List – Educator Certificate Holder, Form No. DQ-1a, effective June 1, 2022, and EPC Certification of Final Determination of Eligibility for the Disqualification List – Educator Certificate Applicant, Form No. DQ-1b, effective June 1, 2022;

(b) School District Certification of Final Determination of Eligibility for the Disqualification List, Form No. DQ-2, effective June 1, 2022;

(c) Charter School Certification of Final Determination of Eligibility for the Disqualification List, Form No. DQ-3, effective June 1, 2022;

(d) Private Scholarship School Certification of Final Determination of Eligibility for the Disqualification List, Form No. DQ-4, effective June 1, 2022;

(e) Commissioner of Education Certification of Final Determination of Eligibility for the Disqualification List, Form No. DQ-5, effective June 1, 2022;

(f) Affidavit of Separation from School District Employment Due to Termination or Resignation in Lieu of Termination, Form No. DQ-6, effective June 1, 2022.

PROPOSED EFFECTIVE DATE: JUNE 1, 2022

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