



Education Fact Sheets 2014

**EDUCATION COMMITTEE
CHOICE & INNOVATION SUBCOMMITTEE
HIGHER EDUCATION & WORKFORCE SUBCOMMITTEE
K-12 SUBCOMMITTEE**

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PreK/Early Learning



What is the School Readiness Program?

Established in 1999,¹ the School Readiness Program provides subsidies for child care services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.² The School Readiness Program offers financial assistance for child care to support working families and children in developing skills for success in school and in life, and provides developmental screening and referrals to health and education specialists where needed. These services work in cooperation with other programs for young children such as Head Start, Early Head Start, and the Voluntary Prekindergarten Education (VPK) Program.³

The School Readiness Program is a state-federal partnership between Florida's Office of Early Learning (OEL)⁴ and the Office of Child Care of the United States Department of Health and Human Services.⁵

The School Readiness Program is administered by early learning coalitions (ELC) at the county or regional level.⁶ Florida's OEL administers the program at the state level, including statewide coordination of the ELCs.⁷

The Florida Department of Children and Families' Office of Child Care Regulation (DCF), as the agency responsible for the state's child care provider licensing program, regulates licensed child care providers that provide the School Readiness Program.⁸ The law authorizes a county to designate a local licensing agency to license such providers if its licensing standards meet or exceed DCF's standards. Five counties have done this – Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota. Thus, in these five counties the local licensing agency, not DCF, regulates licensed child care providers that provide the School Readiness Program.⁹

¹ Section 1, ch. 99-357, L.O.F.

² Section 1002.87, F.S.

³ Florida Office of Early Learning, *Parents*,

http://www.floridaearlylearning.com/parents/early_learning_programs_and_services/school_readiness.aspx (last visited June 11, 2014).

⁴ In 2013, the Legislature established the Office of Early Learning in the Office of Independent Education and Parental Choice within the Department of Education (DOE). The office is administered by an executive director and is fully accountable to the Commissioner of Education but shall independently exercise all powers, duties, and functions prescribed by law, as well as adopt rules for the establishment and operation of the School Readiness Program and the VPK Program. Section 1, ch. 2013-252, L.O.F., *codified as s.* 1002.213, F.S.

⁵ See U.S. Department of Health and Human Services, *Child Care and Development Fund Fact Sheet*, <http://www.acf.hhs.gov/programs/occ/fact-sheet-occ> (last visited June 11, 2014).

⁶ Section 1002.83, F.S.

⁷ Section 1001.213(3), F.S.

⁸ See ss. 402.301-319, F.S., and Parts V and VI, ch. 1002, F.S.

⁹ Section 402.306(1), F.S.; Department of Children and Families, *Licensing Information*, <http://www.myflfamilies.com/service-programs/child-care/licensing-information> (last visited Aug. 29, 2014).

Who is eligible for the School Readiness Program?

Federal regulations governing the Child Care and Development Fund (CCDF) block grant,¹⁰ the primary funding source for the School Readiness Program, authorize states to use grant funds for child care services, if:

- The child is under 13 years of age, or at the state's option, under age 19 if the child is physically or mentally incapable of caring for himself or herself or under court supervision;
- The child's family income does not exceed 85 percent of the state's median income for a family of the same size; and
- The child:
 - Resides with a parent or parents who work or attend job training or educational programs; or
 - Receives, or needs to receive, protective services.¹¹

Within these broad federal eligibility categories, Florida law specifies that ELCs must admit children into the School Readiness Program according to the following priorities:

- **First priority** is a child under 13 years of age from families in which an adult is receiving temporary cash assistance and subject to federal work requirements.¹²
- **Second priority** is a child under the age of 9 who is at-risk.¹³
- **Third priority** is a child, birth to beginning of the school year for which the child is eligible for kindergarten, from a working family that is economically disadvantaged¹⁴ and may include such a child's eligible siblings who are eligible to enter kindergarten through the summer before sixth grade, provided that the ELC uses local revenues first. The child is no longer eligible if the family income exceeds 200 percent of the federal poverty level.
- **Fourth priority** is a child of a parent who transitions from the work program into employment from birth through the summer before kindergarten.
- **Fifth priority** is an at-risk child, ages 9 – 13. Such a child is given priority over other children if his or her sibling is enrolled in the School Readiness Program under eligibility priorities 1, 2, or 3.
- **Sixth priority** is a child younger than 13 years of age from a working family that is economically disadvantaged. Such a child is given priority over other children if his or her sibling is enrolled in the School Readiness Program under eligibility priority 3. However, a child is no longer eligible under this priority if his or her family income exceeds 200 percent of the federal poverty level.
- **Seventh priority** is a child under age 13 whose parent transitions from the work program into employment.
- **Eighth priority** is a child ages 3-5 years of age who has a current individual education plan with a Florida school district. Such a child is eligible until he or she is old enough for kindergarten admission.
- **Last priority** is for a child who is also concurrently enrolled in the Head Start program and the VPK Program.¹⁵

¹⁰ 45 C.F.R. parts 98 and 99.

¹¹ 45 C.F.R. s. 98.20(a). Florida does not provide school readiness funding for children 13-18 years of age who are physically or mentally incapable of self-care or under court supervision. See Florida's Office of Early Learning, *Florida's Child Care and Development Fund State Plan FFY 2014-15*, at 49-50 (Oct. 1, 2013), available at http://www.floridaearlylearning.com/sites/www/Uploads/files/Oel%20Resources/2014-2015_CCDF_Plan_%20Optimized.pdf. [hereinafter *CCDF State Plan*]; see also rule 6M-4.200(1), F.A.C.

¹² Recipients of assistance under a state's Temporary Assistance for Needy Families Block Grant must meet Federal work requirements. These work requirements require a state to meet or exceed minimum rates of recipients participating in "work activities," e.g., employment, education, job search, community service, and vocational training. 42 U.S.C. s. 607(a)-(d). Under Florida law, the maximum number of hours a recipient of subsidized child care, who is not otherwise exempt from work activity, may be required to work is 40 hours per week. Section 445.024(2), F.S.

¹³ At-risk children include, among other things, children who are homeless or who may be experiencing abuse, neglect, abandonment or exploitation. Section 1002.81(1), F.S. (definition of "at-risk child").

¹⁴ "Economically disadvantaged" means having a family income that does not exceed 150 percent of the federal poverty level.

Section 1002.81(7), F.S.

¹⁵ Section 1002.87(1), F.S.

Additionally, the Child Care Executive Partnership (CCEP) Program allows funding from the School Readiness Program to be used for payment of matching child care funding for low-income working parents who are eligible for subsidized child care. State and federal funds are used as incentives for generating matching local funds from local governments, employers, charitable foundations, and other sources.¹⁶

Which child care providers may participate in the School Readiness Program?

In order to be eligible to deliver the School Readiness program, a provider must be:

- A licensed child care facility;
- A licensed or registered family day care home (FDCH);
- A licensed large family child care home (LFCCH);
- A public school or nonpublic school;
- A license-exempt faith-based child care provider;
- A before-school or after-school program; or
- An informal child care provider authorized in the state’s CCDF plan.¹⁷

School Readiness Providers by Classification¹⁸	
Provider Classification	Participating Providers
Licensed Child Care Facility	5,515
Licensed FDCH	1,721
Registered FDCH	232
Licensed LFCCH	284
Public School	980
Faith-Based Exempt	693
Informal Provider	42
Total:	9,467

Provider responsibilities include, but are not limited, to:

- Providing instruction and activities to enhance the age-appropriate progress of each child to attain the child development standards adopted by OEL.
- Providing activities to foster brain development in infants and toddlers in an environment rich in language and music and visual, tactile, auditory, and linguistic stimulation and including 30 minutes of reading to children each day.
- Executing the standard statewide provider contract adopted by OEL.
- Implementing a character development program.
- Maintaining minimum general liability insurance coverage.
- Maintaining any required worker’s compensation insurance and any required unemployment compensation insurance.
- Administering preassessments and postassessments that have been approved by the OEL, but only if the provider chooses to administer such assessments.¹⁹

¹⁶ Section 1002.94, F.S.

¹⁷ Section 1002.88(1)(a), F.S. Generally speaking, informal child care is care provided by a relative. *See CCDF State Plan, supra* note 8, at 71.

¹⁸ Email, Office of Early Learning, Legislative Affairs Director (Sept. 22, 2014). According to OEL, nonpublic schools and before or after school programs that provide the School Readiness Program are included in the figures for licensed child care facilities or faith-based exempt providers. *Id.*

¹⁹ Section 1002.88(1), F.S.

What responsibilities does Florida's Office of Early Learning have regarding the School Readiness Program?

Florida's OEL is the lead agency in Florida for administering the federal CCDF from which funds are used to implement the School Readiness Program. Florida law requires OEL to focus on improving the educational quality of all program providers participating in the School Readiness Program while preserving parental choice by permitting parents to choose from a variety of child care categories.²⁰

OEL must adopt, in rule, a statewide provider contract to be used by each School Readiness Program provider, review and approve each ELC's school readiness plan every 2 years, and monitor and evaluate the performance of each ELC in administering the School Readiness Program and the Voluntary Prekindergarten Program (VPK).²¹ OEL must also adopt specific system support services for the state's School Readiness Program including statewide data information program requirements that include:

- Eligibility requirements.
- Financial reports.
- Program accountability measures.
- Child progress reports.²²

Additional support services include child care resource and referral services and a single point of entry and uniform waiting list.²³ OEL may provide technical assistance and guidance on additional support services to complement the School Readiness Program, including:

- Rating and improvement systems.
- Warm-line services.²⁴
- Anti-fraud plans.
- School Readiness Program standards.
- Child screening and assessments.
- Training and support for parental involvement in children's early education.
- Family literacy activities and services.²⁵

OEL must develop and adopt performance standards and benchmarks to address the age-appropriate progress of children in the development of school readiness skills. The performance standards must be aligned with the standards for children in the VPK program.²⁶

Additional OEL requirements include, but are not limited, to:

- Providing technical assistance to ELCs.
- Coordinating with other state and federal agencies to perform data matches to verify student eligibility.
- Cooperating and coordinating with the Child Care Services Program Office of DCF to reduce paperwork and avoid duplicating interagency activities, health and safety monitoring, and acquiring and composing data pertaining to child care training and credentialing.

²⁰ Section 1002.82(1) and (2)(a)-(b), F.S. Care and curriculum by a faith-based provider must not be limited or excluded in any of these categories. *Id.*

²¹ Section 1002.82(2)(e), (m), and (p), F.S.

²² Section 1002.82(2)(f)1.a., F.S.

²³ Section 1002.82(2)(f)1.b., F.S., and Florida's Office of Early Learning, *Single Point of Entry*, at <https://spe.schoolreadiness.org/pe/> (last visited July 9, 2013).

²⁴ Florida's OEL must "administer a statewide toll-free Warm-Line for the purpose of providing assistance and consultation to child care facilities and FDCHs regarding health, developmental, disability, and other special needs." Section 1002.82(2)(r), F.S.

²⁵ Section 1002.82(2)(f)2., F.S.

²⁶ Section 1002.82(2)(j), F.S.; rule 6M-4.700, F.A.C.; Florida's Office of Early Learning, *Early Learning and Developmental Standards*,

http://www.floridaearlylearning.com/parents/parent_resources/floridas_early_learning_and_development_standards_birth_to_five.aspx (last visited June 11, 2014).

- Developing and adopting a health and safety checklist²⁷ for completion by license-exempt providers.
- Adopting a list of approved curricula that meet the performance standards for the School Readiness Program and establish a review and approval process to ensure a provider's curriculum meets those standards.
- Adopting, in rule, standardized procedures for ELCs to use when monitoring the compliance of School Readiness Program providers with the terms of the standard statewide provider contract.
- Working in conjunction with the Bureau of Federal Education Programs in the Department of Education to coordinate school readiness and VPK services to populations served by the bureau.
- Establishing a statewide child care resource and referral network.²⁸

What responsibilities do early learning coalitions have regarding the School Readiness Program?

Each ELC administers the School Readiness Program,²⁹ the VPK Program,³⁰ and the state's child care resource and referral network in its county or multicounty region.³¹ There are currently 31 ELCs.³² Each ELC is governed by a board of directors comprised of various stakeholders and community representatives. Three board members, including the chair, are appointed by the Governor.³³

In order to participate in the School Readiness Program, each ELC must submit a school readiness plan to OEL for approval.³⁴ The plan must include, but is not limited to:

- The ELC's operations, including its membership and business organizations and articles of incorporation and bylaws, if applicable.
- The minimum number of children to be served by care level.
- The procedures for implementing program requirements such as single point of entry, uniform waiting list, eligibility and enrollment, sliding fee scale, and payment rate.
- A detailed description of the ELC's quality activities and services.
- A detailed budget outlining the estimated expenditures for state, federal, and local matching funds.
- A detailed accounting of all revenues and expenditures during the previous state fiscal year.³⁵

An ELC with an approved school readiness plan must implement a comprehensive system of school readiness services which enhances the cognitive, social, and physical development of children to achieve the children's performance standards.³⁶ Specific ELC requirements include, but are not limited, to:

- Establishing a uniform waiting list to track eligible children.
- Administering a child care resource and referral network for its service area.
- Establishing a regional Warm-Line.
- Establishing age-appropriate screening for children birth to 5 years.
- Implementing age appropriate preassessment and postassessment of children, if specified in the coalition's plan.
- Determining child eligibility.
- Establishing a parent sliding fee scale.

²⁷ See rule 6M-4.620, F.A.C.; see Florida Department of State, *Florida Administrative Code & Florida Register*, <https://www.flrules.org/Gateway/reference.asp?No=Ref-04181> (last visited Aug. 29, 2014)(health and safety checklist forms).

²⁸ Section 1002.82(2), F.S.

²⁹ Part VI, ch. 1002, F.S.

³⁰ Part V, ch. 1002, F.S.

³¹ Section 1002.84, F.S.

³² Florida's Office of Early Learning, *Early Learning Coalition Directory* (Revised 5/7/2013), available at <http://www.floridaearlylearning.com/sites/www/Uploads/files/Parents/CoalitionDirectory.pdf>. Florida law permits the establishment of 31 or fewer ELCs. Section 1002.83(1), F.S.

³³ Section 1002.83(3), F.S.

³⁴ Section 1002.85(2), F.S.

³⁵ Section 1002.85(2)(a)-(i), F.S.

³⁶ Section 1002.84(1), F.S.

- Complying with federal and state procurement requirements.
- Establishing proper information technology security controls.
- Monitoring School Readiness Program providers.³⁷

ELCs are required to submit an annual report to OEL by October 1 of each year. The report must include information such as the total number of children served, details of expenditures by fund source, and an evaluation of its direct enhancement services.³⁸

What responsibilities does the Department of Children and Families or local licensing agency have regarding the School Readiness Program?

DCF or, if applicable, the local licensing agency issue licenses to child care facilities, FDCHs, and LFCCHs that provide the School Readiness Program and enforce licensing requirements.³⁹ Licensure is optional for FDCHs; however, homes that choose not to be licensed must annually register with DCF or the local licensing agency, as applicable.⁴⁰ All child care provider licenses must be renewed annually.⁴¹

DCF or, if applicable, the local licensing agency conduct inspections of all licensed child care providers to determine initial and renewal licensure and periodically assess continued compliance with licensing standards. Licensed child care facilities are inspected three times annually. LFCCHs and licensed FDCHs are inspected twice annually. In each case, the first inspection is an announced initial or renewal licensing inspection. Subsequent inspections are unannounced. DCF does not have authority to inspect registered FDCHs.⁴²

DCF inspects licensed child care facilities based upon 354 total licensing standards in 63 categories. Licensed FDCHs are inspected based upon 261 total standards in 38 categories. LFCCHs are inspected based upon 321 total standards in 55 categories.⁴³ DCF rule classifies licensing violations as follows:

- Class I violations are the most serious in nature, pose an imminent threat to a child including abuse or neglect and which could or does result in death or serious harm to the health, safety or well-being of a child.
- Class II violations are less serious in nature than Class I violations, and could be anticipated to pose a threat to the health, safety or well-being of a child, although the threat is not imminent.
- Class III violations are less serious in nature than either Class I or Class II violations, and pose a low potential for harm to children.⁴⁴

Class I violations include serious threats to health and safety, e.g., failure to report child abuse, child abuse by child care personnel, leaving children alone with personnel who have not been background screened, transporting children in vehicles without enough seat belts, and leaving a child in a vehicle while on a field trip.⁴⁵ DCF or a local licensing agency may impose sanctions for violations, including fines, probation, or license suspension or revocation.⁴⁶

³⁷ Section 1002.84, F.S.

³⁸ Section 1002.84(18), F.S.

³⁹ See ss. 402.301-319, F.S., and Parts V and VI, ch. 1002, F.S.

⁴⁰ Section 402.313(1), F.S.; see Department of Children and Families, *Registered Family Day Care Homes*, <http://www.myflfamilies.com/service-programs/child-care/registered-family-day-care> (last visited Aug. 29, 2014). A county may by ordinance require that FDCHs be licensed. Fifteen counties have enacted such ordinances -- Brevard, Broward, Clay, Duval, Hernando, Hillsborough, Manatee, Miami-Dade, Nassau, Palm Beach, Pasco, Pinellas, Polk, Sarasota, and St. Johns. *Id.*

⁴¹ Sections 402.305 and 402.306-402.308, F.S.

⁴² Sections 402.308 and 402.311, F.S. Licensing standards are found throughout ss. 402.301-402.319, F.S., and ch. 65C-22, F.A.C.

⁴³ *Id.*; ch. 65C-22, F.A.C.

⁴⁴ Rule 65C-22.010(1)(d), F.A.C.

⁴⁵ See, e.g., Florida Department of Children and Families, *Child Care Facility Classification Summary* (July 2012), available at [http://ccrain.fl-dcf.org/\(X\(1\)\)/documents/2/443.pdf#page=1](http://ccrain.fl-dcf.org/(X(1))/documents/2/443.pdf#page=1).

⁴⁶ Section 402.310(1), F.S.

What is the Child Care Resource and Referral Network?

The statewide child care resource and referral network provides referrals to families for child care and information on available community services. Each ELC must compile profiles of available public and private child care providers within its service area for use by parents in choosing providers. Various types of child care programs and services must be included in the network. Referrals must be made to all “legally operating” child care facilities. The child care resource and referral network is also used to document requests for services and provide technical assistance to providers regarding initiating or expanding services and program and budget development. An ELC may contract for or provide these services directly.⁴⁷

How do parents enroll their children in the School Readiness Program?

A parent may apply for his or her child’s admission in the School Readiness Program by submitting an application to an ELC. Florida’s OEL has established, and ELCs must use, a single point of entry that enables a parent to enroll his or her child in the School Readiness Program at various locations throughout a county, by telephone, or through an Internet website.⁴⁸

What funding is available for the School Readiness Program?

The School Readiness Program receives funding from a mixture of federal and state sources, including the federal CCDF block grant, the Federal Grants Trust Fund, the federal Temporary Assistance for Needy Families block grant,⁴⁹ and the state general revenue funds.⁵⁰

For FY 2014-15, a total of \$555.5 million was appropriated for the School Readiness Program from state and federal funds, including \$136.9 million from the state’s General Revenue Fund, \$321.4 million from the CCDF block grant, \$489,286 from Federal Grants Trust Fund, and \$96.6 million from the Welfare Transition Trust Fund.⁵¹

Where can I get additional information?

Florida’s Office of Early Learning

(866) 357-3239

<http://www.floridaearlylearning.com>

Florida Department of Children and Family Services

Child Care Services Program Office

(850) 488-4900

<http://www.myflorida.com/childcare>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

⁴⁷ Section 1002.92(1) and (3), F.S.; *see also* Florida’s Office of Early Learning, *Parents: Find Quality Child Care*, http://www.floridaearlylearning.com/parents/find_quality_child_care/locate_a_child_care_resource_referral_program.aspx (last visited June 11, 2014).

⁴⁸ Section 1002.81(14), F.S.; *see* Florida’s Office of Early Learning, *Single Point of Entry*, http://www.floridaearlylearning.com/how_do_i/apply_for_school_readiness.aspx (last visited June 11, 2014).

⁴⁹ In 2011, the Florida Legislature created the Welfare Transition Trust Fund within the Florida Department of Education for use as a depository for receiving federal funds under the Temporary Assistance for Needy Families (TANF) Program. This trust fund will be terminated on July 1, 2015, unless reenacted by the Legislature. Section 1, ch. 2011-157, L.O.F.

⁵⁰ Specific Appropriation 88, s. 2, ch. 2014-51, L.O.F.

⁵¹ *Id.*

Florida House of Representatives

Appropriations Committee

(850) 717-4810

<http://www.myfloridahouse.gov>

Florida House of Representatives

Health & Human Services Committee

(850) 717-4840

<http://www.myfloridahouse.gov>



What is the Voluntary Prekindergarten Education Program?

In 2004, the Legislature established the Voluntary Prekindergarten Education Program (VPK program), a voluntary, free prekindergarten program offered to eligible four-year old children in the year before admission to kindergarten.¹ A child must be a Florida resident and attain four years of age on or before September 1 of the academic year to be eligible for the VPK program.² Parents may choose either a school-year or summer program offered by either a public school or private prekindergarten provider.³ The child remains eligible for the VPK program until he or she is eligible for kindergarten in a public school or is admitted to kindergarten, whichever occurs first.⁴ A child may not attend the summer VPK program earlier than the summer immediately before the academic year in which the child becomes eligible for kindergarten.⁵

Voluntary Prekindergarten Education Programs			
Program Characteristics	School Year-Programs		Summer Program (s. 1002.61, F.S.)
	Public School (s. 1002.63, F.S.)	Private Prekindergarten Provider (s. 1002.55, F.S.)	
Provider Type	Public school	Private prekindergarten provider	Public school or private prekindergarten provider
Minimum Program Length	540 instructional hours	540 instructional hours	300 instructional hours
Class Size	4 to 20 students	4 to 20 students	4 to 12 students
Prekindergarten Director Credential⁶	Not required	Required	Private prekindergarten provider only
Minimum Required Instructor Credential	Child Development Associate (CDA) or equivalent	CDA or equivalent	Florida-certified teacher or bachelor's or higher degree in early learning
Second Instructor for Large Classes (credential not required)	For classes of 12 or more students	For classes of 12 or more students	Not required

Local oversight of the VPK program is provided by early learning coalitions (ELC) and school districts. Each ELC is the single point of entry for VPK program registration and enrollment in the coalition's county or multi-

¹Section 1, ch. 2004-484, L.O.F.; part V, ch. 1002, F.S.; see also Art. IX, s. 1(b)-(c), Fla. Const. The VPK program originated from a ballot initiative proposing an amendment to the Florida Constitution in the November 2002 general election. The amendment required the Legislature to establish a free prekindergarten education program for every four-year old child residing in Florida by the 2005 academic year. Voters approved the amendment by a total of 59 percent for to 41 percent against. Art. IX, s. 1(b)-(c), Fla. Const.; see also Florida Department of State, Division of Elections, *Voluntary Universal Prekindergarten Education*, <http://election.dos.state.fl.us/initiatives/initdetail.asp?account=34708&seqnum=1> (last visited June 12, 2014).

² Section 1002.53(2), F.S.

³ Section 1002.53(3), F.S. In 2010, the Legislature established a specialized instructional services program for children with disabilities as an option under the VPK program. Section 3, ch. 2010-227, *codified at* s. 1002.53(3)(d), F.S. Beginning with the 2012-13 academic year, a child who has a disability is eligible for specialized instructional services if the child is eligible for the VPK program and has a current Individual Education Plan (IEP) developed by the district school board. Specialized instructional services include applied behavior analysis, speech-language pathology, occupational therapy, and physical therapy. DOE is responsible for approving public and private program providers. Section 1002.66, F.S. Children who participate in the program are eligible to receive a McKay Scholarship to enroll in and attend a private school. See s. 1002.39(2)(a)1., F.S.

⁴ Section 1002.53(2), F.S. Children who attain five years of age on or before September 1 of the academic year are eligible for admission to public kindergarten. Section 1003.21(1)(a)2., F.S.

⁵ Section 1002.61(2)(c), F.S.

⁶ The Florida Department of Education establishes the minimum standards for a credential for directors of private prekindergarten providers delivering the VPK program. Section 1002.57(1), F.S.; see also rule 6M-8.610, F.A.C.

county service area.⁷ Each ELC must coordinate with each school district in the coalition's service area to develop procedures for enrolling children in public school VPK programs.⁸ Local oversight of individual VPK program providers is split, with ELCs providing administration over programs delivered by private prekindergarten providers and school districts administering public school VPK programs.⁹

Florida's Office of Early Learning (OEL),¹⁰ the Department of Education (DOE), and the Department of Children and Family Services (DCF) each play a role in the state-level oversight of the VPK program. As lead agency for Florida's school readiness system, Florida's OEL governs the day-to-day operations of the VPK program.¹¹ OEL oversees ELCs regarding child enrollment, attendance reporting, and reimbursement of VPK program providers and monitors VPK program providers for compliance with program requirements.¹²

DOE administers the accountability requirements of the VPK program at the state level. This includes adopting and requiring each school district to administer a statewide kindergarten readiness screening within the first 30 days of each school year.¹³

DCF administers the state's child care provider licensing program and posts VPK program provider profiles on its Internet website.¹⁴

How are children enrolled in the VPK program?

Parents may enroll their child in the VPK program by submitting an application to an ELC.¹⁵ OEL has established, and ELCs must use, a single point of entry that enables a parent to enroll his or her child in the VPK program at various locations throughout a county, by telephone, or through an Internet website.¹⁶ The ELC must determine the child's eligibility, conduct a parent orientation session, and provide the parent with a profile of eligible VPK program providers in the county where the child is being enrolled.¹⁷ The profile must include information regarding provider services, curricula, instructor credentials, instructor-to-student ratios, and kindergarten readiness rates.¹⁸ The enrollment process is complete when the parent chooses a school-year or summer program offered by an eligible VPK program provider and the child's enrollment is recorded by the ELC.¹⁹ A public school or private prekindergarten provider is prohibited from charging any fees for the VPK program. Additionally, a public school or private prekindergarten provider may not require a child to enroll

⁷ Section 1002.53(4)(a)-(b), F.S. There are currently 30 ELCs. Florida's Office of Early Learning, *Early Learning Coalition Directory (Revised 6/11/2014)*, available at

<http://www.floridaearlylearning.com/sites/www/Uploads/files/Parents/CoalitionDirectory.pdf>.

⁸ Section 1002.53(4)(c), F.S.

⁹ Sections 1002.55(1), 1002.61(1)(a)-(b), and 1002.63(1), F.S.

¹⁰ In 2013, the Legislature established the Office of Early Learning in the Office of Independent Education and Parental Choice within DOE. The office is administered by an executive director and is fully accountable to the Commissioner of Education but shall independently exercise all powers, duties, and functions prescribed by law, as well as adopt rules for the establishment and operation of the school readiness program and the Voluntary Prekindergarten Education Program. s. 1, ch. 2013-252, *codified at* 1001.213, F.S.

¹¹ Sections 1001.213 and 1002.75(1)-(2), F.S.

¹² Section 1002.75(2), F.S.

¹³ Sections 1002.69(1)-(3) and 1002.73, F.S.

¹⁴ Sections 402.301-402.319, F.S.; *see also* Florida Department of Children and Family Services, *Provider Search*, <http://dcfsanswrite.state.fl.us/Childcare/provider> (last visited June 12, 2014).

¹⁵ Section 1002.53(4)(a)-(b), F.S.; *see also* rule 6M-8.201(1)(b), F.A.C.

¹⁶ Sections 1002.53(4)(a) and 1002.82, F.S.; *see* Florida's Office of Early Learning, *Single Point of Entry*, http://www.floridaearlylearning.com/how_do_i/apply_for_school_readiness.aspx (last visited June 11, 2014).

¹⁷ Section 1002.53(4)-(5), F.S.; *see also* rules 6M-8.202(1) and 6M-8.201(4)(a), F.A.C. The ELC must conduct a face-to-face orientation session or determine the child's eligibility face-to-face with the child's parent unless the coalition maintains the child's records for another early learning program and verifies that the child's birth date in the records of the early learning program is the same as on the child's VPK program application; another coalition conducted the VPK program eligibility determination for that child; or if the child's parent is a service member United States Armed Forces and is unable to attend the orientation session because of assigned duty outside the state of Florida, and the parent submits to the coalition, a military order showing that the parent is assigned to duty in the state of Florida for the duration of child's enrollment in the VPK program. Rule 6M-8.201(4)(b), F.A.C.

¹⁸ Section 1002.53(5)(a)-(b), F.S.; *see also* rule 6M-8.201(4)(a)4.-7., F.A.C.

¹⁹ Section 1002.53(3) and (6), F.S.; *see also* rule 6M-8.202(2)(a), (c), and (d), F.A.C.

for, or require the payment of a fee for, any supplemental services as a condition of enrollment in the VPK program.²⁰

Voluntary Prekindergarten Program Enrollment²¹					
Program Year	Total Enrollment	School-Year Program	Summer Program	Population of 4-Year-Olds	Participation Rate
2005-06	106,479	94,011	12,468	217,577	48.9%
2006-07	123,567	113,253	10,314	216,929	57.0%
2007-08	134,717	125,141	9,576	215,713	62.5%
2008-09	147,752	137,637	10,115	213,019	69.4%
2009-10	156,826	148,220	8,606	216,078	72.6%
2010-11	165,374	157,072	8,302	216,179	76.5%
2011-12	175,660	167,358	8,302	217,202	80.9%
2012-13	174,230	166,457	7,773	218,996	80.3%
2013-14	170,265	163,813	6,452	223,140	77.3%

What requirements must VPK program providers meet in order to offer the VPK program?

The VPK program may be offered by either a private prekindergarten provider or a public school. To offer the VPK program, a private prekindergarten provider must register with the ELC and must be a:

- Licensed child care facility;
- Licensed family day care home (FDCH);
- Licensed large family child care home (LFCCH);
- Nonpublic school exempt from licensure; or
- Faith-based child care provider exempt from licensure.²²

In addition, a private prekindergarten provider must:

- Be accredited by an accrediting association that is a member of either the National Council for Private School Accreditation, or the Florida Association of Academic Nonpublic Schools, or be accredited by the Southern Association of Colleges and Schools, the Western Association of Colleges and Schools, the North Central Association of Colleges and Schools, the Middle States Association of Colleges and Schools, or the New England Association of Colleges and Schools; and has written accreditation standards that meet the state’s licensing requirements and requires at least one onsite visit before accreditation is granted;²³
- Hold a current Gold Seal Quality Care designation;²⁴ or
- Be licensed and demonstrate to the ELC that the provider meets the VPK program’s statutory requirements.²⁵

²⁰ Section 1002.71(8), F.S.

²¹ Email, Office of Early Learning, Legislative Affairs Director (Sept. 22, 2014).

²² Section 1002.55(3)(a) and (h), F.S.; *see also* rule 6M-8.300(3), F.A.C.; s. 402.305, F.S. (child care facilities licensing); s. 402.313, F.S. (family day care homes licensing); s. 402.3131, F.S. (large family child care homes licensing); s. 402.316, F.S. (faith-based provider exempt from licensure).

²³ Section 1002.55(3)(b)1., F.S.; *see also* National Council for Private School Accreditation, <http://www.ncpsa.org> (last visited June 12, 2014); Florida Association of Academic Nonpublic Schools, <http://www.faans.org> (last visited June 12, 2014); Southern Association of Colleges and Schools, <http://www.sacs.org/> (last visited June 12, 2014); Western Association of Colleges and Schools, <http://www.acswasc.org/> (last visited June 12, 2014); North Central Association of Colleges and Schools, <http://www.northcentralassociation.org/> (last visited June 12, 2014); Middle States Association of Colleges and Schools, <http://www.middlestates.org/> (last visited June 12, 2014); New England Association of Colleges and Schools, <http://www.neasc.org/> (last visited June 12, 2013).

²⁴ Section 402.281, F.S.; rule 65C-22.009, F.A.C.; *see also* Florida Department of Children and Family Services, *Gold Seal Quality Care*, <http://www.dcf.state.fl.us/childcare/goldseal.shtml> (last visited June 12, 2014). DCF issues the Gold Seal Quality Care designation to child care facilities, LFCCHs, and FDCHs that are accredited by a nationally recognized accrediting association with standards that meet or exceed DCF-adopted standards. DCF’s standards are based upon those of the National Association for the Education of Young Children, National Association of Family Child Care, and National Early Childhood Program Accreditation Commission. Section 402.281(1)-(3), F.S.

VPK Providers by Classification²⁶	
Provider Classification	Participating Providers
Licensed Child Care Facility	4,983
Licensed FDCH	53
Licensed LFCCH	49
Public School	1,103
Nonpublic School	62
Faith-Based Exempt	206
Total Providers	6,456
Unduplicated Provider Total ²⁷	6,442

Private prekindergarten providers must also use the approved statewide provider contract, maintain general liability insurance and maintain any required workers' compensation insurance and reemployment assistance or unemployment compensation coverage.²⁸

Each district school board determines which district schools will offer the school-year and summer VPK programs and such schools must register with the ELC.²⁹ School districts must offer a summer VPK program and may limit enrollment at individual public schools so long as admission is provided to every eligible student who seeks enrollment in the district's summer program.³⁰

What instructor credentials are required for the VPK program?

School-Year Program. A public school or private prekindergarten provider offering a school-year VPK program must have, for each class, at least one instructor with the following credentials:

- A CDA issued by the National Credentialing Program of the Council for Professional Recognition, plus five clock hours of training in emergent literacy;³¹ or
- A credential approved by DCF as being equivalent to or greater than the CDA, plus five clock hours of training in emergent literacy.³²

However, in lieu of the minimum credentials listed above, a prekindergarten instructor for a private prekindergarten provider may hold one of the following credentials:

- An educational credential approved by OEL as being equivalent to or greater than any of these educational credentials;
- Associate's or higher degree in child development;
- Associate's or higher degree in an unrelated field, at least 6 credit hours in early childhood education or child development, and at least 480 hours of teaching or providing child care services for children any age from birth through 8 years of age;

²⁵ Section 1002.55(3)(b), F.S.

²⁶ Email, Office of Early Learning, Legislative Affairs Director (Sept. 24, 2014).

²⁷ According to OEL, 14 providers changed classifications during FY 2013-14 and were counted in each classification. The unduplicated total counts each provider only once. *Id.*

²⁸ Section 1002.55(3)(i) – (l), F.S.

²⁹ Sections 1002.61(3)(a) and (8) and 1002.63(3) and (8), F.S.

³⁰ Sections 1002.53(6)(b) and 1002.61(3)(a), F.S.

³¹ Sections 1002.55(3)(c)1.a. and 2., 1002.59, and 1002.63(4), F.S. Emergent literacy includes oral communication, knowledge of print and letters, phonemic and phonological awareness (recognition that words are made up of sounds), and vocabulary and comprehension development. *Sections* 1002.59 and 1002.67(1)(b), F.S. The emergent literacy training requirement does not apply to individuals who completed required training for staff of child care facilities, family day care homes, and large family child care homes licensed by DCF before the establishment of emergent literacy training courses or April 1, 2005, whichever occurred later. Section 1002.55(3)(c)2., F.S.; *see ss.* 402.305(2)(d)5., 402.313(6), and 402.3131(5), F.S.

³² Sections 1002.55(3)(c)1.b. and 2. and 1002.59, F.S. An active Birth Through Five Child Care Credential awarded as a Florida Child Care Professional Credential, Florida Department of Education Child Care Apprenticeship Certificate, or Early Childhood Professional Certificate satisfies the staff credential requirement. Rule 65C-22.003(7), F.A.C.

- Bachelor's or higher degree in early childhood education, prekindergarten or primary education, preschool education, or family and consumer science; or
- Bachelor's or higher degree in elementary education, if the instructor has been certified to teach children any age from birth through grade 6, regardless of whether the educator certificate is current.³³

In addition, a private prekindergarten instructor of a school year program must successfully complete an emergent literacy training course and a student performance standards training course approved by OEL.³⁴

A public school or private prekindergarten provider offering a school-year VPK program must have a second adult instructor for each class of 12 or more students; however, the second instructor is not required to meet the same qualifications as the lead instructor.³⁵

A VPK program provider may assign a substitute instructor to temporarily teach a school-year VPK program class when the lead instructor is absent.³⁶ If the substitute instructor does not hold any of the credentials authorized for lead instructors, the substitute instructor must, at a minimum, hold an associate's or higher degree in any field of study, a CDA, or a CDA-equivalent credential, and complete specified DCF child care training courses, or meet the local school district's requirements for employment as a substitute teacher.³⁷ A substitute instructor may not be assigned for more than 30 percent of the program hours.³⁸

Summer Program. A public school or private prekindergarten provider offering a summer VPK program must have for each class a Florida-certified teacher or at least one instructor with the following credentials:

- Bachelor's or higher degree in early childhood education, prekindergarten or primary education, preschool education, or family and consumer science; or
- Bachelor's or higher degree in elementary education, if the instructor has been certified to teach children any age from birth through grade 6, regardless of whether the educator certificate is current.³⁹

Like the school-year VPK program, substitute instructors may be assigned to temporarily teach a summer VPK program class when the lead instructor is absent.⁴⁰ If the substitute instructor does not hold any of the credentials authorized for lead instructors, he or she must hold an associate's or higher degree in any field of study or a CDA or equivalent credential.⁴¹ A substitute instructor may not be assigned for more than 30 percent of the program hours.⁴²

What are the background screening requirements for VPK program instructors?

Each VPK program instructor, including substitute instructors, must be of good moral character, may not be ineligible to teach in a public school because of a suspended or revoked teaching certificate, and must pass a level 2 background screening before employment, which must be repeated at least once every five years.⁴³ Background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement, national criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement

³³ Section 1002.55(4), F.S. Although these credentialing requirements appear in the section of law regarding private prekindergarten providers offering the school year program, OEL interprets them to also apply to public school instructors of the school year program. Florida Department of Education, *Technical Assistance Paper: #07-01*, at 2 (Jan. 2007), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-4196/07-02att1.pdf>.

³⁴ 1002.55(3)(c)2., F.S.

³⁵ Sections 1002.55(3)(f) and 1002.63(7), F.S.

³⁶ Sections 1002.55(3)(e) and 1002.63(6), F.S.

³⁷ Rule 6M-8.410(2)(b)2., F.A.C.

³⁸ Rule 6M-8.410(4), F.A.C.

³⁹ Sections 1002.61(4) and 1002.55(4)(a)-(b), F.S.

⁴⁰ Section 1002.61(6), F.S.

⁴¹ Rule 6M-8.410(2)(b)1., F.A.C.

⁴² Rule 6M-8.410(4), F.A.C.

⁴³ Sections 1002.55(3)(d)-(e), 1002.61(5)-(6), and 1002.63(5)-(6), F.S.

agencies.⁴⁴ A VPK program provider may not employ an instructor who has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any one of 52 specified criminal offenses.⁴⁵

What are the curricular requirements for the VPK program?

Each private provider and public school may select or design its own curriculum,⁴⁶ which must:

- Be developmentally appropriate;
- Be designed to prepare a student for early literacy;
- Enhance the age-appropriate progress of students in attaining VPK program performance standards adopted by OEL; and
- Prepare students to be ready for kindergarten based on the statewide kindergarten screening.⁴⁷

However, a public school or private prekindergarten provider that is placed on probation for failing to meet the minimum kindergarten readiness rate adopted by OEL must take certain corrective actions, including the use of an OEL-approved curriculum or a staff development plan to strengthen instruction in language development and phonological awareness.⁴⁸

What is the statewide kindergarten screening?

Within the first 30 school days of each academic year, each school district must screen each kindergarten student in the school district to determine his or her readiness for kindergarten. Nonpublic schools are authorized to administer the statewide kindergarten screening to each kindergarten student in a nonpublic school who was enrolled in the VPK program. DOE has adopted the Florida Kindergarten Readiness Screener (FLKRS) for this purpose.⁴⁹ FLKRS is composed of two screening instruments:

- A subset of the Early Childhood Observation System (ECHOS), which is an observational instrument used to monitor the skills, knowledge, and behaviors a student demonstrates or needs to develop. Skills, knowledge, and behaviors measured include language and literacy, mathematics, social and personal skills, science, social studies, physical development and fitness, and creative arts; and
- The Florida Assessments for Instruction in Reading (FAIR) developed by DOE in partnership with the Florida Center for Reading Research. FAIR is comprised of a progress monitoring assessment of letter naming ability and phonemic awareness and a diagnostic assessment measuring listening comprehension and vocabulary.⁵⁰

⁴⁴ Section 435.04(1)(a), F.S. Form OEL-VPK 20, the Statewide Provider Agreement for the VPK Program, which is incorporated by reference in rule 6M-8.301, F.A.C., requires the local criminal records check. Florida's Office of Early Learning, *Voluntary Prekindergarten Education Program Statewide Provider Agreement*, 2 (July 15, 2010), available at [http://www.floridaearlylearning.com/sites/www/Uploads/Form_OEL-VPK_20_07-15-10_06-13-13\(ENABLED\).pdf](http://www.floridaearlylearning.com/sites/www/Uploads/Form_OEL-VPK_20_07-15-10_06-13-13(ENABLED).pdf).

⁴⁵ Sections 435.04(2), 435.06, 1002.55(3)(d), 1002.61(5), and 1002.63(5), F.S. However, the DCF may, under certain circumstances, grant exemptions from disqualifying offenses for VPK program instructors of private providers. Section 435.07, F.S.

⁴⁶ Section 1002.67(2)(a), F.S.

⁴⁷ Section 1002.67(2)(b), F.S.

⁴⁸ Section 1002.67(4), F.S.

⁴⁹ Section 1002.69(1), F.S.; Florida's Office of Early Learning, *VPK Prekindergarten Readiness Rate Resources for Parents*, <https://vpk.fldoe.org/InfoPages/ParentInfo.aspx> (last visited June 12, 2014).

⁵⁰ Florida's Office of Early Learning, *VPK Prekindergarten Readiness Rate Resources for Parents*, <https://vpk.fldoe.org/InfoPages/ParentInfo.aspx> (last visited June 12, 2014); Florida's Office of Early Learning, *Florida Kindergarten Readiness Screener (FLKRS)*, http://www.floridaearlylearning.com/providers/provider_resources/florida_kindergarten_readiness_screener.aspx (last visited June 12, 2014).

What is a kindergarten readiness rate?

The kindergarten readiness rate is the percentage of program completers who score ready for kindergarten on both FAIR and ECHOS. It is calculated by dividing the number of program completers who score ready on both measures by the number of program completers who were screened on both measures.⁵¹ The law requires the implementation of a pre- and post-assessment using the Florida VPK Assessment tool to calculate the learning gains made by children while attending VPK. Once implemented, learning gains will be used as a component of the kindergarten readiness rates. This will occur in the 2014-15 program year, when two years of data have been collected and a definition of learning gains is formulated based upon valid assessment data.⁵²

To be considered ready for kindergarten, a kindergarten student's score on FAIR must demonstrate for that student probability of reading success of .67 or higher; and the student's assessment on ECHOS must indicate that the student is either "emerging/progressing" or "demonstrating." In order for a public school or private prekindergarten provider to be considered successful in delivering the VPK program, 70 percent of children served by that school or provider must demonstrate kindergarten readiness. A public school or private prekindergarten provider failing to meet this standard will be placed on probation.⁵³ OEL must periodically adopt a minimum kindergarten readiness rate.⁵⁴

A kindergarten readiness rate is calculated for each public school or private prekindergarten provider with at least four children who complete the VPK program and have screening results for both portions of the FLKRS.⁵⁵ Students not taking the statewide kindergarten screening are not included in the calculation of a kindergarten readiness rate.⁵⁶

Florida Kindergarten Readiness Screening Results 2010-11 to 2012-13⁵⁷

VPK Enrollment Year	2010-11	2011-12	2012-13
Ready on ECHOS			
Total Students Tested	186,735	191,296	193,385
VPK Completers	114,305	115,846	118,102
Percent Ready	94.56%	94.90%	94.93%
VPK Non-Completers	28,197	28,203	29,310
Percent Ready	89.50%	90.09%	89.57%
Non-VPK Participants	44,233	47,247	45,973
Percent Ready	84.38%	83.81%	84.47%
Ready on FAIR			
Total Students Tested	150,949	157,623	158,104
VPK Completers	95,143	104,076	103,875
Percent Ready	78.65%	81.18%	83.23%
VPK Non-Completers	20,222	21,947	22,363
Percent Ready	62.83%	66.29%	67.97%
Non-VPK Participants	35,584	31,600	31,866
Percent Ready	58.22%	57.16%	57.52%
Ready on Both ECHOS and FAIR			
Total Students Tested	136,724	144,152	147,031
VPK Completers	90,493	96,867	97,928
Percent Ready	76.89%	79.37%	81.20%

⁵¹ Section 1002.69(5), F.S.; see also rule 6M-8.601 (3), F.A.C. A student is considered to have completed the VPK program if he or she attends the VPK program for 70 percent or more of the total number of instructional hours (*i.e.*, 378 hours of a 540-hour school-year program or 210 hours of a 300-hour summer program). Rule 6M-8.601 (3), F.A.C.

⁵² Section 1002.69(5), F.S.

⁵³ Rule 6M-8.601(3)(b)1., F.A.C.

⁵⁴ Section 1002.69(6), F.S.

⁵⁵ Rule 6M-8.601(3)(a), F.A.C.

⁵⁶ Section 1002.69 (5), F.S.

⁵⁷ Email, Office of Early Learning, Legislative Affairs Director (Sept. 22, 2014).

VPK Non-Completers	18,970	20,005	20,664
Percent Ready	61.70%	64.00%	65.48%
Non-VPK Participants	27,261	27,280	28,439
Percent Ready	52.99%	54.40%	54.75%

What are the accountability requirements for low-performing public schools and private prekindergarten providers?

If the kindergarten readiness rate of a public school or private prekindergarten provider falls below the minimum kindergarten readiness rate adopted by OEL, the ELC or school district, as applicable, must:

- Require the public school or private prekindergarten provider to submit a school improvement plan for approval by the school district or ELC, as applicable, and implement the plan;
- Place the public school or private prekindergarten provider on probation; and
- Require corrective actions including the use of a OEL-approved curriculum or a staff development plan to strengthen instruction in language development and phonological awareness.

A public school or private prekindergarten provider that is placed on probation must continue the required corrective actions until it meets the minimum kindergarten readiness rate.⁵⁸

If a public school or private prekindergarten provider remains on probation for two consecutive years and fails to meet the minimum kindergarten readiness rate, and is not granted a good cause exemption by OEL, OEL must require the ELC or school district, as applicable, to remove the private provider or school from eligibility to deliver the VPK program and receive state funds for such program for a period of five years.⁵⁹

What is a good cause exemption?

A good cause exemption releases a public school or private prekindergarten provider from being determined ineligible to deliver the VPK program and receive state funds for the VPK program. Upon request by a public school or private prekindergarten provider that remains on probation for two consecutive years, subsequently fails to meet the minimum kindergarten readiness rate, and shows good cause, OEL may grant such provider or school a good cause exemption. Such exemption is valid for one year, and may be renewed upon request by the public school or private prekindergarten provider.⁶⁰ A public school or private prekindergarten provider that receives a good cause exemption must continue to implement its improvement plans and take corrective actions until such school or provider meets the minimum kindergarten readiness rate.⁶¹

Request by a public school or private prekindergarten provider to OEL for good cause exemption or renewal of such exemption must include the following:

- Submission of data by the public school or private prekindergarten provider which documents student achievement and learning gains, as measured by a state-approved pre- and post-assessment.⁶²
- Submission and review of data available from the respective ELC or district school board, DCF, local licensing authority, or an accrediting association, as applicable, relating to the public school's or private prekindergarten provider's compliance with state and local health and safety standards.

⁵⁸ Section 1002.67(4)(c), F.S.

⁵⁹ *Id.*

⁶⁰ Section 1002.69(7)(a), F.S.

⁶¹ Sections 1002.69(7)(e) and 1002.67(3)(c)2., F.S.

⁶² Contingent upon legislative appropriation, each public school or private prekindergarten provider in the VPK program must implement an evidence-based pre- and post-assessment approved by the State Board of Education. Approval of such assessment must be based on validity, reliability, developmental appropriateness, and design of the assessment that measures student progress on domains including, but not limited to, early literacy, numeracy, and language. In 2013, the Florida Legislature appropriated \$4,266,892 to implement the VPK program assessment developed by DOE in collaboration with the Florida Center for Reading Research to be used to conduct pre- and post-assessments as required in s.1002.67(3)(a), F.S. Specific Appropriation 72, s. 2, ch. 2013-40, L.O.F.. In 2014, the Legislature appropriated \$1.6 million to purchase and implement such assessments. Specific Appropriation 90, s. 2, ch. 2014-51, L.O.F.

- Submission and review of data available to OEL on the performance of the children served and the calculation of the public school's or private prekindergarten provider's kindergarten readiness rate.⁶³

A good cause exemption must not be granted to any private prekindergarten provider that has any class I violations or two or more class II violations within the 2 years preceding the provider's or school's request for the exemption.⁶⁴

OEL must notify the applicable ELC of the good cause exemption granted to a private prekindergarten provider within the coalition's service area, and direct that coalition to not remove the provider from eligibility to deliver the VPK program.⁶⁵

Low Performing VPK Program Providers 2008-09 to 2012-13⁶⁶					
	2008-09	2009-10	2010-11	2011-12	2012-13
Total Providers	6,051	6,384	6,712	6,809	6,776
Total Providers Rated	5,472 (90%)	5,885 (92%)	6,076 (91%)	6,077 (89%)	6,116 (90%)
Total Low-Performing Providers	787	798	2,123	1,711	1,351

VPK Provider Good Cause Exemptions				
VPK Program Year	2009-10	2010-11	2011-12	2012-13
Valid Applications Received	23	119	134	196
Exemptions Awarded	23	55	63	137

What responsibilities does the Department of Children and Families or local licensing agency have regarding the VPK program?

DCF or, if applicable, the local licensing agency issues licenses to child care facilities, FDCHs, and LFCCHs that provide the VPK Program and enforce licensing requirements.⁶⁷ Licensure is optional for FDCHs; however, homes that choose not to be licensed must annually register with DCF or the local licensing agency, as applicable.⁶⁸ All child care provider licenses must be renewed annually.⁶⁹

DCF or, if applicable, the local licensing agency conducts inspections of all licensed child care providers to determine initial and renewal licensure and periodically assesses continued compliance with licensing standards. Licensed child care facilities are inspected three times annually. LFCCHs and licensed FDCHs are inspected twice annually. In each case, the first inspection is an announced initial or renewal licensing inspection. Subsequent inspections are unannounced. DCF does not have authority to inspect registered FDCHs.⁷⁰

⁶³ Section 1002.69(7)(b)-(c), F.S.

⁶⁴ Section 1002.69(7)(d), F.S. DCF classifies licensing violations as class I, II, and III violations. Class I violations are the most serious in nature, pose an imminent threat to a child including abuse or neglect and which could or does result in death or serious harm to the health, safety or well-being of a child. Class II violations are less serious in nature than Class I violations, and could be anticipated to pose a threat to the health, safety or well-being of a child, although the threat is not imminent. Rule 65C-22.010(1)(d), F.A.C.

⁶⁵ Section 1002.69(7)(f), F.S.

⁶⁶ Email, Office of Early Learning, Legislative Affairs Director (Sept. 22, 2014).

⁶⁷ See ss. 402.301-319, F.S., and Parts V and VI, ch. 1002, F.S.

⁶⁸ Section 402.313(1), F.S.; see Department of Children and Families, *Registered Family Day Care Homes*, <http://www.myflfamilies.com/service-programs/child-care/registered-family-day-care> (last visited Aug. 29, 2014). A county may by ordinance require that FDCHs be licensed. Fifteen counties have enacted such ordinances -- Brevard, Broward, Clay, Duval, Hernando, Hillsborough, Manatee, Miami-Dade, Nassau, Palm Beach, Pasco, Pinellas, Polk, Sarasota, and St. Johns. *Id.*

⁶⁹ Sections 402.305 and 402.306-402.308, F.S.

⁷⁰ Sections 402.308 and 402.311, F.S. Licensing standards are found throughout ss. 402.301-402.319, F.S., and ch. 65C-22, F.A.C.

DCF inspects licensed child care facilities based upon 354 total licensing standards in 63 categories. Licensed FDCHs are inspected based upon 261 total standards in 38 categories. LFCCHs are inspected based upon 321 total standards in 55 categories.⁷¹ DCF rule classifies licensing violations as follows:

- Class I violations are the most serious in nature, pose an imminent threat to a child including abuse or neglect and which could or does result in death or serious harm to the health, safety or well-being of a child.
- Class II violations are less serious in nature than Class I violations, and could be anticipated to pose a threat to the health, safety or well-being of a child, although the threat is not imminent.
- Class III violations are less serious in nature than either Class I or Class II violations, and pose a low potential for harm to children.⁷²

Class I violations include serious threats to health and safety, e.g., failure to report child abuse, child abuse by child care personnel, leaving children alone with personnel who have not been background screened, transporting children in vehicles without enough seat belts, and leaving a child in a vehicle while on a field trip.⁷³ DCF or a local licensing agency may impose sanctions for violations, including fines, probation, or license suspension or revocation.⁷⁴

What funding is provided for the VPK program?

A separate base student allocation per full-time equivalent student in the VPK program is provided in the General Appropriations Act (GAA) for a school-year program and for a summer program.⁷⁵ Each county's allocation per full-time equivalent student in the VPK program must be calculated by multiplying the base student allocation⁷⁶ provided in the GAA by the county's district cost differential.⁷⁷ Each public school or private prekindergarten provider must be paid according to the county's allocation per full-time equivalent student.⁷⁸

OEL has established payment procedures and a uniform student attendance policy used for funding purposes.⁷⁹ Funds are distributed monthly to ELCs for payments to public schools or private prekindergarten providers.⁸⁰ Each ELC is advanced funds based on projected attendance. Once a public school or private prekindergarten provider begins delivery of VPK program services, the parent of each student in the VPK program must verify and certify the student's attendance each month for the prior month, and submit the monthly verification of the student's attendance to the public school or private prekindergarten provider.⁸¹ Payments disbursed after the initial advance payment are reconciled based on actual attendance.⁸²

⁷¹ *Id.*; ch. 65C-22, F.A.C.

⁷² Rule 65C-22.010(1)(d), F.A.C.

⁷³ *See, e.g.*, Florida Department of Children and Families, *Child Care Facility Classification Summary* (July 2012), available at [http://ccrain.fl-dcf.org/\(X\(1\)\)/documents/2/443.pdf#page=1](http://ccrain.fl-dcf.org/(X(1))/documents/2/443.pdf#page=1).

⁷⁴ Section 402.310(1), F.S.

⁷⁵ Section 1002.71(3), F.S.

⁷⁶ Base student allocation for a school-year program must be "equal for each student, regardless of whether the student is enrolled in a school-year prekindergarten program delivered by a public school or a private prekindergarten provider. The base student allocation for a summer prekindergarten program [must] be equal for each student, regardless of whether the student is enrolled in a summer prekindergarten program delivered by a public school or private prekindergarten provider." Section 1002.71(3)(a), F.S.

⁷⁷ Section 1002.71(3)(b), F.S. The district cost differential must be calculated by "adding each district's price level index as published in the Florida Price Level Index for the most recent 3 years and dividing the resulting sum by 3. The result for each district [must] be multiplied by 0.008 and to the resulting product [must] be added 0.200; the sum thus obtained [must] be the cost differential for that district for that year." Section 1011.62(2), F.S.

⁷⁸ Sections 1002.71(3)(b) and 1011.62(2), F.S.

⁷⁹ Section 1002.71(5)(b) and (6)(d), F.S.; *see also* rule 6M-8.204, F.A.C.

⁸⁰ Section 1002.71(5)(b), F.S.

⁸¹ Section 1002.71(6)(b)1.-2., F.S.

⁸² Section 1002.71(5)(b), F.S.

Each ELC must report student enrollment to OEL on a monthly basis. ELCs may not amend student enrollment count for the prior fiscal year after December 31 of the subsequent fiscal year.⁸³

VPK Program Funding: FYs 2010-11 to 2014-15					
	2010-11⁸⁴	2011-12⁸⁵	2012-13⁸⁶	2013-14⁸⁷	2014-15⁸⁸
Total Funding	\$404,372,806	\$394,921,554	\$413,312,552	\$404,927,801	\$396,065,224
Per Student Funding: School-Year Program	\$2,562	\$2,383	\$2,383	\$2,386	\$2,437
Per Student Funding: Summer Program	\$2,179	\$2,026	\$2,026	\$2,028	\$2,080

The State Constitution does not require the VPK program to provide transportation for students,⁸⁹ and current law does not earmark funding for transportation.⁹⁰ However, a public school or private prekindergarten provider may use part of its VPK program funding for student transportation.⁹¹

Where can I get additional information?

Florida's Office of Early Learning

(866) 357-3239

<http://www.floridaearlylearning.com/>

Florida Department of Children and Family Services

Child Care Services Program Office

(850) 488-4900

<http://www.myflfamilies.com/service-programs/child-care>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

Florida House of Representatives

Appropriations Committee

(850) 717-4810

<http://www.myfloridahouse.gov>

Florida House of Representatives

Health & Human Services Committee

(850) 717-4840

<http://www.myfloridahouse.gov>

⁸³ Section 1002.71(3)(c), F.S.

⁸⁴ Specific Appropriations 75, s. 2, and 2246, s. 6, ch. 2010-152, L.O.F.

⁸⁵ Specific Appropriations 66, s. 2, and 2036, s. 6, ch. 2011-69, L.O.F.

⁸⁶ Specific Appropriation 78, s. 2, ch. 2012-118, L.O.F.

⁸⁷ Specific Appropriation 82, s. 2, ch. 2013-40, L.O.F.

⁸⁸ Specific Appropriation 92, s. 2, ch. 2014-51, L.O.F.

⁸⁹ Art. IX, s. 1(b)-(c), Fla. Const.

⁹⁰ See s. 1002.71(9), F.S.

⁹¹ Sections 1002.71(9) and 1011.68, F.S.

K-12 Education

Students & Parents



What are interscholastic extracurricular activities?

Interscholastic extracurricular activities are any school-authorized athletic or education-related activities for students that occur during or outside of the regular instructional school day. Such activities include athletics, marching band, chorus, and academic clubs.¹

What eligibility requirements must a high school student meet to participate in interscholastic extracurricular activities?

Generally speaking, the eligibility requirements for participation in interscholastic extracurricular activities include academic and conduct requirements and residency requirements. To be eligible for participation in interscholastic extracurricular activities, a high school student² must:

- Maintain either a 2.0 grade point average (GPA) or above on a 4.0 scale in the semester preceding participation; or a cumulative 2.0 GPA or above in the courses required for high school graduation;
- Execute and fulfill the requirements of an academic performance contract if the student's GPA falls below 2.0 in the courses required for graduation. An academic performance contract is an agreement between the student, the district school board, the appropriate governing association, and the student's parents, which at a minimum requires the student to attend summer school or its graded equivalent, between grades nine and 10 or grades 10 and 11, as necessary;
- Have a cumulative GPA of 2.0 or above in the courses required for graduation in his or her junior or senior year; and
- Maintain satisfactory conduct. The eligibility of a student who is convicted of, or found to have committed, a felony or delinquent act that would have been a felony if committed by an adult is governed by district school board policy.³

A school district may set additional eligibility requirements, but the requirements must not make participation less accessible to home education students than to other students.⁴ A student may participate in high school athletics at the school in which he or she first enrolls each school year or, at the school in which the student becomes a candidate for an athletic team by engaging in a practice prior to enrolling in the school.⁵

A student may also be eligible to participate in interscholastic extracurricular activities in the school to which the student has transferred during the school year if the transfer is made by a deadline established by the Florida High School Athletic Association (FHSAA),⁶ which may not be prior to the date authorized for the beginning of practice for the sport. However, the eligibility of a transfer student is subject to the receiving district school board's or private school's transfer student eligibility policy.⁷

¹ See s. 1006.15(2), F.S. FHSAA bylaws state that "Interscholastic athletic programs encompass all activities relating to competitive sport contests involving individual students or teams of students from one school against individual students or teams of students from another school. Such activities include, but are not limited to, tryouts, offseason conditioning, summer workouts, preseason conditioning, in-season practice and contests." Bylaw 9.2.1.2, FHSAA.

² For purposes of athletics in public K-12 schools, high school includes grade six through 12. Section 1006.20(1), F.S.

³ Section 1006.15(3)(a), F.S.

⁴ Section 1006.15(4), F.S.

⁵ Section 1006.20(2)(a), F.S.

⁶ The FHSAA is the designated governing nonprofit organization of athletics in Florida public schools. Section 1006.20(1), F.S.

⁷ Section 2, ch. 2012-188, L.O.F.; 1006.20(2)(a), F.S.

Additionally, a student who transfers from a charter school or a home education program to a public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student has a successful evaluation from the previous school year.⁸

A public or private school student who has not maintained academic eligibility may not participate in interscholastic extracurricular activities as a charter school or a home education student until the student successfully demonstrates educational progress for one grading period.⁹

What is the state law and FHSAA policy regarding the recruitment of student athletes?

Florida law requires the FHSAA to adopt bylaws prohibiting the recruitment of student athletes. Currently, the bylaws prohibit member schools from recruiting student athletes for athletic purposes. "Athletic recruiting" is "any effort by a school employee, athletic department staff member, or representative of a school's athletic interests to pressure, urge or entice a student to attend that school for the purpose of participating in interscholastic athletics." The bylaws set forth specific behaviors that constitute recruiting, as well as identify persons who are considered to represent a school's athletic interests.¹⁰

If it is determined that a school has recruited a student in violation of FHSAA bylaws, the FHSAA may require the school to participate in a higher classification for the sport in which the recruited student competes for a minimum of one classification cycle, in addition to any other appropriate fine and sanction imposed on the school, its coaches, or adult representative. A student may be declared ineligible based upon violation of recruiting rules only if the student or parent has:

- Falsified any enrollment or eligibility document; or
- Accepted any benefit or any promise of benefit not generally available to the school's students or family members or is based in any way on athletic interest, potential, or performance.¹¹

The bylaws may not prospectively limit the competition of student athletes for rule violations of their adult representatives, their school or its coaches. A student athlete may not be unfairly punished for eligibility or recruiting violations perpetrated by a teammate, coach, or administrator. Contests may not be forfeited for inadvertent eligibility violations unless the coach or a school administrator should have known of the violation. Contests may not be forfeited for other eligibility violations or recruiting violations in excess of the number of contests that the coaches and adult representatives responsible for the violations are prospectively suspended.¹²

Although the law requires FHSAA to allow transfer eligibility in its bylaws, it authorizes each district school board and private school to adopt policies regarding such transfers.¹³ Consequently, some school districts have adopted policies that require transfer students to wait one calendar year before being eligible to compete in athletics, only allow transfer eligibility if the student makes a full and complete move with all members of his or her household, or require transfer students to compete at the junior varsity level for a period of one year.¹⁴

What processes must FHSAA employ in making ineligibility determinations?

The FHSAA must adopt bylaws specifying the process and standards for eligibility determinations. The bylaws must provide that:

⁸ Section 1006.15(3)(c)6.-(d)6., F.S.

⁹ Section 1006.15(3)(c)7.-(d)7., F.S.

¹⁰ Section 1006.20(2)(b), F.S.; Policy 36, FHSAA.

¹¹ Section 1006.20(2)(b), F.S.

¹² Section 1006.20(2)(i), F.S.

¹³ Section 1006.20(2)(a), F.S.

¹⁴ See, e.g., Policy 4.43, Clay County School Board and Policy 8.801, Bay County School Board. These types of residency and transfer policies are similar to the FHSAA residency and transfer bylaws that resulted in the creation of the Student Athlete Recruiting Task Force and recent legislative changes requiring the FHSAA to change its bylaws regarding recruiting.

- Ineligibility must be established by clear and convincing evidence;
- Student athletes, parents, and schools must have notice of the initiation of any investigation or other eligibility inquiry and may present information or evidence to the investigator and to the individual making the eligibility determination;
- Eligibility determinations must be made by the executive director or designee for an unbiased and objective determination of eligibility; and
- A determination of ineligibility must be made in writing, setting forth the findings of fact and specific violation upon which the decision is based.¹⁵

If a student athlete is determined to be ineligible by the FHSAA's executive director, the member school principal may appeal the ruling if the principal takes issue with the ruling or if the student requests an appeal.¹⁶ Appeals of ineligibility determinations must be expedited so that disposition of the appeal can be made before the end of the applicable sports season, if possible.¹⁷ A school or student filing the appeal may present information and evidence that was not available at the time of the initial determination or if the determination was not made by an unbiased, objective individual using a process allowing full due process rights to be heard and to present evidence.¹⁸ Initial appeals of ineligibility determinations are heard by the Sectional Appeals Committee. An unfavorable decision on the initial appeal may be appealed to the Sectional Appeals Committee if the student athlete wishes to submit new evidence in his or her defense. An unfavorable decision on the initial appeal may be appealed to the FHSAA Board of Directors if the student athlete has no new evidence to submit in his or her defense.¹⁹

Are students who are enrolled in public schools of choice, private schools, or home education able to participate in interscholastic athletics at a public school?

Yes, but only under certain circumstances. Students who are enrolled in a charter school; the Florida Virtual School; a home education program; a magnet school, alternative school, or other public school of choice may participate in interscholastic athletics at a traditional public school, if requirements are met.²⁰ Such eligibility is provided because FLVS and home education do not field athletic teams and most other schools of choice offer limited or no athletic programs. Generally speaking, such students must:

- Demonstrate educational progress or meet GPA requirements;
- Meet the same residency requirements as other students in the school;
- Meet the same standards of acceptance, behavior, and performance required of other participating students; and
- Register their intent to participate in interscholastic extracurricular activities with the school before the beginning date of the season for the activity for which the student wishes to participate.²¹

The conditions placed upon participation vary. For example FLVS and home education students may play any sport offered by the traditional public school. Charter school students may play any sport offered by the traditional public school that is not offered by the charter school. Fewer options are available to magnet school and alternative school students. They may only play a sport at a traditional public school if their school does not offer any sport programs at all.²²

¹⁵ Section 1006.20(2)(g), F.S. As an alternative, the law authorizes FHSAA to instead provide the procedural safeguards of ss. 120.569 and 120.57, F.S., making appropriate provision for appointment of unbiased and qualified hearing officers. Section 1006.20(2)(h), F.S. Florida courts have held that these due process protections are applicable to all eligibility determinations, not just those that pertain to recruiting violations. *Florida High School Athletic Ass'n v. Rosenberg ex rel. Rosengberg*, 177 So.3d 825 (Fla 4th DCA 2013).

¹⁶ Bylaw 10.4.1, FHSAA.

¹⁷ Section 1006.20(7)(f), F.S.

¹⁸ Section 1006.20(7)(g), F.S.

¹⁹ Bylaws 10.5.5 and 10.5.6, FHSAA.

²⁰ Section 1006.15(3)(c), (d), and (e), F.S. (home education, charter schools, and FLVS); bylaws 9.2.2.4 and 9.2.2.4.1, FHSAA (alternative schools and magnet schools).

²¹ Section 1006.15(3)(c), (d), and (e), F.S. Generally speaking, the student must be allowed to participate in curricular activities if such participation is a requirement for an extracurricular activity. Section 1006.15(3)(c)5., (d)5., and (e)5., F.S.

²² Section 1006.15(3)(c), (d), and (e), F.S.; bylaw 9.2.2.4, FHSAA.

A student attending a private middle school or high school may participate in interscholastic or intrascholastic sports at a public school that is zoned for the physical address at which the student resides if the private school where the student is enrolled is not a member of the FHSAA (non-FHSAA member), has an enrollment of less than 125 students, and does not offer any interscholastic or intrascholastic athletic programs.²³

The FHSAA and district school board must adopt guidelines that establish:

- Registration deadlines and procedures for each sport; and
- Student participation requirements that include, but are not limited to, the same standards of eligibility, acceptance, behavior, educational progress, and performance which apply to students attending FHSAA member public and private schools.²⁴

A private school student may only participate at the public school in which the student first registers or is a candidate for participation by engaging in a practice. The parents of a participating private school student are responsible for transporting the student to and from the public school. The student's private school, the public school where the student participates in athletics, the district school board, and the FHSAA are exempt from liability arising from any injury that occurs during such transportation.²⁵

Eligibility by School Type²⁶		
Educational Choice Program	The district school at which the student may participate:	Activity the student may participate in:
FLVS	Zoned school or any public school they could attend through controlled open enrollment	Any activity (because FLVS does not offer any extracurriculars)
Homeschool	Zoned school or any public school they could attend through controlled open enrollment	Any activity (because the student does not attend a school)
Charter School	Zoned school or any public school they could attend through controlled open enrollment	<ul style="list-style-type: none"> • Any activity that is not offered by the charter school • May participate in that particular activity <u>even if the charter school offers other activities</u>
Magnet School or Alternative School	Zoned school or any public school they could attend through controlled open enrollment	Any <u>SPORT</u> , but <u>only if</u> their school does not offer any sports programs
FHSAA Non-Member Private School	Zoned school.	Any <u>SPORT</u> , but <u>only if</u> the school: <ul style="list-style-type: none"> • Is not an FHSAA member; • Enrolls 125 students or less; and • Does not offer any sports programs

²³ Section 1006.15(8), F.S. A private school that has a student who wishes to participate in a public school athletic program must make all student records, including, but not limited to, academic, financial, disciplinary, and attendance records, available upon request by the FHSAA. *Id.*

²⁴ Section 1006.15(8), F.S.

²⁵ *Id.*

²⁶ Section 1006.15(3) and (8), F.S.

Do students who wish to participate in interscholastic athletic activities have to pass a medical evaluation prior to participation?

Yes. A student wishing to participate in interscholastic athletic activities must pass an annual medical evaluation administered by a licensed medical practitioner. The evaluation form must incorporate the recommendations of the American Heart Association for participation in cardiovascular screening and advise students to complete a cardiovascular assessment. The evaluation must indicate that the student is physically capable of participating in interscholastic athletic competition.²⁷

A student may participate in interscholastic athletics without undergoing a medical evaluation if his or her parent files a written objection stating the evaluation conflicts with the student's religious beliefs. In such case, a person or entity in a position to rely on medical evaluation results may not be held liable for the injury or death of a student during an interscholastic athletic activity which results from a medical condition that would have been detected by an evaluation.²⁸

May student athletes be tested for anabolic steroid use?

Yes. Federal law authorizes school districts to conduct student testing for drugs including anabolic steroids.²⁹ In the past, Florida school districts have exercised local authority in determining whether to implement student drug testing programs, but few districts have conducted such programs.³⁰

The FHSAA prohibits the use of anabolic steroids or other performance-enhancing drugs by student athletes and the use of such substances is considered unsportsmanlike conduct.³¹ A student athlete found to be using anabolic steroids or other performance-enhancing drugs is ineligible to compete in any interscholastic contest until medical evidence provides that the student's system is free of such substances. A coach who condones or facilitates a student athlete's use of steroids will be ineligible to coach any interscholastic contest for a minimum of one year.³²

What is the state law and FHSAA policy regarding the nature and risk of concussion and head injury?

Florida law requires the FHSAA to adopt guidelines to educate athletic coaches, officials, administrators, and student athletes and their parents of the nature and risk of concussion and head injury.³³ The FHSAA must adopt bylaws or policies that require the parent of a student who is participating in interscholastic athletic competition, or is a candidate for an interscholastic athletic team, to sign and return an informed consent that explains the nature and risk of concussion and head injury, including the risk of continuing to play after a concussion or head injury.³⁴ The FHSAA must also adopt bylaws or policies that require each student athlete who is suspected of sustaining a concussion or head injury in a practice or competition to be immediately removed from the activity. A student athlete who has been removed from an activity may not return to practice or competition until the student submits to the school a written medical clearance to return.³⁵ The medical clearance must state that the student athlete no longer exhibits signs, symptoms, or behaviors consistent with a concussion or other head injury. The medical clearance must be authorized by a health care practitioner

²⁷ Section 1006.20(2)(c), F.S.

²⁸ Section 1006.20(2)(d), F.S.

²⁹ 20 U.S.C. s. 7131; *see ss.* 1001.32(2) and 1001.41(5), F.S.

³⁰ OPPAGA, *Progress Report: Steroid Education Programs Are Available, But Most School Districts Still Do Not Test*, Report No. 07-25, at 2 and 4 (Apr. 2007), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0725rpt.pdf>.

³¹ Bylaw 7.2.6, FHSAA.

³² Policy 31, FHSAA.

³³ Section 1006.20(2)(j), F.S. Florida law imposes similar requirements on independent sanctioning authorities for youth athletes. Section 943.0438, F.S.

³⁴ Section 1006.20(2)(l), F.S.

³⁵ *Id.*; bylaw 6.1.1, FHSAA; Policy 40, FHSAA.

trained in the diagnosis, evaluation, and management of concussions as defined by the Sports Medicine Advisory Committee³⁶ of the FHSAA.³⁷

Are FHSAA member schools required to purchase insurance?

Yes. FHSAA bylaws require each member school to verify that medical, catastrophic accident, and catastrophic disability insurance coverage is provided for each of its student athletes. Each member school must also purchase liability insurance coverage.³⁸ If a student athlete is not covered by his or her parent's medical insurance coverage, then the athlete's school must purchase coverage. The student may be required to purchase the coverage individually or the school may purchase a blanket policy for all of its student athletes.³⁹

Any district school board, school athletic association, or school may purchase insurance, or may self-insure, school students against injury sustained from engaging and participating in athletic activities conducted or sponsored by the district school board, association, or school in which the student enrolls. Any such entity may add a surcharge to the fee charged for admission to athletic events to purchase such insurance or to provide self-insurance. Any district school board may use district school board funds to pay for insurance or self-insurance.⁴⁰ Moreover, any insurance provided by district school boards for participants in extracurricular activities must cover participating home school students. However, the home school student must pay the additional premium, if any, for such coverage.⁴¹

Where may I obtain Additional Information?

Florida High School Athletic Association

1801 NW 80th Boulevard

Gainesville, FL 32606

(800) 461-7895

(352) 372-9551

<http://www.fhsaa.org>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

³⁶ The committee is composed of eight physicians licensed under ch. 458 or ch. 459 with at least one member licensed under ch. 459; one chiropractor licensed under ch. 460; one podiatrist licensed under ch. 461; one dentist licensed under ch. 466; three athletic trainers licensed under part XIII of ch. 468; and one member who is a current or retired head coach of a high school in the state. Section 1006.20(2)(m), F.S.

³⁷ Section 1006.20(2)(l), F.S.; bylaw 6.1.1, FHSAA; Policy 40, FHSAA.

³⁸ Bylaw 3.5.3, FHSAA.

³⁹ Policy 8, FHSAA.

⁴⁰ Section 1006.16, F.S.

⁴¹ Section 1006.15(7), F.S.



What entity oversees interscholastic athletics programs?

The Florida High School Athletic Association (FHSAA) is designated as the governing nonprofit organization for athletics in Florida public schools in grades 6 through 12. The FHSAA is not a state agency, but is assigned quasi-governmental functions. If the FHSAA fails to meet its obligations and responsibilities, the Commissioner of Education (commissioner) is directed to designate a nonprofit organization to manage interscholastic athletics with the approval of the State Board of Education.¹

The FHSAA operates as a representative democracy in which the sovereign authority is within the member schools. FHSAA member schools are divided along existing county lines into four administrative regions. Each region contains approximately the same number of member schools. Each member school appoints an official representative to the organization who must be the principal, an assistant principal, or an in-house athletic director.² FHSAA's governance structure consists of:

- A board of directors that serves as FHSAA's executive branch and has authority to, among other things, levy dues and fees, formulate administrative policies, and act as final decision-maker in disputes regarding student eligibility, member sanctions, and other FHSAA bylaws and policies.³
- A representative assembly that serves as FHSAA's legislative branch whose sole duty is to consider, adopt, or reject new FHSAA bylaws or amendments to existing bylaws.⁴
- A public liaison advisory committee that facilitates public input in FHSAA decision making processes; annually conducts public meetings in each of the four administrative regions; and annually evaluates the FHSAA and reports its findings, conclusions, and recommendations to the FHSAA Board of Directors, the commissioner, and to the respective education committees of the Florida Senate and the Florida House of Representatives.⁵
- Committees on appeals.⁶ There are two types of appeals committees – sectional appeals committees and an infractions appeal committee. The four sectional appeals committees are geographically-based and issue decisions on student eligibility cases and other requests for waivers of rules or appeals filed

¹ Section 1006.20(1), F.S.

² Section 1006.20(3), F.S.; Articles 3 and 4 of the bylaws, FHSAA. FHSAA annually publishes its bylaws and administrative policies and procedures in the FHSAA Handbook. See FHSAA, *2014-15 FHSAA Handbook*, (Jan. 2014), available at <http://www.fhsaa.org/rules/fhsaa-handbook>.

³ Section 1006.20(4), F.S. The 16 member board is comprised of the commissioner or his or her designee, four public member school representatives elected from each of the four administrative regions, four nonpublic member school representatives elected from each of the four administrative regions, three representatives appointed by the commissioner, two district school superintendents, and two district school board members. *Id.*

⁴ Section 1006.20(5), F.S. The 60 member assembly is comprised of 30 public high school delegates, 16 private high school delegates, five middle school delegates, four district school superintendents elected from each of the four administrative regions, four district school board members elected from each of the four administrative regions, and the commissioner or his or her designee. *Id.*; FHSAA, *2014 Representative Assembly Roster of Delegates*, (2014), available at http://www.fhsaa.org/sites/default/files/orig_uploads/gov/assembly/2014/14_delegates.pdf.

⁵ Section 1006.20(6), F.S. The 15 member public liaison advisory committee is comprised of the commissioner or his or her designee; member public school principal; a member private school principal; a member school principal who is a member of a racial minority; an active athletic director; an active coach, who is employed full time by a member school; a student athlete; a district school superintendent; a district school board member; a member of the Florida House of Representatives; a member of the Florida Senate; a parent of a high school student; a member of a home education association; a representative of the business community; and a representative of the news media. *Id.*

⁶ Section 1006.20(7), F.S.

by member schools.⁷ The infractions appeals committee is appointed by the Board of Directors to decide appeals of schools found to have committed major violations.⁸

Who may become a member of the FHSAA?

Any high school, middle school, or combination school,⁹ including charter schools, virtual schools, private schools and home education cooperatives,¹⁰ may become a member of the FHSAA and participate in FHSAA activities. Membership is not mandatory for any school. All public and private schools are required to submit an application and pay an application fee to be considered for membership into the FHSAA. Annually, the FHSAA Board of Directors determines which schools will be granted membership.¹¹

FHSAA may not deny or discourage interscholastic competition between its member schools and non-FHSAA member Florida schools, including members of another athletic governing organization. The FHSAA may not take any retributory or discriminatory action against any of its member schools that participate in interscholastic competition with non-FHSAA member Florida schools.¹² FHSAA has adopted bylaws that require non-FHSAA member Florida schools that compete with FHSAA member schools to verify, among other things, that the school holds liability insurance coverage and that their student athletes meet the same eligibility requirements as member school student athletes, undergo medical evaluations, have medical insurance coverage, and submit liability waivers.¹³

How does the FHSAA regulate the conduct of its members?

The law states that the FHSAA bylaws “are to be the rules by which high school athletic programs, and the students who participate in them, are governed.”¹⁴ The bylaws require member schools to comply with all FHSAA bylaws and administrative policies and procedures.¹⁵ Each member school must, as a condition to membership in FHSAA, annually adopt the bylaws as the rules governing its interscholastic athletic programs.¹⁶ Such adoption acts as a contract between FHSAA and the member school.¹⁷ Member schools that violate the bylaws are subject to any disciplinary action determined to be appropriate by FHSAA.¹⁸ FHSAA bylaws define member school to include not just the institution, but also “its administration, faculty, athletic staff, student athletes, student body, and any other individual or group engaged in activities representing, supporting or promoting the athletic interests of the school.”¹⁹

The school principal is responsible for administration of all aspects of the school’s interscholastic athletic programs, including control over the actions of the administration and faculty; the athletic department staff and student-athletes; the student body, parents, and other spectators at athletic events; and any other individual or

⁷ Bylaw 4.5, FHSAA. Each sectional appeals committee is comprised of two elected public school representatives, one elected nonpublic school representative, one elected member representing public school districts, one elected nonpublic school accrediting association representative, an at-large member from an under-represented gender or race appointed by the Board of Directors, and one attorney living within the section. *Id.*

⁸ Bylaw 10.5.7.1, FHSAA. The infractions appeals committee is comprised of one public school school administrator; one public school member who is either a school administrator or district administrator; one private school administrator; one private school member, who is either a school administrator or a regional- or state-level administrator in a private school accrediting organization recognized by FHSAA; and one attorney. Bylaw 10.5.7.1.2, FHSAA.

⁹ A combination school is any school that serves both students in high school and the middle school grades; elementary, middle or high school grades combined; or elementary and middle grades combined, e.g., K-12, K-8, 6-12, or 7-12. Bylaw 3.2.2.3, FHSAA.

¹⁰ A “home education cooperative” is a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6 through 12. Bylaw 3.2.2.4, FHSAA..

¹¹ Bylaws 3.2.2 (types of member schools) and 3.7, FHSAA (procedures for admittance).

¹² Section 1006.20(1), F.S.

¹³ Bylaw 8.3.1, FHSAA.

¹⁴ Section 1006.20(1), F.S.

¹⁵ Bylaws 2.6 (compliance with rules), 3.3.1 (conditions of membership), and 3.5, FHSAA (obligations of membership).

¹⁶ Bylaw 3.3.1(d), FHSAA.

¹⁷ *Sult v. Gilbert*, 148 Fla. 31, 35 (1941).

¹⁸ *Sult*, 148 Fla. at 35; bylaw 2.6, FHSAA.

¹⁹ Bylaw 3.2.1, FHSAA.

group engaged in activities representing, supporting or promoting the athletic interests of the school.²⁰ A member school must monitor its athletic programs to assure compliance with FHSAA bylaws and other regulations, report instances of noncompliance to FHSAA, and take appropriate corrective actions to remedy the noncompliance.²¹

What penalties may the FHSAA impose for violations of its bylaws?

The Executive Director has the authority to invoke one or more of the following penalties against its member schools:

- Reprimand and warning against further violations;
- Fine;
- Forfeiture of an interscholastic athletic contest;
- Probation;²² or
- Expulsion, i.e., the involuntary termination of a school's FHSAA membership for one or more calendar years.²³

A coach may be prohibited or suspended from coaching, participating in, or attending any FHSAA-sponsored, -recognized, or -sanctioned athletic activity.²⁴

Students who violate FHSAA bylaws or other regulations will be ineligible to participate for a specified period of time.²⁵

What is the state law and FHSAA policy regarding persons who conduct investigations on behalf of the FHSAA?

The FHSAA must adopt bylaws that regulate persons who conduct investigations on behalf of the FHSAA. The bylaws must require an investigator to:

- Undergo level 2 background screening,²⁶ establishing that the investigator has not committed any disqualifying offense;²⁷
- Be appointed as an investigator by the executive director;
- Carry a photo identification card that shows the FHSAA name, logo, and the investigator's official title; and
- Adhere to specified guidelines.

²⁰ Bylaw 2.5, FHSAA.

²¹ Bylaw 3.5.2, FHSAA.

²² The types of probation that may be imposed are: 1) Administrative Probation—The school is reprimanded, fined and served notice that it is in a period of warning for a minimum of one calendar year. Additional violations during this time will result in increased penalties which may include expulsion; 2) Restrictive Probation—The school faces the same penalties as administrative probation, with the additional consequence of restriction from participation in championship competition in one or more sports, or other restrictions deemed appropriate by the Executive Director, for one or more calendar years; 3) Suspension Probation—The school faces the same penalties as administrative probation, with the additional consequence of suspension from one or more sports for one or more calendar years. Bylaw 10.1.2(d), FHSAA.

²³ Bylaw 10.1.2(a)-(e), FHSAA. Any member school that competes with a currently expelled school may subject itself to expulsion from the Association for one calendar year. Bylaw 10.1.2(e), FHSAA.

²⁴ Bylaw 10.1.3, FHSAA.

²⁵ See e.g. Bylaw 7.2.1.1, FHSAA (penalty for unsportsmanlike conduct).

²⁶ Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 53 offenses. Section 435.04, F.S.

²⁷ Background screening is not required if the investigator provides proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any professional licensure requirements so long as the investigator has not had a break in service from a position that requires level 2 screening for more than 90 days, and the investigator submits, under penalty of perjury, an affidavit verifying that the investigator has not committed any disqualifying offense and is in full compliance with the other requirements for investigators. Sections 1006.20(2)(e) and 1012.468(2)(g), F.S.

The guidelines require investigators to investigate only those alleged violations assigned by the executive director or the board of directors, conduct interviews on Monday through Friday between the hours of 9 a.m. and 7 p.m. only, unless previously agreed to by the interviewee, allow the parent of any student being interviewed to be present during the interview, and search residences or other private areas only with the consent of the student's parent and only with a parent or a representative of the parent present.²⁸

Is the FHSAA subject to an annual financial audit?

Yes. The law requires the FHSAA to have an annual financial audit of its accounts and records by an independent certified public accountant retained by it and paid from its funds. The accountant must furnish a copy of the audit report to the Auditor General. Additionally, FHSAA must keep adequate and complete records of all revenue and expenditures, including salaries, fees, expenses, travel allowances, and other expenses. These records must be open for inspection by the Auditor General.²⁹

Where may I obtain Additional Information?

Florida High School Athletic Association

1801 NW 80th Boulevard
Gainesville, FL 32606
(800) 461-7895
(352) 372-9551
<http://www.fhsaa.org>

Florida House of Representatives

Education Committee
(850) 717-4830
<http://www.myfloridahouse.gov>

²⁸ Section 1006.20(2)(e), F.S.

²⁹ Section 1006.19, F.S.



What student and parental rights are protected by the law?

Florida law requires that parents of public school students be provided accurate and timely information regarding their child's academic progress and informed of ways they can help their child to succeed in school.¹ Among other things, parents must be provided the student's report card and progress reports and school report cards and financial reports.² Students and their parents must be notified regarding student promotion policies, including policies for whole grade and mid-year promotion, 3rd grade retention, and remediating academic deficiencies.³ Additionally, the school district must notify high school students and their parents, in writing, of the requirements for a standard high school diploma, available diploma designations,⁴ and the eligibility requirements for state scholarship programs⁵ and postsecondary admissions.⁶

To inform parents and enable them to direct and control their child's education, the law specifies various parental notice requirements, requires parental consent before public schools may take certain actions, and allows parents to opt their child out of certain requirements for religious or other reasons.⁷ The law also allows students with certain medical conditions to administer their medications during the school day. These medications include asthma inhalers, epinephrine auto-injectors, diabetic supplies and equipment, and pancreatic enzyme supplements.⁸

Students and parents also have certain constitutional rights. Among other things, the U.S. Supreme Court has held that:

- Parents have a right to make decisions regarding their child's education under the Due Process Clause of the 14th amendment of the U.S. Constitution.⁹
- Generally speaking, student speech and religious expression are protected by the First Amendment of the U.S. Constitution.¹⁰
- Students are protected from unreasonable searches and seizures conducted by school officials under the Fourth Amendment of the U.S. Constitution.¹¹
- Students may abstain from reciting the pledge of allegiance under the First Amendment of the U.S. Constitution.¹²

¹ Section 1002.20, F.S. (introductory paragraph at beginning of section).

² Section 1002.20(14)-(16), F.S.

³ Section 1008.25(2), (4), (5), and (7), F.S.

⁴ Students who satisfy standard high school diploma requirements and complete specified credit and testing requirements may earn a Scholar designation. Students who satisfy standard high school diploma requirements and attain one or more industry certifications may earn a Merit designation. Section 1003.4285, F.S.

⁵ State law establishes several scholarship programs, such as the Bright Futures Scholarship Program, that enable qualified students to earn money for postsecondary education. Part B., ch. 1009, F.S.

⁶ Section 1003.4282(2), F.S.

⁷ See, e.g., s. 1002.20(3), F.S.

⁸ See, e.g., s. 1002.20(3)(h)-(k), F.S.

⁹ *Meyer v. State of Nebraska*, 262 U.S. 390, 400 (1923).

¹⁰ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 513-514 (1969) (speech); see *Westside Community Schools v. Mergens*, 496 U.S. 226, 232, 250 (1990) and *Chandler v. Siegelman*, 230 F.3d 1313, 1316-1317 (11th Cir., Ala., 2001), cert. denied, 533 U.S. 916 (2001) (religious expression).

¹¹ See, e.g., *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

¹² *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

When must public schools provide notice to parents?

The law specifies numerous instances in which public schools must provide notice to parents. Among other things, public schools must notify a student's parent regarding:

- Disciplinary actions taken against the student, such as corporal punishment, suspension, and expulsion and substance abuse violations committed by the student.¹³
- Interventions and consequences for compulsory school attendance violations if it is determined that the student is not enrolled in or attending school.¹⁴
- Education records privacy rights.¹⁵
- Ability to access their child's instructional materials through the district's local instructional improvement system.¹⁶
- Placement of the student in a dropout prevention and academic intervention program before such placement is made.¹⁷
- Assignment of the student to an out-of-field teacher.¹⁸
- The availability of a scholarship from the Opportunity Scholarship Program,¹⁹ John M. McKay Scholarship Program,²⁰ or Florida Tax Credit Scholarship Program, if the student is eligible.²¹

Additionally, each district school board must:

- Distribute to parents its code of student conduct.²²
- Establish an early warning system for any school that includes 6th, 7th, or 8th grades and notify parents if a student in such grades exhibits two or more early warning indicators.²³

When must public schools obtain parental consent before taking action regarding a student?

Among other things, public schools must obtain parental consent before:

- Conducting an initial evaluation for the purpose of determining eligibility for exceptional student education services.²⁴
- Providing classroom instructional accommodations to a student with a disability.²⁵
- Administering an alternate assessment to a student with a disability and providing instruction in the state standards access points curriculum.
- Placing a student with a disability in an exceptional student education center.²⁶
- Referring or offering contraceptive services to a student.²⁷

¹³ Sections 1002.20(3)(g) and (4), 1003.32(1)(k), 1006.07(1)(a), and 1006.08(1), F.S.

¹⁴ Section 1003.26(2), F.S.

¹⁵ Section 1002.22(2)(e), F.S.

¹⁶ Section 1006.283(2)(b)11., F.S.

¹⁷ Section 1002.20(2)(d), F.S.

¹⁸ Section 1012.42(1) and (2), F.S. This reporting requirement applies to teachers who are teaching subject matter that is outside the field in which the teacher is certified, outside the field that was the applicant's minor field of study, or outside the field in which the applicant has demonstrated sufficient subject area expertise. Section 1012.42(2), F.S.

¹⁹ Section 1002.38(3)(a)1., F.S.

²⁰ Section 1002.39(5)(a)1., F.S.

²¹ Section 1002.395(10)(a), F.S.

²² Section 1006.07(2), F.S.

²³ Section 1001.42(18)(b), F.S.

²⁴ Rule 6A-6.0331(3)(a), F.A.C.

²⁵ Section 1008.22(3)(c)3.b., F.S.

²⁶ Section 1003.5715(1), F.S.

²⁷ Sections 1002.20(3)(e) and 1006.062(7), F.S.

Are parents allowed to opt their child out of certain requirements?

Yes. The law authorizes a parent to opt his or her child out of the following requirements:

- A child attending public or private school may be exempted from the requirement of a school entry health examination or school immunization requirements if the parent submits a written request stating objections on religious grounds.²⁸
- A parent of a public school student may request and be granted permission for absence of the student from school for religious instruction or religious holidays.²⁹
- A parent of a public school student may request that their child be excused from:
 - Performing surgery or dissection in biological science classes.³⁰
 - The teaching of reproductive health or any disease, including HIV/AIDS.³¹
 - Reciting the pledge of allegiance.³²
 - Reciting the Declaration of Independence during “Celebrate Freedom Week.”³³
- A parent of a public high school student may request that the student be exempted from taking the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT).³⁴
- A student athlete may be exempted from the medical evaluation required for participation in interscholastic athletics upon written request by his or her parent specifying that such evaluation is contrary to the parent’s religious beliefs.³⁵

Additionally, each district school board must establish a policy enabling a parent to object to the child’s use of a specific instructional material and a process enabling parents to contest the district school board’s adoption of a specific instructional material.³⁶

What limits are placed upon the collection and dissemination of student information?

Federal and state law grants parents the right to inspect, review, and challenge the content of their child’s education records and, subject to certain exceptions, control the disclosure of education records or personally identifiable information³⁷ contained in the records.³⁸ State law prohibits public schools from collecting, obtaining, or retaining information on the political affiliation, voting history, religious affiliation, or biometric information of a student, a student’s parent, or a student’s sibling.³⁹ A student is not required to provide his or

²⁸ Sections 1002.20(3)(a)-(b) and 1003.22(5)(a), F.S.

²⁹ Sections 1002.20(2)(c) and 1003.21(2)(b), F.S.

³⁰ Sections 1002.20(3)(c) and 1003.47, F.S.

³¹ Sections 1002.20(3)(d) and 1003.42(3), F.S.

³² Section 1002.20(12), F.S.

³³ Section 1003.421(4), F.S.

³⁴ Section 1007.35(5), F.S.

³⁵ Section 1006.20(2)(d), F.S. In such cases, persons or entities in a position to otherwise rely on the results of such medical evaluation are not liable for injury or death of the student arising directly from athletic participation where an undisclosed medical condition that would have been revealed in the medical evaluation is a proximate cause of the injury or death. *Id.*

³⁶ Section 1006.28(1)(a)2.-3., F.S.

³⁷ FERPA defines “personally identifiable information” to include, without limitation, the names of the student and his or her parents or other family members; the address of the student or student’s family; the student’s social security number, student number, biometric record, or other personal identifier; indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name; and other information that could reasonably identify a student. 34 C.F.R. s. 99.3 (definition of “personally identifiable information”).

³⁸ 20 U.S.C. s. 1232g(a) and (b); 34 C.F.R. part 99. In cases of divorced, separated, or never-married parents, each parent is presumed to have rights under FERPA unless a state statute, court order, or other legally binding document provides to the contrary. 34 C.F.R. s. 99.4.

³⁹ Section 1002.222(1)(a), F.S. The law defines biometric information as information collected from the electronic measurement or evaluation of any physical or behavioral characteristics that may be personally identifiable, including characteristics of fingerprints, hands, eyes, and the voice. Thus, agencies or institutions may not use fingerprint scans, palm scans, retina or iris scans, face geometry scans, or voice prints. *Id.*

her social security number (SSN) and public schools are prohibited from conditioning enrollment or graduation upon submission of a SSN.⁴⁰

Does the U.S. Constitution protect a parent's right to direct and control their child's education?

Yes. Generally speaking, states have authority to require school-aged children to attend school and may enact reasonable regulations for all school-aged children and schools. However, such exercise of authority must not unreasonably infringe on a parent's right to direct and control their child's education.⁴¹ Thus, the U.S. Supreme Court has struck down state laws that deny parents the ability to select a school that serves their child's educational needs or reflects their cultural or religious values.⁴²

What religious freedoms do public school students have?

The relationship between religion and government in the United States is governed by the First Amendment to the U.S. Constitution, which both prevents the government from establishing religion and protects privately initiated religious expression and activities from government interference and discrimination.⁴³ Federal law requires the Secretary of the U.S. Department of Education (U.S. DOE) to issue guidance on constitutionally protected prayer in public schools.⁴⁴ The guidance specifies that students may:

- Pray individually or in groups so long as they are not disruptive.
- Express their religious beliefs in the form of reports, homework, and artwork. Teachers may not reject or correct such submissions simply because they include a religious symbol or address religious themes.
- Participate in before or after-school religious activities.
- Speak to, and attempt to persuade, their peers about religious topics in the same manner as topics such as politics and current events.
- Organize on-campus religious activities and groups during non-instructional hours.⁴⁵

Florida law requires the DOE to annually distribute these guidelines to district school board members, superintendents, school principals, and teachers.⁴⁶ Additionally, the Florida Religious Freedom Restoration Act prohibits government from substantially burdening acts (or refusals to act) that are "substantially motivated by a religious belief," unless there is a compelling governmental interest for burdening the person and the burden is the least restrictive means of accomplishing that interest.⁴⁷

What limitations are placed on school officials by the First Amendment of the U.S. Constitution regarding religious expression in public schools?

The Establishment Clause of the First Amendment of the U.S. Constitution prohibits government speech endorsing religion. The U.S. Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of religion, showing neither favoritism toward nor hostility

⁴⁰ Section 1008.386, F.S.

⁴¹ *Meyer*, 262 U.S. at 400-402; *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534-535 (1925).

⁴² *Meyer*, 262 U.S. at 403 (Nebraska law prohibiting public and private schools from teaching foreign languages other than English held unconstitutional. This World War I era law was directed towards curtailing the teaching of German.); *Pierce*, 268 U.S. at 530-531, 534 (Oregon law required all students to attend a public school, subject to narrow exceptions. The law was aimed at eliminating parochial schools.).

⁴³ The relevant portions of the First Amendment provide "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech. U.S. Const., amend. 1.

⁴⁴ 20 U.S.C. s. 7904(b).

⁴⁵ U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools* (Feb. 7, 2003), available at http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html [hereinafter *U.S. DOE Guidance*].

⁴⁶ Section 1002.205, F.S.

⁴⁷ Section 761.03, F.S.

against religious expression such as prayer.⁴⁸ Therefore, teachers and other school personnel, as government officials, may not lead students in prayer, devotional readings from religious texts, or other religious practices.⁴⁹ However, privately initiated, voluntary student prayer during the school day is permissible. Students may pray, read religious texts, or study religious materials in a non-disruptive manner when not engaged in school activities or instruction. School authorities may regulate such activities, but must do so in a manner that does not discriminate against religious expression.⁵⁰

Students may also organize prayer groups, religious clubs, and "see you at the pole" gatherings during non-instructional hours to the same extent that students are permitted to organize other non-curricular student groups.⁵¹ If a district school board has a policy of allowing access to school facilities by student groups, it must not deny access to groups that are religious in nature. Such action violates the Free Speech Clause of the First Amendment.⁵²

The U.S. Supreme Court has also invalidated school board policies that allow school officials to invite, encourage, or arrange for speakers to deliver religious messages at school-sponsored events.⁵³ However, permitting students to independently decide whether to include religious messages in speeches delivered at such events is acceptable. In such cases, the student speaker must be free to deliver any message, whether it be sectarian, secular, or both.⁵⁴ Accordingly, Florida law authorizes district school boards to adopt a policy that authorizes the delivery of "inspirational messages" by students at student assemblies. School district personnel may not participate in the selection of the speaker or content of the message. While the law does not expressly address prayer, the messages authorized by such a policy could potentially include prayer or religious topics.⁵⁵

Is student speech protected by the First Amendment of the U.S. Constitution?

Yes. Generally speaking, student speech and expression is protected by the First Amendment of the U.S. Constitution.⁵⁶ The U.S. Supreme Court has held that public school officials may regulate student speech or expression that substantially disrupts the school environment or interferes with the orderly operation of the school,⁵⁷ is vulgar, lewd, or patently offensive;⁵⁸ or promotes illegal activity⁵⁹ and in school publications or other "expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school."⁶⁰ Certain forms of speech, such as threats and fighting words, are not constitutionally protected at all.⁶¹

The U.S. Supreme Court's rulings on student speech all involve conduct that occurred on school property or

⁴⁸ See, e.g., *Everson v. Board of Education of Ewing Tp.*, 330 U.S. 1, 18 (1947)(The First Amendment "requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them."); see also *Good News Club v. Milford Central School*, 533 U.S. 98 (2001).

⁴⁹ See *Engel v. Vitale*, 370 U.S. 421 (1962)(invalidating state laws directing the use of teacher-led prayer in public schools) and *School District of Abington Township Pennsylvania v. Schempp*, 374 U.S. 203 (1963)(invalidating state laws requiring public schools to begin the school day with Bible readings and prayer).

⁵⁰ See *Westside Community Schools v. Mergens*, 496 U.S. 226, 232, 250 (1990).

⁵¹ U.S. DOE *Guidance*, *supra* note 45.

⁵² *Good News Club*, 533 U.S. at 120.

⁵³ *Lee v. Weisman*, 505 U.S. 577, 587-588 (1992); *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 306 (2000).

⁵⁴ *Adler v. Duval County School Board*, 250 F. 3d 1330, 1342 (11th Cir. May 11, 2001), *cert. denied*, 534 U.S. 1065 (2001). In *Adler*, the U.S. Court of Appeals for the Eleventh Circuit upheld a lower court's ruling that the school board's policy of permitting a graduating student, elected by the graduating class, to deliver an unrestricted message at graduation ceremonies did not violate the Establishment Clause of the First Amendment on its face. The court ruled that the primary factor in distinguishing state speech from private speech is the element of state control over the content of the message. *Id.* at 1336, 1337.

⁵⁵ Section 1001.432, F.S.

⁵⁶ *Tinker*, 393 U.S. at 513-514.

⁵⁷ *Id.*

⁵⁸ *Bethel School District v. Fraser*, 478 U.S. 675, 685 (1986).

⁵⁹ *Morse v. Frederick*, 551 U.S. 393, 409-410 (2007).

⁶⁰ *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S.260, 270-271 (1988)

⁶¹ *Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 573-547 (1942).

at a school-related activity. The court has declined to rule on the extent to which public school officials may regulate student speech or expression that occurs off campus during the student's private time, thereby allowing several lower federal court decisions to stand.⁶² According to these lower federal courts, public school officials may regulate student speech or expression occurring off campus during a student's private time if such conduct materially and substantially disrupts the school environment or interferes with the orderly operation of the school.⁶³

Are students protected from unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution?

Yes. Students have a legitimate expectation of privacy to be secure in their persons and effects at school and are protected from unreasonable searches and seizures conducted by school officials under the Fourth Amendment of the U.S. Constitution.⁶⁴ However, the legality of student searches is judged by a different standard than searches conducted by law enforcement officers or other government officials outside of the school environment. Under ordinary circumstances, a search warrant supported by probable cause is required to search one's person or belongings. The court has attempted to balance the privacy interests of students with the need to maintain a safe, efficient, and orderly school environment. Thus, the U.S. Supreme Court has disposed of the warrant and probable cause requirements for student searches. Instead, the legality of a search of a student conducted by school officials depends upon the reasonableness of the search, under the circumstances.⁶⁵

Are students required to recite the pledge of allegiance?

No. Public schools may not compel students to recite the pledge of allegiance.⁶⁶ Schools also may not require students to stand during the pledge of allegiance.⁶⁷ Florida law requires that the pledge of allegiance be recited at the beginning of the day at every public elementary, middle, and high school. Students must be informed of the right not to participate in the recitation of the pledge. A student can exercise this right by providing the school with a written request from his or her parent.⁶⁸

Where can I get additional information?

Florida Department of Education

Bureau of Exceptional Education and Student Services

(850) 245-0475

<http://www.fldoe.org/ese>

Florida House of Representatives

Education Committee

(850) 717-4230

<http://www.myfloridahouse.gov>

⁶² *J.S. ex rel. Snyder v. Blue Mountain School District*, 650 F.3d 95 (3d Cir. 2011) and *Layshock ex rel. Layshock v. Hermitage School Dist.*, 650 F.3d 205 (3d Cir. 2011), *cert. denied*, 132 S.Ct. 1097 (2012); *Doninger v. Niehoff*, 642 F.3d 334 (2d Cir. 2011), *cert. denied*, 132 S.Ct. 499 (2011).

⁶³ See *Tinker*, 393 U.S. at 513-514; compare *Layshock*, 650 F.3d at 215-219 (holding that student's off-campus internet conduct was protected speech.) with *Doninger*, 642 F.3d at 345-351, (holding that student's off-campus internet conduct was not protected speech.).

⁶⁴ The Fourth Amendment provides that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." U.S. Const., amend. 4.

⁶⁵ *New Jersey v. T.L.O.*, 469 U.S. 325, 340-342 (1985). The U.S. Supreme Court has upheld school district policies requiring students to participate in random drug testing as a condition of participation in athletics and other extracurricular activities. See *Vernonia School District v. Acton*, 515 U.S. 646, (1995) and *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822 (2002).

⁶⁶ *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

⁶⁷ *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1283-1284 (11th Cir. 2008). The court in *Frazier* struck down the requirement in s. 1003.44(1), F.S., that students stand at attention during the pledge while preserving other provisions of the statute. *Id.*

⁶⁸ Section 1003.44(1), F.S.



What policies must district school boards adopt regarding school safety and student discipline?

Florida law requires each district school board to provide for the proper accounting for all students; for the attendance and control of students at school; and for proper attention to health, safety, and other matters relating to the welfare of students. School boards must adopt rules, policies, and procedures for addressing disciplinary issues and providing for a safe and orderly school environment.¹ Each school board must adopt a code of student conduct that is based upon its rules governing student conduct and discipline.² The code of student conduct must include, but is not limited to:

- Consistent policies and specific grounds for disciplinary action.
- Penalties and procedures for acts requiring discipline, including in-school suspension, out-of-school suspension, expulsion, and corporal punishment.
- An explanation of the rights and responsibilities of students with regard to attendance, respect for persons and property, knowledge and observation of rules of conduct, the right to learn, free speech and student publications, assembly, privacy, and participation in school programs and activities.
- A dress code policy and penalties and procedures for addressing dress code violations.
- Notice that student possession of alcohol, drugs, weapons, or firearms; violence against school district personnel; disruptive behavior on a school bus; sexual harassment; and threats or false reports made against school property, personnel, or transportation are grounds for disciplinary action and may result in the imposition of criminal penalties.
- Policies for the assignment of violent or disruptive students to alternative educational programs.³

At the beginning of each school year, the code of student conduct must be:

- Distributed to all teachers, school personnel, students, and parents;
- Made available in the school district's student handbook or similar publication; and
- Discussed in student classes, school advisory council meetings, and parent and teacher association or organization meetings at the beginning of the school year.⁴

In addition, each school board must adopt policies prohibiting bullying and harassment, hazing, and dating violence and abuse and for emergency preparedness and response.⁵

What roles do district school superintendents, instructional personnel, school principals, and school bus drivers play in maintaining student discipline and school safety?

Florida law provides an extensive description of the roles, duties, and authority of each personnel classification charged with maintaining a safe and orderly school environment and enforcing disciplinary violations.⁶ Each district school superintendent must, among other things, recommend to the district school board plans for promoting the welfare of students, including attendance, discipline, health and safety, and

¹ Section 1006.07(1)(a), F.S.

² Section 1006.07(2), F.S.

³ *Id.*

⁴ *Id.*

⁵ See ss. 1006.07(4) and (6), 1006.135, 1006.14, 1006.147, and 1006.148, F.S.

⁶ See ss. 1003.32 (classroom teachers and school principals), 1006.08 (superintendents), 1006.09 (school principals), and 1006.10, F.S. (school bus drivers).

other matters. Each superintendent must fully support the disciplinary authority of school principals, classroom teachers, and school bus drivers.⁷

Generally speaking, the law provides that each classroom teacher “shall have such authority for the control and discipline of students as may be assigned to him or her by the principal . . .” Consistent with the school district’s code of student conduct, classroom teachers have authority to, among other things, establish classroom rules of conduct; establish and implement consequences for infractions; and remove disobedient, disorderly, or violent students from the classroom.⁸

Each school principal must, among other things, develop policies for delegating responsibility for the control and direction of students to classroom teachers, other instructional staff, and school bus drivers. Each school principal must fully support the authority of such personnel to remove disobedient, disrespectful, violent, abusive, uncontrollable, or disruptive students from the classroom and the school bus. The principal must give full consideration to disciplinary recommendations made by such personnel when making disciplinary referrals.⁹

Each school principal may suspend a student from school pursuant to school board rules.¹⁰ A school principal may recommend the expulsion of a student to the superintendent who, in turn, may recommend such expulsion to the school board.¹¹

Each school bus driver is responsible for managing the behavior of students being transported on his or her school bus. Such authority does not extend to students waiting at school bus stops or when students are en route to or from the school bus stop, unless the bus is present at the bus stop. A school bus driver may take necessary action to protect student safety if the conduct of students riding the bus results in an emergency. A school bus driver is not required to operate a bus if the conduct of one or more students poses a clear and present danger to the safety of the driver, students riding the bus, or bus itself.¹²

What are the consequences for students who possess a weapon or firearm at school?

The federal Gun-Free Schools Act¹³ requires states receiving federal funds under the No Child Left Behind Act of 2001¹⁴ to have in effect a state law requiring local education agencies (LEA)¹⁵ to expel a student from school for a minimum of one year and refer him or her to the criminal justice or juvenile justice system if the LEA determines that the student brought a firearm to a school, or possessed a firearm at a school, under its jurisdiction.¹⁶

In compliance with the Gun Free Schools Act, Florida law requires each district school board to adopt a policy of zero tolerance for crime and victimization, which, among other things, requires that students found in possession of a firearm at school, at school functions, or on school transportation be expelled for a minimum of one year and referred to the criminal justice or juvenile justice system. Florida’s zero tolerance law also applies to a student in possession of a weapon at school, at a school function, or on school transportation and

⁷ Section 1006.08(1), F.S.

⁸ Section 1003.32(1), F.S.

⁹ Section 1006.09(1)(a), F.S.

¹⁰ Section 1006.09(1)(b)-(2), F.S.

¹¹ Sections 1006.08(1) and 1006.09(1)(c)-(2), F.S.

¹² Section 1006.10, F.S.

¹³ Pub. L. No. 103-382, 108 Stat. 3518 (Oct. 20, 1994). States were required to comply with the Gun Free Schools Act by October 20, 1995. *Id.* The Florida Legislature enacted legislation in the 1995 General Session pursuant to the Act. Section 66, ch. 95-267, L.O.F., *codified at* s. 230.23(6)(d)10., F.S. (1995), *now codified at* ss. 1006.07 and 1006.13, F.S. The Gun-Free Schools Act applies only to firearms possession by students at school. In contrast, Florida’s zero tolerance statute addresses both firearms and weapons possession. *See* 20 U.S.C. s. 7151(b)(3).

¹⁴ Pub. L. No. 107-110, 115 Stat. 1425 (Jan. 8, 2002).

¹⁵ Federal law broadly defines the term LEA to include state boards of education, state departments of education, local school boards, cities, counties, political subdivisions, public postsecondary institutions, or any other public entities that a state’s law authorizes to administer public elementary and secondary schools. Each state determines which entities will serve as LEAs. *See, e.g.*, 34 C.F.R. s. 77.1.

¹⁶ 20 U.S.C. s. 7151(b)(1) and (h)(1).

threats or false reports regarding explosives, bombs, weapons of mass destruction, and destructive devices involving school or school personnel’s property, school transportation, or school sponsored activities.¹⁷

School boards have discretion to provide continuing educational services to an expelled student in an alternative educational setting. A district school superintendent may consider the one-year expulsion requirement on a case-by-case basis and request that the school board modify the requirement by assigning the student to a disciplinary program or second chance school if it determines such modification is in the best interest of the student and the school system.¹⁸

Additionally, each school board's zero tolerance policy must:

- Provide that any student found to have committed crimes upon any elected official or school district employee must be expelled or placed in an alternative school setting or other program, as appropriate.¹⁹
- Prohibit students found to have committed certain felony offenses against another student from attending the same school or riding on the same school bus as a victim or a victim’s sibling.²⁰

School boards are required to enter into agreements with the county sheriff’s office and local police department which specify the guidelines for ensuring that acts posing a serious threat to school safety, whether committed by a student or an adult, are reported to a law enforcement agency. In addition, school boards are required to adopt a cooperative agreement with the Florida Department of Juvenile Justice (DJJ) to establish guidelines for ensuring that any “no contact order” entered by a court is reported and enforced and that all of the necessary steps are taken to protect the victim of the offense.²¹

Florida law states that the purpose of zero tolerance policies is to protect students and staff from serious threats to school safety and the policies should not be applied to petty acts of misconduct and misdemeanors, including, but not limited to, minor fights or disturbances.²² Among other things, each school board’s zero tolerance policy must define acts that pose a serious threat to school safety and petty acts of misconduct.²³

The Florida Department of Education’s (DOE) policy statement on zero tolerance policies provides that it “is incumbent upon districts to use discretion and take a “common sense” approach to school discipline. District administrators must investigate and take into consideration mitigating circumstances (on a case-by-case basis) when determining appropriate disciplinary responses to student misconduct.”²⁴

Weapons Possession 2010-11 through 2012-13²⁵

Year	Total	Reported to Law Enforcement	Firearm Related	Gang Related	Bullying Related	Alcohol Related	Drug Related
2010-11	2,144	2,144	102	6	0	4	55
2011-12	1,921	1,921	101	2	7	5	46
2012-13	1,802	1,802	82	3	2	7	55

¹⁷ Section 1006.13(3), F.S.; see s. 790.162 and 790.163, F.S. (relating to threats and false reports).

¹⁸ Section 1006.13(3), F.S. (*flush-left provision at end of subsection*).

¹⁹ Section 1006.13(5), F.S.

²⁰ Section 1006.13(6)(a), F.S.

²¹ Section 1006.13(4)(a) and (6)(b), F.S.

²² Section 1006.13(1), F.S.

²³ Section 1006.13(2)(b) and (c), F.S.

²⁴ Florida Department of Education, *Florida Department of Education’s Position on Zero Tolerance* (2009), available at http://www.fldoe.org/safeschools/pdf/FDOE_Position_On_Zero_Tolerance.pdf.

²⁵ Email, Florida Department of Education, Legislative Affairs Director (Sept. 10, 2014).

May criminal penalties be imposed upon individuals who discharge, exhibit, or possess a firearm or weapon on school grounds, at school functions, or on a school bus?

Yes. Florida law prohibits, with exceptions, the possession or discharge of weapons or firearms at a preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.²⁶ The law prohibits:

- Exhibition of a weapon or firearm in the presence of another in a rude, careless, angry, or threatening manner on school property or a school bus, at a school bus stop or school-sponsored event, or within 1,000 feet²⁷ of a K-12 public or private school, during school hours or at the time of a school activity.²⁸ Such exhibition is a third degree felony,²⁹ unless it is made in lawful self-defense.³⁰
- Possession of a weapon³¹ or firearm, “except as authorized in support of school-sanctioned activities, at a school-sponsored event or on the property of any school, school bus, or school bus stop.”

Penalties for such possession vary, as follows:

- Willful and knowing unlawful possession of a firearm on school property or a school bus or at a school bus stop or school-sponsored activity or event is a third degree felony.³²
- A person who fails to securely store a firearm, enabling a minor to access it who then unlawfully possesses it on school property or a school bus or at a school bus stop or school-sponsored activity or event, commits a second degree misdemeanor.³³
- A person who discharges a firearm while unlawfully possessing it on school property or a school bus or at a school bus stop or school-sponsored activity or event, commits a second degree felony,³⁴ unless discharged for lawful defense of self or others or for a lawful purpose.³⁵

The penalties for unlawful exhibition or possession of a firearm or weapon differ for licensed concealed weapons permit holders. Violations by such individuals constitute a second degree misdemeanor.³⁶

The law provides several exceptions allowing individuals to carry a firearm on school property or a school bus or at a school bus stop or school-sponsored activity or event without express approval by school officials. A firearm may be carried:

- In a case to a school-approved firearms program;
- In a case to a career center having a firearms training range; or
- In a vehicle by a person who is at least 18 years of age if the firearm is securely encased or not readily accessible for immediate use.

School districts may adopt policies waiving the vehicle exception for purposes of student and campus parking privileges.³⁷

²⁶ Section 790.115(2)(a), F.S. (flush left provision at end of paragraph). Florida’s gun-free school zones statute is patterned after the federal Gun Free School Zones Act, which prohibits the knowing possession of a firearm that has moved in or that otherwise affects interstate or foreign commerce in a school zone. 18 U.S.C. s. 922.

²⁷ The prohibition on exhibition of a firearm or weapon on private real property within 1,000 feet of a school does not apply to the property owner or those whose presence is authorized by the owner. Section 790.115(1), F.S.

²⁸ Section 790.115(1), F.S.

²⁹ A third degree felony is punishable by term of imprisonment not exceeding five years and a fine not exceeding \$5,000. Sections 775.082(3)(d) and 775.083(1)(c), F.S.

³⁰ Section 790.115(1), F.S.

³¹ In addition to firearms and items defined as weapons, this provision also applies to possession of an electric weapon or device, destructive device, and a razor blade or box cutter. Section 790.115(2)(a), F.S.

³² Section 790.115(2)(c)1., F.S.

³³ Section 790.115(2)(c)2., F.S. This does not apply if the firearm was securely stored and the minor obtains the firearm as a result of an unlawful entry by any person or to members of the Armed Forces, National Guard, State Militia, or law enforcement officers, with respect to firearm possession by a minor which occurs during or incidental to the performance of their official duties. *Id.*

³⁴ A second degree felony is punishable by a term of imprisonment not exceeding 15 years and a fine not exceeding \$10,000. Sections 775.082(3)(d) and 775.083(1)(b), F.S.

³⁵ Section 790.115(2)(d), F.S.

³⁶ Sections 790.115(2)(e) and 790.06(12)(a) and (d), F.S. A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine not exceeding \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

What items are considered firearms or weapons?

Florida law defines the terms “firearm” and “weapon” as follows:

- “Firearm” means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.³⁸
- “Weapon” means “any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.”³⁹

School boards must adhere to these definitions when determining punishments for school-related firearms and weapons infractions.⁴⁰

May students be punished for simulating a firearm or weapon while playing?

Public school students should not be disciplined merely for simulating a firearm or weapon while playing. The law defines simulating a firearm or weapon while playing to include, without limitation:

- Brandishing a partially consumed pastry or other food item to simulate a firearm or weapon;
- Possessing a toy firearm or weapon which is two inches or less in overall length;
- Possessing a toy firearm or weapon made of plastic snap-together building blocks;
- Using a finger or hand to simulate a firearm or weapon;
- Vocalizing an imaginary firearm or weapon;
- Drawing a picture of, or possessing an image of, a firearm or weapon; or
- Using a pencil, pen, or other writing or drawing utensil to simulate a firearm or weapon.

However, a district school board may discipline students that simulate a firearm or weapon if the conduct substantially disrupts student learning, causes bodily harm to another person, or places another person in reasonable fear of bodily harm. In such cases, the severity of any consequences imposed upon a student must be proportionate to the severity of the infraction and consistent with school board policies for similar infractions. If a student is disciplined for such conduct, the school principal or his or her designee must call the student’s parent.⁴¹

Does Florida law allow the use of corporal punishment in public schools?

Yes. “Corporal punishment” means the moderate use of physical force or physical contact by a teacher or principal as may be necessary to maintain discipline or to enforce school rule.⁴² The use of corporal punishment must be approved in principle by the principal before it is used, but approval is not necessary for each specific instance in which it is used. The principal must prepare guidelines for administering such punishment which identify punishable offenses, the conditions for administering such punishment, and the school staff who are authorized to administer the punishment. A teacher or principal may only administer corporal punishment in the presence of another adult who is informed beforehand, and in the student’s

³⁷ Section 790.115(2)(c), F.S.; *see, e.g.*, Policies 1217, 3217, 4217, 5772, and 7217, Leon County School Board. *See also Florida Carry, Inc., v. University of North Florida*, 133 So.3d 966 Fla. 1st DCA (2013) (Holding that a state university was not a “school district” authorized to waive secure encasement exception.).

³⁸ Section 790.001(6), F.S. The federal definition of “firearm” is similar to Florida’s. *See* 18 U.S.C. s. 921(a).

³⁹ Section 790.001(13), F.S.

⁴⁰ Sections 1006.07(2)(g) and 1006.13(3), F.S.

⁴¹ Section 1006.07(2)(g), F.S.

⁴² Section 1003.01(7), F.S. The term does not include the use of reasonable force by a teacher or principal necessary to protect themselves or other students from disruptive behavior. *Id.*

presence, of the reason for the punishment. If requested by a student's parent, a teacher or principal who has administered corporal punishment on the student must provide a written explanation of the reason for the punishment and the name of the other adult who was present.⁴³ District school boards have the authority to prohibit the use of corporal punishment if a written program of alternative control or discipline is adopted.⁴⁴ A school board that has a policy authorizing the use of corporal punishment must review its policy once every three years during a school board meeting.⁴⁵

What requirements must be followed when addressing dress code violations?

Each district school board's code of student conduct must include an explanation of student responsibilities regarding appropriate dress, respect for self and others, and the role that appropriate dress and respect for self and others has on an orderly learning environment. The policy must prohibit students, while on school grounds during the school day, from wearing clothing that exposes underwear or body parts in an indecent or vulgar manner or that disrupts the orderly learning environment.⁴⁶ The law prescribes an escalating series of interventions which school boards must apply when addressing dress code violations:

- For a first offense, a student must be given a verbal warning and the school principal must call the student's parent or guardian.
- For a second offense, the student is ineligible to participate in any extracurricular activity for a period of time not to exceed five days and the school principal must meet with the student's parent or guardian.
- For a third or subsequent offense, a student must receive an in-school suspension for a period not to exceed three days, the student is ineligible to participate in any extracurricular activity for a period not to exceed 30 days, and the school principal must call the student's parent or guardian and send the parent or guardian a written letter regarding the student's in-school suspension and ineligibility to participate in extracurricular activities.⁴⁷

The law prohibits school boards from punishing students for wearing clothing or accessories which depict a firearm or weapon or express an opinion regarding Second Amendment⁴⁸ rights solely based upon such depiction or opinion. If the clothing item or accessory violates the dress code on other grounds, the infraction must be treated like other dress code violations. If the wearing of the clothing item or accessory causes a substantial disruption to student learning, it may be addressed in a manner that is consistent with school board policies for similar infractions.⁴⁹

Does Florida law address bullying and harassment in public schools?

Yes. Among other things, the law prohibits bullying or harassment:

- Of any public K-12 student or employee during a public K-12 education program or activity;
- During a school-related or school-sponsored program or activity;
- On a public K-12 school bus;
- Using a computer, computer system, or computer network that is within the scope of a public K-12 educational institution;⁵⁰ or

⁴³ Section 1003.32(1)(k), F.S.

⁴⁴ Section 1006.07(1)(a), F.S.

⁴⁵ Section 1002.20(4)(c)2., F.S.

⁴⁶ Section 1006.07(2)(d), F.S. A district school board may require uniforms to be worn by the student body, or impose other dress-related requirements, if the board finds that those requirements are necessary for the safety or welfare of the student body or school personnel. Section 1001.43(1)(b), F.S.

⁴⁷ Section 1006.07(2)(d), F.S.

⁴⁸ The Second Amendment of the U.S. Constitution states that "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., Amend. 2.

⁴⁹ Section 1006.07(2)(g), F.S.

⁵⁰ "Within the scope of a public K-12 educational institution" means, regardless of ownership, any computer, computer system, or computer network that is physically located on school property or at a school-related or school-sponsored program or activity. Section 1006.147(3)(d), F.S.

- Using technology or electronic devices that are not owned or otherwise controlled by a school district or school, but only if the bullying substantially interferes with or limits the victim’s ability to participate in or benefit from the services, activities, or opportunities offered by a school or substantially disrupts the education process or orderly operation of a school. The law does not require a school to staff or monitor any non-school related activity, function, or program in its efforts to prevent bullying and harassment.⁵¹

The terms “bullying” and “harassment” constitute the following behaviors:

- **Bullying**: Systematically and chronically inflicting physical hurt or psychological distress on one or more students, which may involve:
 - Teasing;
 - Social exclusion;
 - Threat;
 - Intimidation;
 - Stalking;
 - Physical violence;
 - Theft;
 - Sexual, religious, or racial harassment;
 - Public or private humiliation; or
 - Destruction of property.⁵²
- **Cyberbullying**: Bullying through the use of technology or electronic communication, e.g., email, postings on internet websites or social media, instant messages, text messages, or cell phone.⁵³
- **Harassment**: Threatening, insulting, or dehumanizing gestures, use of computers, or written, verbal, or physical conduct directed against a student or school employee that causes reasonable fear of harm to person or property; substantially interferes with a student’s educational performance, opportunities, or benefits; or substantially disrupts the orderly operation of a school.⁵⁴

The law further specifies that bullying and harassment include:

- Retaliating against a student or school employee for reporting bullying or harassment;
- Reporting bullying or harassment, which reporting is not made in good faith;
- Perpetuating bullying or harassment with the intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by incitement or coercion; use of (or providing access to) a school district’s computer, computer system, or computer network; or conduct substantially similar to bullying or harassment.⁵⁵

Each district school board must adopt a policy prohibiting bullying and harassment. A school district's policy may provide separate discrimination policies for different categories of students, but all students must be equally protected under the policy from bullying and harassment. A school district must have included students, parents, teachers, administrators, school staff, volunteers, community representatives, and local law enforcement agencies in the development of the policy.⁵⁶

Each school district’s bullying and harassment policy must, among other things:

- Prohibit, define, and describe the behaviors that constitute bullying and harassment;
- Prescribe consequences for bullying and harassment and false accusations;

⁵¹ Section 1006.147(2), F.S.

⁵² Section 1006.147(3)(a), F.S.

⁵³ See s. 1006.147(3)(b), F.S.

⁵⁴ Section 1006.147(3)(c), F.S.

⁵⁵ Section 1006.147(3)(f), F.S.

⁵⁶ Section 1006.147(4), F.S.

- Procedures for reporting and investigating acts of bullying and harassment;
- Procedures for making referrals to law enforcement; and
- Procedures for referring victims and perpetrators to counseling.⁵⁷

Annually, the Commissioner of Education must submit a report on the statewide implementation bullying and harassment policies, to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must also include data regarding incidents of bullying and harassment. Distribution of safe schools funds to a school district is contingent upon the school district's compliance with required procedures for reporting bullying and harassment and reporting regarding policy implementation and incidents.⁵⁸

Does Florida law address hazing?

Yes. Florida law defines “hazing” as “any action or situation that endangers the mental or physical health or safety of a student at a school with any of grades 6 through 12 for purposes including, but not limited to, initiation or admission into or affiliation with any organization operating under the sanction of a school with any of grades 6 through 12.”⁵⁹ “Hazing” includes:

- Pressuring, coercing, or forcing a student into:
 - Violating state or federal law;
 - Consuming any food, liquor, drug, or other substance; or
 - Participating in physical activity that could adversely affect the health or safety of the student.
- Any brutality of a physical nature, such as whipping, beating, branding, or exposure to the elements.

Hazing does not include customary athletic events or other similar contests or competitions or any activity or conduct that furthers a legal and legitimate objective.⁶⁰

Criminal penalties may apply to hazing committed by a student in grades 9 through 12. Hazing that results in serious bodily injury or death to the victim is a third degree felony⁶¹ if the perpetrator knew or should have known the act would result in serious bodily injury or death. Hazing that creates a potential risk of physical injury or death to the victim is a first degree misdemeanor⁶² if the perpetrator knew or should have known the act would create such risk of injury or death.⁶³ In addition to any criminal penalties imposed upon a perpetrator of hazing, the court:

- Must require the perpetrator to complete a 4-hour hazing education course and may also impose a condition of drug or alcohol probation;
- May require the perpetrator to make a public apology to the students and victims at the school; and
- May require the perpetrator to participate in a school-sponsored antihazing campaign to raise awareness of what constitutes hazing and the penalties for hazing.⁶⁴

Each district school board must adopt a policy that:

- Prohibits and defines hazing;
- Prescribes consequences for hazing;
- Prescribes procedures for:

⁵⁷ *Id.*

⁵⁸ Section 1006.147(7) and (9), F.S.

⁵⁹ Section 1006.135(1), F.S.

⁶⁰ *Id.*

⁶¹ A third degree felony is punishable by a term of imprisonment not exceeding 5 years and fine of \$5,000. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

⁶² A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and fine of \$1,000. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

⁶³ Section 1006.135(3)(a), F.S.

⁶⁴ Section 1006.135(3)(b), F.S.

- Reporting an alleged act of hazing;
- Referring acts of hazing committed by a student in grades 9 through 12 that meet specified criteria to law enforcement; and
- Referring victims and perpetrators of hazing to a certified school counselor; and
- Requires hazing incidents to be reported in the school's safety and discipline report.⁶⁵

Does Florida law address dating violence and abuse?

Yes. Each district school board must adopt and implement a dating violence and abuse policy. The policy must:

- Prohibit dating violence and abuse by any student on school property, during a school-sponsored activity, or during school-sponsored transportation.
- Provide procedures for responding to such incidents, including accommodations for students experiencing dating violence or abuse.
- Define dating violence and abuse and provide for a teen dating violence and abuse component in the health education curriculum.
- Be implemented in a manner that is integrated with a school district's discipline policies.⁶⁶

Additionally, each school board must provide training for teachers, staff, and school administrators to implement its dating violence and abuse policy.⁶⁷

What are school safety officers and school resource officers?

A school safety officer is a certified law enforcement officer who may be employed by a district school board or law enforcement agency. A school safety officer has and must exercise the power to make arrests for violations of law on school board property. The officer may also make arrests off school board property if the law violation occurred on such property and may carry weapons when performing his or her official duties. A school safety officer's salary may be paid jointly by the school board and the law enforcement agency, as mutually agreed.⁶⁸

A school resource officer is a law enforcement officer who is employed by a law enforcement agency. School resource officers abide by school board policies and consult with and coordinate activities through the school principal. They are responsible to the law enforcement agency in all matters relating to employment, subject to agreements between a school board and a law enforcement agency. Activities conducted by the school resource officer, which are part of the regular instructional program of the school, are under the principal's direction.⁶⁹

What measures must school districts take regarding emergency preparedness?

Florida law requires each district school board to formulate policies and procedures for emergency response drills and actual emergencies. These policies must include procedures for responding to various emergencies, such as fires, natural disasters, and bomb threats. Commonly used alarm system responses for specific types of emergencies must be incorporated into such policies. Additionally, school boards must establish model emergency management and preparedness procedures for weapon-use and hostage situations; hazardous materials or toxic chemical spills; weather emergencies, including hurricanes, tornadoes, and severe storms; and exposure resulting from manmade emergencies.⁷⁰

⁶⁵ Section 1006.135(2), F.S.

⁶⁶ Section 1006.148(1), F.S.

⁶⁷ Section 1006.148(2), F.S.

⁶⁸ Section 1006.12(2), F.S.

⁶⁹ Section 1006.12(1), F.S.

⁷⁰ Section 1006.07(4)(a)-(b), F.S.

The *Safety and Security Best Practices* (Best Practices) is a self-assessment tool that each school district must use to annually assess the effectiveness of district emergency response policies. Among other “best practices,” the self-assessment suggests that school districts:

- Implement procedures for emergency drills including procedures for verifying that regular drills are conducted and varying the time and conditions for such drills to prepare for a range of scenarios.
- Develop a checklist with step-by-step emergency procedures for use in every classroom which includes evacuation, lockdown, and shelter-in-place procedures developed in collaboration with local law enforcement, fire, and emergency response personnel.
- Share emergency plans, policies, procedures, and educational facilities floor plans with local law enforcement agencies and fire departments.
- Share emergency plans and procedures with designated school and school district personnel, identify training for all types of school staff and staff that require specialized training, and incorporate such training into the Master Plan for In-Service Training.
- Use the annual self-assessment to identify the potential hazards for each educational facility and implement procedures for practicing responses to identified hazards.
- Review the comprehensive school safety plan and emergency procedures and revise them if necessary.⁷¹

Each district school superintendent must make recommendations to the school board for improving emergency preparedness and response policies based upon the self-assessment results. The self-assessment results and superintendent’s recommendations must be addressed in a publicly noticed school board meeting. The results of the self-assessment and any school board action on the superintendent’s recommendations must be reported to the Commissioner of Education within 30 days after the school board meeting.⁷²

Do districts receive funding for school safety programs?

Yes. In FY 2014-15, \$64,456,019 was appropriated for Safe Schools funding. Each district receives \$62,660 and the remaining funds are allocated by a formula based on the Florida Crime Index and each district’s share of the state’s total unweighted student enrollment. Proviso language defines Safe Schools activities as:

- After school programs for middle school students;
- Middle and high school programs for correcting specific discipline problems;
- Implementation of conflict resolution strategies or other improvements to enhance the learning environment;
- Behavior driven intervention programs that include anger and aggression management strategies;
- Alternative school programs for adjudicated youth;
- Suicide prevention programs;
- Bullying prevention and intervention;
- School resource officers; and
- Detection dogs.⁷³

The distribution of safe schools funds provided to a school district is contingent upon the school district’s compliance with all reporting procedures related to the prevention of bullying and harassment.⁷⁴

How does Florida keep track of the disciplinary incidents that occur at public schools?

The School Environmental Safety Incident Reporting (SESIR) System assists schools, districts, and staff of the DOE in assessing the extent and nature of problems in school safety. The SESIR System requires schools

⁷¹ Section 1006.07(6), F.S.; Florida Department of Education, *District Safety and Security Best Practices*, <http://www.fldoe.org/EM/security-practices.asp> (last visited March 12, 2013).

⁷² Section 1006.07(6), F.S.

⁷³ Specific appropriations 9 and 96, ss. 1 and 2, respectively, of ch. 2014-51, L.O.F.; s. 1011.62(6)(b)2., F.S.

⁷⁴ Section 1006.147(8), F.S.

to report 23 types of serious safety incidents that occur on school grounds, on school transportation, and at off-campus, school-sponsored events. SESIR data is reported statewide and by school district within the Florida Statewide Report on School Safety and Discipline. DOE also collects annual data on the types and number of discipline actions administered when students violate school or district rules. The SESIR must also include the disciplinary action taken for each reported incident, e.g., suspension, expulsion, corporal punishment.⁷⁵

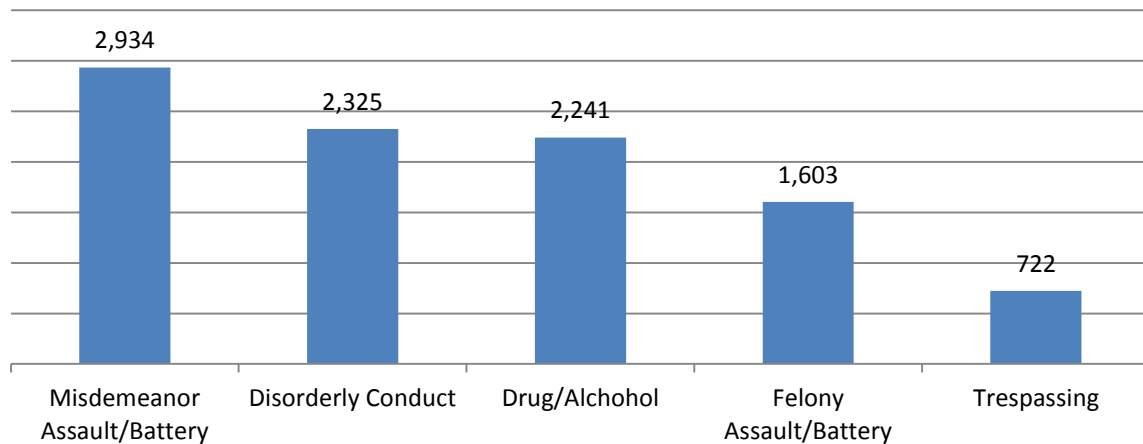
Additionally, the DJJ issued a report in January 2013 that examined trends in school-related arrests. Among other things, DJJ found that delinquency arrests for school-related offenses declined 50% from FY 2004-05 to FY 2011-12. During that time, 48% fewer youth were arrested for school-related offenses.⁷⁶

School-Related Arrests: FY 2004-05 through FY 2011-12

Fiscal Year	Arrests	Youth Arrested
2004-05	28,008	24,189
2005-06	25,708	23,070
2006-07	22,926	20,736
2007-08	21,289	19,362
2008-09	20,223	18,256
2009-10	18,467	16,784
2010-11	16,377	14,758
2011-12	13,870	12,520
8-Year Change	-50%	-48%

According to DJJ, the majority of school-related arrests made in FY 2011-12 involved misdemeanor assault or battery (22%) and disorderly conduct (17%). Drug or alcohol offenses accounted for 18% of school-related arrests and trespassing accounted for 5.4%.⁷⁷

Most Common School-Related Arrests: FY 2011-12



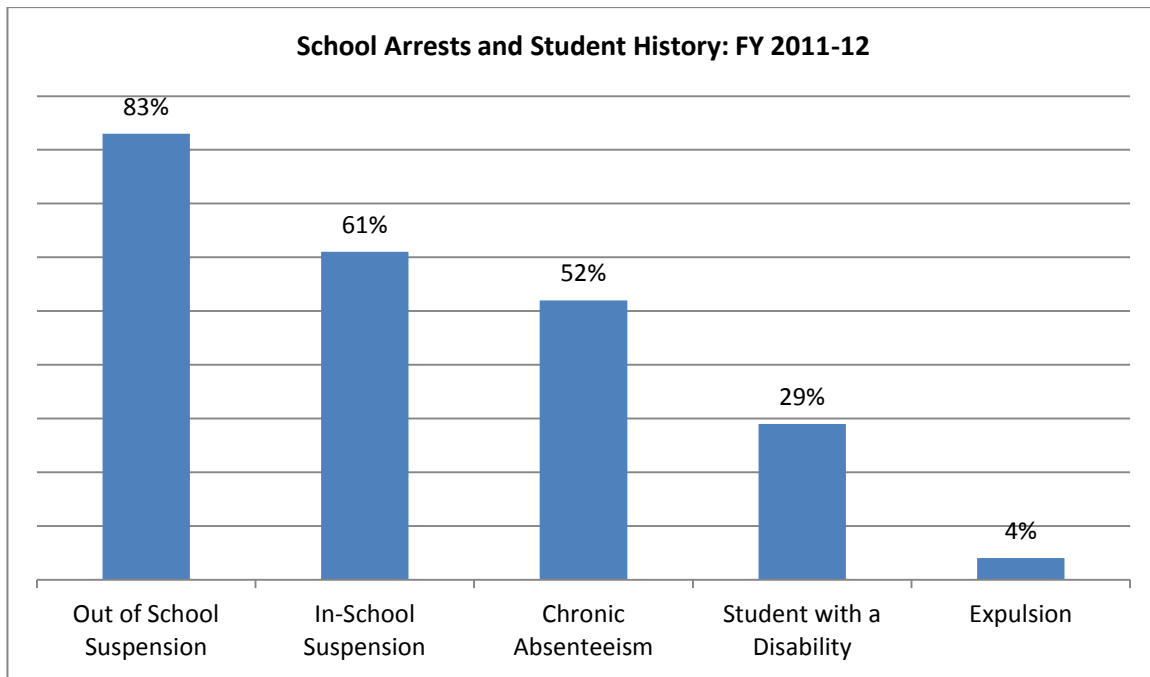
DJJ also reported that a large percentage of students arrested for school-related offenses in FY 2011-12 had a history of truancy or suspension. Smaller percentages of these students were identified as students with a disability or were previously expelled from school.⁷⁸

⁷⁵ Florida Department of Education, *School Environmental Safety Incident Reporting (SESIR) Poster*, (Revised 2013), available at <http://www.fldoe.org/safeschools/sesir/pdf/poster.pdf>.

⁷⁶ Department of Juvenile Justice, *Delinquency in Florida's Schools: An Eight-Year Study (FY 2004-05 through FY 2011-12)*, at 3 (January 2013), available at [http://www.djj.state.fl.us/docs/research2/fy-2011-12-delinquency-in-schools-analysis-\(final-june-2013\)-recvd-sj-07-08-13-final.pdf?sfvrsn=0](http://www.djj.state.fl.us/docs/research2/fy-2011-12-delinquency-in-schools-analysis-(final-june-2013)-recvd-sj-07-08-13-final.pdf?sfvrsn=0).

⁷⁷ *Id.* at 8.

⁷⁸ *Id.* at 14.



Where can I get additional information?

Florida Department of Education

Office of Safe Schools

(850) 245-0416

<http://www.fldoe.org/safeschools/>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

Florida Department of Juvenile Justice

Bureau of Research and Planning

(850) 717-2627

<http://www.djj.state.fl.us/research/about-us>

Assessment & Accountability



Statewide Assessment Program Accommodations, Exemptions, and Alternate Assessments Education Committee

Last Updated: October 2014

Is a student with a disability required to take statewide assessments?

Yes. All students attending public schools, including students with disabilities,¹ are required to take statewide assessments, except as otherwise provided by law.² Students are assessed to measure achievement of the core curricular content established in the Next Generation Sunshine State Standards (NGSSS). Assessing how well all students have mastered the standards, among other things, provides the data and information necessary to improve instruction, guide learning objectives, assess how educational goals are met, and identify the educational strengths and needs of students and their readiness to be promoted or graduate from high school.³

A student with a disability may take statewide assessments with or without accommodations or take an alternate assessment.⁴ The appropriate assessment method is determined by the student's individualized education plan (IEP) team.⁵ The IEP team may determine that the student:

- Is able to access instruction and statewide assessments without accommodations;
- Requires allowable accommodations⁶ during instruction and on statewide assessments; or
- Has a significant cognitive disability and meets the following criteria for taking statewide alternate assessments:
 - The student is unable to master the NGSSS, even with appropriate and allowable instructional accommodations, assistive technology, or accessible instructional materials;
 - The student is participating in a curriculum based upon the state standards access points⁷ for all academic areas; and

¹ The term “students with disabilities” includes students who have an intellectual disability; autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; an other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ages birth through five years, or children, ages birth through two years with established conditions that are identified in State Board of Education rules. Section 1003.01(3)(a), F.S.; rule 6A-6.03030, F.A.C. These terms are consistent with provisions of the federal Individuals with Disabilities Education Act (IDEA). See 20 U.S.C. s. 1401(3)(A).

² Section 1008.22(3), F.S.; rule 6A-1.0943(2), F.A.C. Statewide assessments include the FCAT 2.0 Science assessment and all statewide comprehensive assessments and statewide end-of-course assessments. Section 1008.22(3), F.S.; See Memorandum from Pam Stewart, Commissioner, Fla. Dept. of Educ. to School District Superintendents (May 30, 2014), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-7046/dps-2014-81.pdf>. Federal law requires the inclusion of all students in the accountability system of each state receiving federal education grant funds. See 20 U.S.C. 6311(a)(2) and 34 C.F.R. s. 200.6. No less than 95 percent of each subgroup of students (all public elementary school and secondary school students, economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency) enrolled in a public school are required to take statewide assessments, including alternative assessments. 20 U.S.C. s. 6311(a)(2)(I)(ii); 34 C.F.S. s. 200.20(c)(1)(i).

³ Section 1008.22(1), F.S.

⁴ Rule 6A-1.0943(3)-(5), F.A.C. Regardless of whether a student takes a statewide assessment or the Florida Alternate Assessment, federal law requires the test to measure the academic achievement of the student relative to the state’s academic content and academic achievement standards for the grade in which the student is enrolled. 34 C.F.R. s. 200.6(a).

⁵ See rule 6A-1.0943(3)-(5), F.A.C. An IEP team is a group of individuals that is responsible for developing, reviewing, or revising an IEP for a student with a disability. Rule 6A-6.03411(1)(v), F.A.C.

⁶ See *infra text accompanying* notes 40-43 for discussion of allowable accommodations.

⁷ Access points are academic expectations written for students with significant cognitive disabilities to access the general education curriculum. Access points are embedded in the NGSSS and reflect the core intent of the standards with reduced levels of complexity.

- The student requires direct instruction in academics based upon access points in order to acquire, generalize, and transfer skills across settings.⁸

What is the Florida Alternate Assessment and who is eligible to take it?

Under the direction and supervision of the Commissioner of Education, the Department of Education has developed the Florida Alternate Assessment (FAA), which measures student academic performance on the NGSSS using access points,⁹ for students with significant cognitive disabilities.¹⁰ The FAA consists of reading and mathematics assessments for eligible students in grades 3 through 10; science assessments for eligible students in grades 5, 8, and 11; and writing assessments for eligible students in grades 4, 8, and 10.¹¹

Are there exemptions from participation in statewide assessments for students with disabilities?

Yes, Florida law establishes two types of exemptions from statewide assessments for students with disabilities.

Extraordinary Exemption

If a student's IEP team determines that certain circumstances¹² or conditions¹³ prevent the student from physically demonstrating the mastery of skills that have been acquired and are measured under the statewide assessment program, including the FAA, the IEP team may apply for an extraordinary exemption from administration of the assessment.¹⁴ The IEP team, which must include the student's parent, must submit a written request to the district school superintendent no later than 60 days before the current year's assessment administration for which the request is made.¹⁵ The written request must include:

- A description of the student's disabling conditions, including a specific description of the student's impaired sensory, manual, or speaking skills;
- Written documentation of the most recent evaluation data;
- Written documentation, if available, of the most recent administration of the statewide assessment, and end-of-course assessment, or an alternate assessment;
- A written description of the condition's effect on the student's participation in these assessments;
- Written evidence that the student has had the opportunity to learn the skills being tested;
- Written evidence that the student has been provided appropriate instructional accommodations;
- Written evidence as to whether the student has had the opportunity to be assessed using the instructional accommodations on the student's IEP that are allowable in the administration of the applicable assessment; and

Florida Department of Education, *The Florida Alternate Assessment*, <http://www.fldoe.org/asp/altassessment.asp> (last visited July 8, 2014); rule 6A-1.09401(1), F.A.C.

⁸ Rule 6A-1.0943(3)-(5), F.A.C.

⁹ See *supra* text accompanying note 7.

¹⁰ See s. 1008.22(3)(c)4., F.S.; rule 6A-1.09430(1), F.A.C.; see also Florida Department of Education, Division of Public Schools and Bureau of Exceptional Education and Student Services, *Statewide Assessment for Students with Disabilities*, Technical Assistance Paper 2010-92 (July 15, 2010).

¹¹ Rule 6A-1.09430(3)(a), F.A.C.

¹² "Circumstance" is defined as a situation in which accommodations allowable for use on the statewide standardized assessment, a statewide standardized end-of-course assessment, or an alternate assessment are not offered to a student during the current year's assessment administration due to technological limitations in the testing administration program which lead to results that reflect the student's impaired sensory, manual, or speaking skills rather than the student's achievement of the benchmarks. Section 1008.212(1)(a), F.S., as created by s. 7, ch. 2013-236, L.O.F.; rule 6A-1.0943, F.A.C.

¹³ "Condition" is defined as an impairment, whether recently acquired or longstanding, which affects a student's ability to communicate in modes deemed acceptable for statewide assessments, even with accommodations provided, and results in reflecting the student's impaired sensory, manual, or speaking skills rather than the student's achievement of the benchmarks. Section 1008.212(1)(b), F.S.

¹⁴ Section 1008.212(2), F.S.

¹⁵ Section 1008.212(3), F.S.

- Written evidence of the circumstance or condition that prevents the student from physically demonstrating the mastery of skills that have been acquired and are measured under the statewide assessment program.¹⁶

The superintendent must review the request and documentation and recommend to the commissioner whether an extraordinary exemption should be granted or denied.¹⁷ The commissioner must notify the parent whether the extraordinary exemption has been granted or denied within 30 days of receipt from the superintendent.¹⁸ The parent may request an expedited hearing if he or she disagrees with the commissioner's decision.¹⁹

The commissioner must, by June 30 each year, submit to the Governor, the President of the Senate and the Speaker of the House of Representatives, the number of extraordinary exemptions requested, the number granted, and the criteria by which the decisions were made.²⁰ The commissioner must also regularly inform district testing and special education administrators of the exemption request procedures.²¹

Exemption for Children with a Medical Complexity

In addition to an extraordinary exemption, Florida law establishes an exemption from statewide assessments for children with a medical complexity.²² A child with a medical complexity is a child who, based upon medical documentation from a physician licensed in Florida,²³ is medically fragile and needs intensive care due to a condition such as congenital or acquired multisystem disease, has a severe neurological or cognitive disorder with marked functional impairment, or is technology dependent for activities of daily living, and lacks the capacity to take or perform on an assessment.²⁴

If a student's IEP team, with the consent of the student's parent, determines that the student should not be assessed based upon medical documentation that he or she has a medical complexity, the student's parent may choose one of three assessment options:

- A one-year exemption approved by the district school superintendent based on written documentation of parental consent and appropriate medical documentation supporting the IEP team's determination that the child has a medical complexity;²⁵
- A one- to three-year exemption approved by the commissioner based on written documentation of parental consent, district school superintendent approval, the IEP team's determination that the child has a medical complexity based on appropriate medical documentation, and all medical documentation;²⁶ or
- A permanent exemption approved by the commissioner based on written documentation of parental consent, district school superintendent approval of a permanent exemption, the IEP team's

¹⁶ Section 1008.212(3)(a)-(h), F.S.

¹⁷ Section 1008.212(4), F.S.

¹⁸ *Id.* In order for an extraordinary exemption to be granted by the commissioner, all required documentation must be submitted and must provide sufficient evidence that the identified circumstance or condition prevents the student from physically demonstrating the mastery of skills that have been acquired and are measured by the statewide standardized assessment. Rule 6A-1.0943(5)(e), F.A.C.

¹⁹ Section 1008.212(5), F.S. The department must inform the parent of any free or low-cost legal services and arrange a hearing with the Division of Administrative Hearings within 20 school days after the parent's request for such hearing. The administrative law judge must render a decision within 10 school days after the hearing.

²⁰ Section 1008.212(6), F.S.

²¹ *Id.* For the 2014 test administration window, the department received and processed 35 requests for extraordinary exemptions to the FCAT, the FAA, and end-of-course assessments pursuant to s. 1008.212, F.S., and rule 6A-1.0943, F.A.C. Of the 16 requests for an extraordinary exemption from the FAA, only 10 requests were granted by the commissioner. Of the 19 FCAT and end-of-course assessment extraordinary exemption requests, 15 were granted. Letter from Commissioner of Education to the Speaker of the Florida House of Representatives (June 23, 2014) (on file with House of Representatives staff).

²² Section 1008.22(9), F.S., as created by s. 9, ch. 2014-23, L.O.F.

²³ The physician must be licensed pursuant to chapter 458 or 459, F.S. Section 1008.22(9)(a), F.S.

²⁴ *Id.*

²⁵ Section 1008.22(9)(b)1., F.S.

²⁶ Section 1008.22(9)(b)2., F.S.

determination based on supporting medical documentation that a permanent exemption is appropriate, and all medical documentation.²⁷

District school superintendents who approve one-year exemptions must report annually to the district school board and the department the number of students determined to be a child with a medical complexity that are not participating in the assessment program.²⁸ The commissioner must annually report to the Legislature data, by district, related to the implementation of the child with medical complexity exemption provisions at the same time student performance on statewide assessments results are reported.²⁹

Is a student classified as an English language learner required to take statewide assessments?

Yes. A student classified as an English Language Learner (ELL),³⁰ also known as a Limited English Proficiency (LEP) student, is required to take statewide assessments.³¹ However, an ELL who has been enrolled in a school in the United States for less than 12 months may be exempted from participation in any component of the statewide assessment program.³² In making a determination for exemption, the ELL committee³³ must consider the following factors:

- The student's level of mastery of basic competencies or skills in English and the home language according to appropriate local, state, and national criterion-referenced standards;
- The student's grades from the current or previous years; or
- Other test results.³⁴

An ELL who is exempted from participation in the reading component of the statewide assessment program must take the Comprehensive English Language Learning Assessment (CELLA).³⁵

Who is eligible for testing accommodations when taking statewide assessments?

A student with a disability may be eligible for testing accommodations, if the accommodations:

- Are recorded on the student's IEP or 504 accommodation plan;³⁶
- Are based on current instructional accommodations and accessible instructional materials used by the student in the classroom; and
- Do not negate the assessment's validity.³⁷

²⁷ Section 1008.22(9)(b)3., F.S.

²⁸ Section 1008.22(9)(b)1., F.S.

²⁹ Section 1008.22(9)(c), F.S.

³⁰ An ELL is a student who was not born in the United States and whose native language is a language other than English; a student who comes from a home environment where a language other than English is spoken in the home; or a student who is an American Indian or Alaskan native and who comes from an environment where a language other than English has had a significant impact on his or her level of English language proficiency; and who, by reason thereof, has sufficient difficulty speaking, reading, writing, or listening to the English language. Section 1003.56(2)(a), F.S.; rule 6A-6.0901(1), F.A.C.

³¹ See s. 1008.22(3), F.S.; rule 6A-1.09432(1), F.A.C. See *supra* text accompanying note 2.

³² Rules 6A-1.09432(1) and 6A-6.0909(1), F.A.C.

³³ An ELL committee is a group composed of English for Speakers of Other Languages (ESOL) teachers; home language teachers; an administrator or designee; and guidance counselors, social workers, school psychologists, or other educators as appropriate for the situation. Rule 6A-6.0901(5), F.A.C.

³⁴ Rule 6A-1.09432(2)(a), F.A.C.

³⁵ See Rule 6A-6.0909(1), F.A.C. An ELL who is exempted from the statewide reading assessment is still required to take all other statewide assessments with accommodations as necessary. See *id.*

³⁶ Rule 6A-1.0943(4)(b), F.A.C. Some students are not eligible for special education and related services under the IDEA, but have disabilities recognized under Section 504 of the Federal Rehabilitation Act of 1973 (Section 504), which include physical or mental impairments that substantially limit one or more major life activity. See 29 U.S.C. s. 705(9) and rule 6A-19.001(6), F.A.C. Students with disabilities recognized under Section 504 are eligible for accommodations as determined necessary by the student's 504 plan team. Florida Department of Education, Bureau of Exceptional Education and Student Services, *Accommodations for Students with Disabilities Taking the Florida Comprehensive assessment Test (FCAT)*, Technical Assistance Paper FY 2007-04 (Sept. 2006).

³⁷ Rule 6A-1.0943(4)(a), F.A.C.

An ELL may be eligible for testing accommodations if the student is currently receiving services in accordance with an approved ELL district plan.³⁸ An ELL who is otherwise classified as a student with a disability is eligible for testing accommodations in the same manner as other students with disabilities.³⁹

What types of testing accommodations are authorized for statewide assessments?

For students with disabilities, testing accommodations on statewide assessments may include:

- Adjustments to the presentation of the statewide assessment questions;
- Adjustments to the methods of recording examinee responses to the questions;
- Adjustments to the scheduling for the administration of the assessment;
- Adjustments to the settings for the administration of the assessment; and
- The use of assistive technology or devices to facilitate the student's participation in the assessment.⁴⁰

Any accommodations that negate the validity of a statewide assessment are not allowed.⁴¹ District personnel are required to implement the accommodations in a manner that ensures the test responses are the independent work of the student. Personnel are prohibited from assisting a student in determining how the student will respond or directing or leading the student to a particular response.⁴²

In addition to the standard testing accommodations listed above, a student with a disability who needs a unique accommodation may submit a request for use of the accommodation to the department for approval by the commissioner.⁴³ In order for a unique accommodation to be approved, it must be allowable for use on a statewide assessment, used by the student during classroom instruction and assessment, and described as such on the student's IEP or 504 plan.⁴⁴

Testing accommodations for ELLs can include:

- Additional time to complete each test section, including, if necessary, administering the entire test over one or more days;
- Access to English-to-home language or home language-to-English dictionaries; and
- The opportunity to be tested in a separate room with an ESOL or home language teacher serving as the test administrator.⁴⁵

How does a parent know if an accommodation used in classroom instruction is permissible on statewide assessments?

A school district must provide to the parent of a student who receives instructional accommodations that are not allowed for statewide assessments written information regarding the impact on the student's ability to meet expected performance levels on the assessments.⁴⁶ The parent must provide signed consent before the instructional accommodations are provided in the classroom and acknowledge, in writing, that he or she understands the possible impact or future consequences of using accommodations in the classroom which are not permitted on statewide assessments.⁴⁷

³⁸ Rule 6A-6.09091(3), F.A.C.

³⁹ Rule 6A-6.09091(5), F.A.C.

⁴⁰ Rule 6A-1.0943(4)(a), F.A.C.

⁴¹ Section 1008.22(3)(c)3.a., F.S.; rule 6A-1.0943(4)(a), F.A.C.

⁴² Rule 6A-1.0943(4)(d), F.A.C.

⁴³ Rule 6A-1.0943(4)(c), F.A.C.

⁴⁴ *Id.*

⁴⁵ Rule 6A-6.09091(3)(a)-(c), F.A.C. Additional allowable accommodations for assessments in mathematics, reading, or writing are provided in state board rule. *See* rule 6A-6.09091(d)-(f), F.A.C.

⁴⁶ Section 1008.22(3)(c)3.b., F.S.; rule 6A-1.0943(4)(a), F.A.C.

⁴⁷ Section 1008.22(3)(c)3.a., F.S.

Examples of accommodations not permitted on statewide assessments include reduced number of test questions or answer options, use of spelling or grammar check for responses to performance tasks, and use of graphic organizers or software to assist in preparing responses.⁴⁸

May a student with a disability receive a standard high school diploma if the student receives testing accommodations on statewide assessments?

Yes. Use of allowable testing accommodations on statewide assessments has no bearing on the type of diploma issued to the student.⁴⁹

Is a student with a disability who does not earn passing scores on statewide assessments eligible for a standard high school diploma?

Yes. A student with a disability for whom the IEP team determines that the statewide assessments cannot accurately measure the student's abilities, taking into consideration all allowable accommodations, must have the assessment results waived for the purpose of receiving a course grade and a standard high school diploma.⁵⁰ Any such waiver must be approved by the student's parent, subject to verification for appropriateness by an independent reviewer,⁵¹ and indicated on the student's transcript.⁵²

Where can I get additional information?

Florida Department of Education

Bureau of Exceptional Education and Student Services
(850) 245-0475
<http://www.fldoe.org/ese>

Florida Department of Education

Bureau of Student Achievement through Language Acquisition
(850) 245-0417
<http://www.fldoe.org/aala/>

Florida House of Representatives

Education Committee
(850) 717-4830
<http://www.myfloridahouse.gov>

⁴⁸ Florida Department of Education, Bureau of Exceptional Education and Student Services, *Guide to FCAT and FCAT 2.0 Accommodations for Students with Disabilities*, at 19 (2010), available at www.fldoe.org/ese/pdf/fcatteam.pdf.

⁴⁹ See s. 1003.4282(7), F.S.

⁵⁰ Section 1008.22(3)(c)2., F.S.

⁵¹ Section 1003.4282(11)(e), F.S., as created by s. 33, ch. 2014-184, L.O.F. As of the time of publication of this fact sheet, the provisions of ch. 2014-184, L.O.F., are the subject of a constitutional challenge on unrelated grounds. See *Faasse v. Scott*, No. 37 2014 CA 001859 (2d Cir. Ct. filed July 16, 2014) (challenging ch. 2014-184, L.O.F. based on alleged violation of the single subject rule).

⁵² *Id.*



Must Florida implement a statewide system of school improvement and accountability?

Yes. The Elementary and Secondary Education Act (ESEA) of 1965, as reauthorized and substantially revised by the No Child Left Behind Act of 2001 (NCLB), requires each state to develop and implement a single, statewide system of school improvement and accountability based on academic standards and assessments. Each system must contain sanctions and rewards to hold school districts and public schools accountable for student achievement.¹ In addition, NCLB requires each state to narrow student achievement gaps within the state, school districts, and schools of the following subgroups:

- Economically disadvantaged students;²
- Students from major racial and ethnic groups;³
- Students with disabilities; and
- Students with limited English proficiency.⁴

By holding schools accountable for the learning gains of all students in the lowest performing 25 percent, Florida's accountability system is structured to close the achievement gap across all subgroups, including those specified under NCLB.⁵ The State Board of Education (SBE) is responsible for Florida's system of public school improvement and accountability.⁶ In accordance with NCLB requirements, the system must assess student performance by school, identify schools that are not meeting accountability standards, and institute appropriate measures for enforcing improvement.⁷

How does the Federal law require states to hold schools accountable?

NCLB requires that, by the end of the 2013-2014 school year, 100 percent of students meet proficiency levels on statewide reading/language arts and mathematics assessments.⁸ To help states achieve this requirement,

¹ Pub. L. No. 107-110, 115 Stat. 1425 (Jan. 8, 2002)(NCLB); Pub. L. No. 89-10, 79 Stat. 27 (April 11, 1965)(ESEA); 20 U.S.C. s. 6311(b)(2)(A).

² Historically, the Florida Department of Education has defined "economically disadvantaged" to mean students who are eligible for free or reduced price lunch or are attending a USDA Provision 2 school, i.e., a school that provides meals to all students at no charge. See Florida Department of Education, *2011 Guide to Calculating Adequate Yearly Progress (AYP), Technical Assistance Paper 2010-11*, at 5 (July 2011), available at <http://schoolgrades.fldoe.org/pdf/1011/AYPTAP2011.pdf> [hereinafter *AYP Guide*]; see, e.g., U.S. Department of Agriculture, *School Meals, Provisions 1, 2, & 3*, <http://www.fns.usda.gov/school-meals/provisions-1-2-and-3> (last visited Sep. 4, 2014).

³ Historically, the Florida Department of Education has defined the state's major racial and ethnic groups for purposes of NCLB accountability as White, Black, Hispanic, Asian, and American Indian. See *AYP Guide*, *supra* note 2, at 5.

⁴ 20 U.S.C. s. 6311(b)(2)(C)(v)(II). Under Florida's waiver from certain NCLB requirements, all four student subgroups are identified based upon the improvement of the lowest 25th percentile of students in the school on statewide reading and mathematics assessments, as measured by Florida's school grading system. Florida Department of Education, *Florida ESEA Flexibility Request*, at 50, 96-97, and 120-121 (June 28, 2012), as revised June 1, 2014, available at <http://www2.ed.gov/policy/eseaflex/approved-requests/fl2extreq814.pdf> [hereinafter *ESEA Waiver Request*]; see s. 1008.34(3)(b)1.c., F.S. See also *infra* text accompanying notes 17-24.

⁵ See s. 1008.34, F.S.; rule 6A-1.09981(1)(a)1.c., F.A.C.

⁶ Section 1008.33(2)(a), F.S.

⁷ *Id.* Provisions implementing Florida's statewide system of school improvement and accountability are found in rule 6A-1.099811, F.A.C.

⁸ See 20 U.S.C. s. 6311(b)(2)(F).

NCLB required states to demonstrate that its schools were making adequate yearly progress (AYP) towards meeting 100 percent proficiency based on state-adopted annual measurable objectives (AMOs).⁹

In addition, while NCLB's education accountability provisions are aimed at improving the achievement of all public school students, the law placed particular emphasis on improving the achievement of students attending high-poverty schools, known as Title I schools.¹⁰ States must identify Title I schools that fail to make AYP for two consecutive years as "schools in need of improvement" (SINI).¹¹ Under NCLB, these school improvement interventions were implemented in a "one size fits all" fashion, increasing in intensity each year a school was identified as a SINI, regardless of whether the school barely missed making AYP or was in need of dramatic intervention.¹²

In July 2008, Florida received U.S. Department of Education (USDOE) approval to implement a more nuanced system of school improvement and accountability than that prescribed by NCLB.¹³ This system was known as differentiated accountability because the intervention and support strategies applied to SINIs vary in intensity depending upon the nature and severity of substandard student achievement at the school, enabling states to focus school improvement resources upon the neediest schools.¹⁴ Initially, schools were placed in one of six categories, with one category not requiring any strategies and the other five requiring strategies according to the causes and severity of substandard student achievement.¹⁵ Intervention and support strategies were then applied to the school based upon the school's categorization. Criteria used to categorize a school included the school's grade,¹⁶ statewide assessment results, and AYP count.¹⁷

Do all of the NCLB requirements continue to apply to Florida?

The provisions of NCLB have not been reauthorized since it became law in 2002. Accordingly, amid rising concerns that states would be unable to meet NCLB's 2013-2014 100 percent proficiency requirement, the Secretary of USDOE invited states to apply for waivers of certain NCLB requirements¹⁸ in exchange for implementing specified accountability policies, or "principles."¹⁹

Each state must submit a request showing how it will implement the principles to increase the quality of instruction for students and improve student academic achievement.²⁰ The principles include:

- Adoption of college- and career-ready standards and aligned, high-quality state assessments in English language arts and math.

⁹ 20 U.S.C. s. 6311(b)(2)(G).

¹⁰ 20 U.S.C. ss. 6301(2)-(3) and 6311(b)(2)(C)(v); see U.S. Government Accountability Office, *No Child Left Behind Act: Improvements Needed in Education's Process for Tracking States' Implementation of Key Provisions*, Report No. GAO-04-734, at 6 (Sept. 30, 2004), available at <http://www.gao.gov/new.items/d04734.pdf>.

¹¹ 20 U.S.C. s. 6316(b). NCLB prescribed a series of school improvement interventions that gradually increase in intensity with each consecutive year a school was identified as a SINI. See 20 U.S.C. s. 6311(b)(1)(E)(i), (b)(5)(B), (b)(7)(C)(iv), (b)(8)(A), and (e)(1), (6), (8), and (12)(A) and (C).

¹² See 20 U.S.C. s. 6316(b).

¹³ U.S. Department of Education, Press Release, *U.S. Education Secretary Margaret Spellings Announces Approval of Three Additional States to Use Differentiated Accountability Under NCLB* (Jan. 8, 2009), available at <http://www2.ed.gov/news/pressreleases/2009/01/01082009b.html>.

¹⁴ Section 1008.33(2)(b) and (4), F.S.

¹⁵ The six categories from highest to lowest were "Schools Not Required to Participate in Differentiated Accountability Strategies;" "Prevent I;" "Correct I;" "Prevent II;" "Correct II;" and "Intervene." Placement in all but the highest category identified a school for interventions. Rule 6A-1.099811(3), F.A.C. (effective Aug. 20, 2010, but subsequently amended Aug. 6, 2013).

¹⁶ For an explanation of Florida's school grades, see *supra* text accompanying notes 52-55.

¹⁷ *Id.*

¹⁸ Among other things, waived requirements include the use of AYP to determine which schools require intervention and support, reaching 100 percent student proficiency in mathematics and reading/language arts by the 2013-14 school year, and allocation of certain federal grant funds. *ESEA Waiver Request*, *supra* note 4, at 4-7.

¹⁹ Letter from Secretary of the U.S. Department of Education to Chief State School Officers (Sept. 23, 2011), available at <http://www2.ed.gov/policy/gen/guid/secletter/110923.html>. See also U.S. Department of Education, *ESEA Flexibility*, at 2-3 (as revised June 1, 2014), <http://www.ed.gov/esea/flexibility/documents/esea-flexibility-acc.doc> [hereinafter *ESEA Flexibility*].

²⁰ *ESEA Flexibility*, *supra* note 17, at 1.

- Implementation of state-developed differentiated recognition, accountability, and support systems used to improve the academic achievement of all students, close achievement gaps, and support Title I schools.
- Implementation of teacher and principal evaluation systems that incorporate student growth and are used to make personnel decisions.
- Reduction of duplication and unnecessary reporting burdens on schools and districts.²¹

To receive a flexibility waiver, the state’s system of differentiated recognition, accountability, and support must identify certain Title I schools as “reward,” “focus,” or “priority” schools based on student performance on statewide ELA and mathematics assessments.²²

Federal Differentiated Recognition, Accountability, and Support System Requirements ²³		
Category	Federal Identification Criteria	Required Strategies or Recognitions
Reward	<ul style="list-style-type: none"> • High performing schools—Schools among the Title I schools that have the “highest absolute performance” over a number of years for all students and student subgroups. • High progress schools—Schools among the ten percent of Title I schools that are making the most progress in improving performance of all students or improving graduation rates. Cannot include schools with significant achievement gaps across subgroups that are not closing. 	<ul style="list-style-type: none"> • Provide incentives and recognition for success on annual basis. • If possible, reward schools making the most progress or having the highest performance.
Focus	<ul style="list-style-type: none"> • Schools that have largest within-school gaps between highest achieving subgroup(s) and the lowest-achieving subgroup(s) or similar gaps in HS graduation rates. • High schools that have a subgroup(s) with low achievement or graduation rates. • High schools that have a graduation of less than 60% and are not a priority school. 	<ul style="list-style-type: none"> • Districts must implement interventions, which may include tutoring and public school choice. • The state may use certain federal grant funds to districts in order to serve focus schools. • The state must develop criteria to determine when a school makes progress significant enough to exit “focus” status.
Priority	<ul style="list-style-type: none"> • Schools among the lowest 5% of schools in the state based on the achievement of all students and have demonstrated a lack of progress over a number of years. • Title I schools with a graduation rate less than 60% over a number of years. • Tier I or Tier II SIG schools using SIG funds to implement a school intervention model. 	<ul style="list-style-type: none"> • Schools districts must implement, for at least 3 years, meaningful interventions aligned with turnaround principles. • The state must develop criteria to determine when a school makes progress significant enough to exit “priority” status.
Other Title I Schools	<ul style="list-style-type: none"> • Title I schools that do not make progress in improving student achievement and narrowing achievement gaps. 	<ul style="list-style-type: none"> • The state must provide incentives and supports to “ensure continuous improvement.”

²¹ See *ESEA Flexibility*, supra note 17, at 1.

²² See *ESEA Flexibility*, supra note 17, at 2. The flexibility waiver effectively ended Florida’s participation in the differentiated accountability program. However, state board rule still refers to the state system by which the FDOE provides support and interventions to “D” and “F” schools as the “Differentiated Accountability State System of School Improvement.” Telephone interview with Deputy Chancellor for School Improvement and Student Achievement, Florida Department of Education (Oct. 2, 2014); rule 6A-1.099811(2)(g), F.A.C.

²³ See *ESEA Flexibility*, supra note 17.

The flexibility waiver requires that “reward” schools receive recognition and, if possible, monetary awards for demonstrating the highest performance or making the most progress. For “focus” schools, which must include at least 10 percent of all Title I schools in the state, the state must work to close achievement gaps and require districts to implement interventions.²⁴ For the lowest-performing “priority” schools, the state must “effect dramatic, systemic change,” implementing meaningful interventions aligned with “turnaround principles” for at least three years.²⁵ “Priority” schools must include at least five percent of all Title I schools in the state.²⁶ States must also provide incentives and supports for “other Title I schools” that are not making progress in improving student achievement and narrowing achievement gaps.²⁷

In February 2012, the Florida Department of Education (FDOE) obtained a flexibility waiver from USDOE.²⁸ Under the waiver, a school’s grade²⁹ determines whether it is identified as a “focus”,³⁰ “priority”,³¹ or “reward” school, irrespective of Title I status.³² Support and intervention strategies must be implemented at all of these schools.^{33, 34} In August 2014, USDOE extended Florida’s flexibility waiver, as revised, through the 2014-2015 school year.³⁵

Under Florida law and the flexibility waiver, schools that earn an “A” or increase their grade from one year to the next are considered “reward” schools,³⁶ schools that earn a “D” are considered “focus” schools,³⁷ and schools that earn an “F” are considered “priority” schools.³⁸ The most intensive intervention and support strategies are provided to schools earning a grade of “F” or recurring letter grades of “D.”³⁹ By targeting all “D”

²⁴ *ESEA Flexibility*, *supra* note 17, at 5.

²⁵ *ESEA Flexibility*, *supra* note 17, at 2, 7.

²⁶ *ESEA Flexibility*, *supra* note 17, at 2.

²⁷ *ESEA Waiver Request*, *supra* note 4, at 130.

²⁸ *ESEA Waiver Request*, *supra* note 4.

²⁹ For an explanation of Florida’s school grades, *see supra* text accompanying notes 52-55.

³⁰ Rule 6A-1.099811(2)(k), F.A.C.

³¹ Rule 6A-1.099811(2)(s), F.A.C.

³² *ESEA Flexibility*, *supra* note 17, at 2.

³³ *Id.* at 73-77. Before the ESEA flexibility waiver, in 2008, Florida obtained USDOE approval to implement a more nuanced system of school improvement and accountability than that prescribed by ESEA. The system was called “differentiated accountability” because it applied varied intervention and support strategies, depending on the nature and severity of substandard student achievement, to SINIs. U.S. Department of Education, Press Release, *U.S. Education Secretary Margaret Spellings Announces Approval of Three Additional States to Use Differentiated Accountability Under NCLB* (Jan. 8, 2009), available at <http://www2.ed.gov/news/pressreleases/2009/01/01082009b.html> [hereinafter *U.S. DOE Press Release*]. *See also* s. 1008.33(3)-(5), F.S.; text accompanying note 14, *supra*.

³⁴ Section 1008.33(3) and (4), F.S.; *ESEA Waiver Request*, *supra* note 4, at 4-7.

³⁵ Letter from Assistant Secretary, U.S. Department of Education, to Commissioner, Florida Department of Education (August 14, 2014). The revised flexibility waiver contains changes to Florida law made during the 2014 legislative session. Notably, the waiver was amended to reflect a change in Florida law that excludes the achievement scores of an English language learner (ELL) from school grade calculations until the ELL has attended a U.S. school for more than two years. *See* s. 1008.34(3), F.S. (flush left provisions at the end of the subsection), *as amended by* s. 1, ch. 2014-23, L.O.F. The learning gains of all ELL students, regardless of how long they have attended school, are included in the school grade calculation. While USDOE approved the waiver generally, it did not approve this change because federal law “requires assessing all students in tested grades and including their results in accountability determinations . . . Florida’s progress in implementing all ESEA flexibility requirements and progress on this issue will inform [USDOE’s] decision regarding renewal of Florida’s ESEA flexibility after the 2014-2015 school year.” Letter from Assistant Secretary, U.S. Department of Education, to Commissioner, Florida Department of Education (August 14, 2014). *See also* Letter from the Governor of Florida to the Secretary of Education, U.S. Department of Education (October 17, 2014) (requesting hearing on approval of two-year delay in using student achievement scores of ELL students as part of waiver from NCLB requirements).

³⁶ *ESEA Flexibility*, *supra* note 17, at 2.

³⁷ Rule 6A-1.099811(2)(k), F.A.C.

³⁸ Rule 6A-1.099811(2)(s), F.A.C. The FDOE uses the differentiated accountability term “prevent” to categorize “C” schools. However, there are no intervention or support strategies required by federal law, Florida law, or the flexibility waiver specific to “C” or “prevent” schools. Telephone interview with Deputy Chancellor for School Improvement and Student Achievement, Florida Department of Education (Oct. 2, 2014). *See* rule 6A-1.099811(3), F.A.C. *See also* s. 1008.33(3), F.S., and *ESEA Waiver Request*, *supra* note 4.

³⁹ Section 1008.33(3)(c) and (4), F.S.

and “F” schools, the system has identified the percentage of “focus” and “priority” schools required for ESEA flexibility.⁴⁰

School Designations
Based Upon 2013-14 (2012-2013 for high schools) School Performance Data⁴¹

School Grade	Federal Category	“DA” Category	Projected Number	% of Title I Schools
F	Priority	Intervene	141 (136 Title I)	8% (136/1,734)
D	Focus	Correct	327 (306 Title I)	18% (306/1,734)
C		Prevent	743 (583 Title I)	34% (583/1,734)
A or increased school grade	Reward		1,848	

What intervention and support strategies are required for “Focus” and “Priority” schools?

Florida law requires FDOE to adopt a “differentiated matrix of intervention and support strategies” for “D” and “F” schools.⁴² These strategies must include school improvement planning, leadership and educator quality improvement, professional development, curriculum alignment and pacing, continuous improvement, and monitoring plans and processes.⁴³ The specific requirements for each strategy are set forth in the forms, incorporated by reference in state board rule, used by districts to monitor and report implementation of intervention and support strategies to the FDOE.⁴⁴

What are school turnaround options?

A school district must select a school turnaround option when a traditional public school earns any of the following:

- A grade of “F”;
- Three consecutive grades of “D”; or
- A grade of “F” within two years of improving from a grade of “F” or exiting the Intervene category (under the law predating Florida’s ESEA waiver).⁴⁵

The school district may select one of the following turnaround options:

- Convert the school to a district-managed turnaround school;
 - Reassign students to another school and monitor the progress of each reassigned student;
 - Close the school and reopen it as one or more charter schools, each with a governing board with a demonstrated record of effectiveness;
 - Contract with an outside entity that has a demonstrated record of effectiveness to operate the school;
- or

⁴⁰ ESEA Waiver Request, *supra* note 4, at 107, 119.

⁴¹ ESEA Waiver Request, *supra* note 4, at 130.

⁴² Section 1008.33(3)(c), F.S.

⁴³ Section 1008.33(3)(c), F.S.

⁴⁴ See forms DA-1, Checklist for Districts with Focus or Priority Schools (August 2013); DA-2, Checklist for Focus and Priority Schools (August 2013); DIAP-1, District Improvement and Assistance Plan (August 2013); SIP-1, School Improvement Plan (August 2013); TOP-1, Turnaround Option Selection (Phase 1) (August 2013); and TOP-2, Turnaround Option Plan – Phases 2 and 3 (August 2013) incorporated by reference in rule 6A-1.099811(9), F.A.C. As of the publication of this document, amendments to the rule and forms incorporated by reference are pending approval by the state board at its November 18, 2014 meeting. Florida Department of Education, *State Board Rules Under Review*, <https://app1.fldoe.org/rules/default.aspx> (last visited October 29, 2014).

⁴⁵ Section 1008.33(4)-(7), F.S.

- A hybrid version of these options or another school turnaround model demonstrated to be effective in improving school performance.⁴⁶

The first full school year after the school earns a grade of “F” is a planning year.⁴⁷ The school district must implement intervention and support strategies, select a school turnaround option, and submit a plan for implementing the option to FDOE for state board approval.⁴⁸ If the school does not improve by at least one letter grade during the planning year, the turnaround option must be implemented the following school year.⁴⁹

Schools earning three consecutive grades of “D” must implement the district-managed turnaround option. A school that earns a grade of “F” within two years of improving from an “F” must implement the turnaround option that was planned for before the school improved its grade. These schools do not get a planning year before implementing a turnaround option.⁵⁰

A school turnaround option must be implemented for two full school years. A school that does not improve by at least one letter grade during the implementation period must select and implement a different turnaround option the following school year. The state board has discretion to allow the school district to continue implementing the existing turnaround option, if it finds that the school is likely to improve with additional time.⁵¹

A traditional public school is no longer required to implement a turnaround option if it improves by at least one letter grade; however, it must continue implementing the school improvement plan. Continued implementation of the plan must be monitored by the school district for three years.⁵²

What are school grades?

School grades communicate to the public how well a school is performing relative to state standards by assigning a grade of A through F as follows:

- “A,” for schools making excellent progress;
- “B,” for schools making above average progress;
- “C,” for schools making satisfactory progress;
- “D,” schools making less than satisfactory progress; and
- “F,” for schools failing to make adequate progress.⁵³

The assessment-based components of all school grades are calculated based upon student performance on statewide, standardized ELA, mathematics, social studies, and science assessments.⁵⁴ School grades for middle schools include an additional component measuring the percentage of students passing high school level end-of-course (EOC) assessments or attaining national industry certifications.⁵⁵ High school grades are calculated by also including a school’s four-year graduation rate and the percentage of the school’s students who are eligible to earn college and career credit through accelerated courses or who attain national industry certifications.⁵⁶

⁴⁶ Section 1008.33(4)(b), F.S.

⁴⁷ Section 1008.33(4)(c), F.S.

⁴⁸ Section 1008.33(4)(a), F.S.

⁴⁹ Section 1008.33(4)(c)-(e), F.S.

⁵⁰ Section 1008.33(5)-(6), F.S.

⁵¹ Section 1008.33(4)(c)-(e), F.S.

⁵² Section 1008.33(4)(c)-(d), F.S.

⁵³ Section 1008.34(2), F.S.

⁵⁴ Section 1008.34(3)(b), F.S.

⁵⁵ Section 1008.34(3)(b)i., F.S. The industry certifications must be identified in the Industry Certification Funding List adopted by the State Board of Education. *Id.*

⁵⁶ Section 1008.34(3)(b)2., F.S.

What statewide, standardized assessments are used to measure student performance⁵⁷ for the purpose of calculating school grades?

The statewide standardized assessments used for school grades are:⁵⁸

English language arts (ELA) assessment	Grades 3-11
Mathematics assessment	Grades 3-8
FCAT Science	Grades 5 and 8
Algebra I EOC assessment	
Biology I EOC assessment	
Geometry EOC assessment	
Civics EOC assessment (for middle grades students, beginning in the 2014-15 school year)	
U.S. History EOC assessment	
Florida Alternate Assessment (FAA) ⁵⁹	

Which schools are graded?

All public schools, including charter schools, which have at least 10 full-year-enrolled students with valid statewide, standardized assessment or FAA scores in reading for the current and prior years and at least 10 full-year-enrolled students with valid standardized, statewide assessment or FAA scores in mathematics for the current and prior years must be assigned a school grade.⁶⁰ For high schools, there must be at least 10 eligible students with valid Algebra I and Geometry I EOC assessment scores in the current and previous years in order to receive a school grade.⁶¹

Department of Juvenile Justice schools are not graded, and alternative schools that provide dropout prevention and academic intervention services have the option of earning a school grade or a school improvement rating. If an alternative school chooses to receive a school improvement rating instead of a school grade, student performance is also included in the school grade of the students' home school.⁶²

How are Exceptional Student Education (ESE) centers held accountable?

Exceptional Student Education (ESE) Centers must choose to receive a school grade or school improvement rating.⁶³ Achievement levels and learning gains of a student with a disability attending an ESE center who has not been enrolled in or has not attended a public school other than the ESE center for grades K-12 within the school district are not included in the calculation of the home school's grade if the student is identified as an emergent student on the FAA.⁶⁴

How are collocated schools graded?

A collocated school is one that has its own unique master school identification number, provides for the education of each of its enrolled students, and operates at the same facility as another school with its own unique master school identification number providing for the education of each of its enrolled students. If a collocated school does not earn a school grade or school improvement rating for the performance of its

⁵⁷ "Student performance" includes, but is not limited to, student learning growth, achievement levels, and learning gains on statewide, standardized assessments.

⁵⁸ See s. 1008.34(3)b.1., F.S. See also rule 6A-1.09981(4), F.A.C.

⁵⁹ Rule 6A-1.09981(1)(a), F.A.C. The IEP team may determine that a student with a significant cognitive disability should take the statewide alternate assessment. See Rule 6A-1.0943(4), F.A.C.

⁶⁰ Section 1008.34(3)(a), F.S.; rule 6A-1.09981(3)(a)3., F.A.C.

⁶¹ Rule 6A-1.09981(3)(a)2., F.A.C.

⁶² Section 1008.34(3)(d)1., F.S.; see also s. 1008.341, F.S. "Home school" means the school to which the student would be assigned if the student were not assigned to an alternative school. Section 1008.34(3)(d)1., F.S.

⁶³ Section 1008.3415(1), F.S.

⁶⁴ *Id.* For a definition of emergent see, *Understanding the Florida Alternate Assessment and Your Child's Score*, Florida Department of Education, available at <http://www.fldoe.org/asp/pdf/Parent-Brochure-English-Web.pdf>

students, the student performance of all schools operating at the same facility must be aggregated to develop a school grade that will be assigned to all schools at that location.⁶⁵

What criteria are used to grade schools?

The basic school grade model used for elementary, middle, and high schools is based upon the percentage of total possible points earned by a school for student achievement scores on specified statewide, standardized assessments; student learning gains on statewide, standardized ELA and mathematics assessments; and the improvement of the lowest 25 percent of students in the school in reading and mathematics.⁶⁶ Points are earned as follows:

Student achievement levels (each worth 100 points):⁶⁷

- The percentage of students who pass the statewide, standardized ELA assessment or attain a level 4 or above on FAA in reading and writing;
- The percentage of students who pass the statewide, standardized mathematics assessment, pass the EOC assessments for Algebra I or Geometry, or attain a level 4 or above on FAA in mathematics;
- The percentage of students who pass the statewide, standardized science assessment, pass the EOC assessment for Biology I, or attain a level 4 or above on FAA in science; and
- The percentage of students who pass the Civics and U.S. History EOC assessments.⁶⁸

Learning gains (each worth 100 points):⁶⁹

- The percentage of students making learning gains as measured by the statewide, standardized ELA assessment and the FAA reading assessment; and
- The percentage of students making learning gains as measured by the statewide, standardized mathematics assessment, the EOC assessments for Algebra I and Geometry, and the FAA mathematics assessment.⁷⁰

Learning gains of students in the lowest 25 percent in ELA and mathematics (each worth 100 points):⁷¹

- The percentage of students in the lowest 25 percent in ELA who make learning gains as measured by the statewide, standardized ELA assessment; and

⁶⁵ Section 1008.34(3)(a)3., F.S.

⁶⁶ Section 1008.34(3)(b)1., F.S.

⁶⁷ “Achievement level” describes the level of content mastery a student has acquired in a particular subject as measured by statewide, standardized assessments. Section 1008.34(1)(a), F.S. There are five achievement levels: level 1 represents the lowest achievement level, level 5 is the highest achievement level. Level 3 indicates satisfactory performance (passing) on an assessment. Sections 1008.22(3)(e)1. and 1008.34(1)(a), F.S. Achievement scores for the FAA are reported using nine achievement levels, level 1 represents the lowest achievement level, level 9 is the highest achievement level, and level 4 is passing. Rule 6A-1.09430(5), F.A.C.

⁶⁸ There is no statewide, standardized social studies assessment administered to elementary school students. Accordingly, the elementary school grade model does not include a social studies component.

⁶⁹ Annual learning gains indicate the percent of eligible students who have: improved their achievement level on the statewide, standardized ELA or mathematics assessment, or the FAA, as applicable, from one year to the next (e.g., from level 1 to level 2); maintained their achievement level of 3 or above (level 4 or above on the FAA) from one year to the next; or remained within achievement levels 1 or 2, but demonstrated more than one year’s growth according to developmental scale scores from one year to the next. Students whose achievement levels decline from one year to the next do not make annual learning gains, even if the lower score is at or above grade level. Rule 6A-1.09981(4)(a)2., F.A.C.

⁷⁰ Section 1008.34(3)(b)1.b., F.S.; rule 6A-1.09981(5)(a)5. and 6., F.A.C.; rule 6A-1.09981(4)(a)2. f. and g., F.A.C. Students who move to level 4 from a lower level receive additional weighting, as do prior-year low performers who make greater-than-expected gains. Students who move to level 4 from a lower level also receive additional weighting.

⁷¹ Section 1008.34(3)(b)1.g. and h., F.S. Improvement of the lowest 25 percent of students in reading and in mathematics in each grade, calculated separately for each subject, are aggregated for each school, unless the students are performing at achievement level 3 or above on the FCAT and EOC assessments. Rule 6A-1.09981(4)(a)3., F.A.C. Students are classified in the lowest 25 percent based on their statewide assessment scores from the prior year. Section 1008.34(3)(b)1.g. and h., F.S.

- The percentage of students in the lowest 25 percent in mathematics who make learning gains as measured by the statewide, standardized mathematics assessment, the EOC assessments for Algebra I and Geometry, and the FAA mathematics assessment.

Elementary School Grade Calculation (percentage of 700 points)

English/ Language Arts	Mathematics	Science
Achievement (0% to 100%)	Achievement (0% to 100%)	Achievement (0% to 100%)
Learning Gains (0% to 100%)	Learning Gains (0% to 100%)	
Learning Gains of the Low 25% (0% to 100%)	Learning Gains of the Low 25% (0% to 100%)	

What additional criteria are used for middle school grades?

The grade calculation for a middle school must also include the percentage of students who pass high school level EOC assessments or attain national industry certifications identified in the Industry Certification Funding List (worth 100 possible points).⁷² Beginning with the 2014-2015 school year, student performance on the Civics EOC assessment will be used to calculate the social studies component of a middle school's grade.⁷³

Middle School Grade Calculation (percentage of 900 points)

English/ Language Arts	Mathematics	Science	Social Studies (Civics EOC)	Acceleration Success
Achievement (0% to 100%)	Achievement (0% to 100%)	Achievement (0% to 100%)	Achievement (0% to 100%)	Percentage of students who pass H.S. EOCs and industry certifications (0% to 100%)
Learning Gains (0% to 100%)	Learning Gains (0% to 100%)			
Learning Gains of the Low 25% (0% to 100%)	Learning Gains of the Low 25% (0% to 100%)			

What other criteria are used for high school grades?

The grade calculation for a high school must also include the following, each worth 100 possible points:

- The percentage of students who pass the Algebra I and Geometry EOC assessments;
- The school's four-year graduation rate;⁷⁴

⁷² Section 1008.34(3)(b)1.i., F.S.

⁷³ See Section 1008.34(3)(b)1.d., F.S.; rule 6A-1.09981(4)(b)5., F.A.C.

⁷⁴ Section 1008.34(3)(b)2.a., F.S. The four-year graduation rate is calculated using a formula established by the state board. *Id.* Section 1, ch. 2014-23, L.O.F. made significant changes to the way graduation rates factored into a high school's grade. Previously,

- The percentage of students who are eligible to earn college credit through Advanced Placement (AP), International Baccalaureate (IB), dual enrollment, and Advanced International Certificate of Education (AICE) courses or who attain national industry certifications identified in the Industry Certification Funding List at any time during high school;⁷⁵ and
- The percentage of students who pass the U.S. History EOC assessment.⁷⁶

High School Grade Calculation (percentage of 1,000 points)

English/ Language Arts	Mathematics (EOCs)	Science (Biology EOC)	Social Studies (US History EOC)	Graduation Rate	Acceleration Success
Achievement (0% to 100%)	Achievement (0% to 100%)	Achievement (0% to 100%)	Achievement (0% to 100%)	Overall, 4-year Graduation Rate (0% to 100%)	Percent of students eligible to earn college credit through AP, IB, AICE, dual enrollment or earning an industry certification (0% to 100%)
Learning Gains (0% to 100%)	Learning Gains (0% to 100%)				
Learning Gains of the Low 25% (0% to 100%)	Learning Gains of the Low 25% (0% to 100%)				

Which students' statewide, standardized assessment scores⁷⁷ are counted toward a school's grade?

The scores of all full-year-enrolled students on statewide, standardized assessments or the FAA are included in performance measures for ELA, mathematics, science, and social studies—with the exception of English language learners (ELLs) who have been enrolled in school in the U.S. for less than two years.⁷⁸ All students, regardless of disability or ELL classification, with assessment scores in ELA and mathematics in both the current year and the previous year are included in the learning gains components of school grades.⁷⁹

May other factors cause a school's grade to be raised or lowered?

No. The state board is prohibited from adopting any provision that would raise or lower a school's grade beyond the percentage of points earned, and extra weight may not be added in the calculation of any school grade component.⁸⁰

How is the school grading scale set, and can it be adjusted?

The state board must adopt in rule a school grading scale that sets the percentage of points needed to earn each school grade ("A" through "F"). There must be at least five percentage points to separate the percentage

high schools were separately accountable for four-year and five-year graduation rates for all students and for "academically at-risk students". See rule 6A-1.09981(4)(c)1.a. and b., F.A.C. As of the publication of this document, the rule has not been amended to reflect the changes made by s. 1, ch. 2014-23, L.O.F., which eliminated inclusion of the 5-year graduation rate and the graduation rate of academically at-risk students. The rule defines the four-year graduation rate as a "four-year adjusted cohort rate using criteria for the federal uniform graduation rate defined in the Code of Federal Regulations at 34 C.F.R. § 200.19(b)." Rule 6A-1.09981(4)(c)1., F.A.C.

⁷⁵ Section 1008.34(3)(b)2.b., F.S.

⁷⁶ Rule 6A-1.09981(4)(c)1.f., F.A.C.

⁷⁷ Reading and mathematics scores include results from statewide, standardized assessments, and the FAA. Rule 6A-1.09981(2)(a), F.A.C.

⁷⁸ Section 1008.34(3)(b)1., F.S. (flush left provisions at end of subparagraph).

⁷⁹ Rule 6A-1.09981(2)(b), F.A.C.

⁸⁰ Section 1008.34(3)(c)2., F.S., as amended by s. 1, ch. 2014-23, L.O.F.

thresholds needed to earn each school grade.⁸¹ Periodically, the board must review the school grading scale to determine if the scale should be adjusted upward to meet raised expectations and encourage increased student performance. Any time the grading scale is adjusted upward, the state board must provide to the public and the school districts “the reasons for and degree of the adjustment and its anticipated impact on school grades.”⁸²

What are school improvement ratings?

School improvement ratings are indicators of whether the performance of an alternative school that provides dropout prevention and academic intervention services has improved, remained the same, or declined compared to the prior year, based upon student learning gains on statewide, standardized assessments.⁸³ Alternative schools and ESE centers may choose to receive a school improvement rating instead of a school grade.⁸⁴ An alternative school that earns a school improvement rating receives one of the following:

- “Commendable”—a significant percentage of the students attending the school are making learning gains;
- “Maintaining”—a sufficient percentage of the students attending the school are making learning gains; or
- “Declining”—students are making less academic progress at the alternative school than when the students were served in their home schools.⁸⁵

In order to receive a school improvement rating, an alternative school or ESE center must have a minimum of 10 students with valid statewide, standardized assessment or FAA scores for the current and previous year for each component.⁸⁶ If the school does not have at least 10 students with complete data for either component, then the component may not be used in calculating the school’s improvement rating. An alternative school or ESE center receiving a school improvement rating must annually identify the percentage of its students making learning gains irrespective of a student’s past performance, if any, at his or her home school.⁸⁷

Beginning with the 2016-2017 school year, if the school does not meet the requirements for the issuance of a school improvement rating in the current year and has failed to receive a school improvement rating for the prior two consecutive years, the school must receive a rating for the current year based on a compilation of all student learning gains, for all grade levels, for those three years.⁸⁸

An alternative school that tests at least 80 percent of its students may receive a school improvement rating. If an alternative school tests less than 90 percent of its students, the school may not earn a rating higher than “maintaining.”⁸⁹

What criteria are used to determine a school improvement rating?

The school improvement rating calculation uses the following two components:

- The percentage of eligible students who make learning gains in ELA as measured by statewide, standardized assessments; and
- The percentage of eligible students who make learning gains in mathematics as measured by statewide, standardized assessments.⁹⁰

⁸¹ Section 1008.34(3)(c)1., F.S.

⁸² *Id.*

⁸³ See s. 1008.341(2), F.S.; rule 6A-1.099822(5)(b), F.A.C.

⁸⁴ Sections 1008.341(2) and 1008.3415(1), F.S.

⁸⁵ *Id.*

⁸⁶ Rule 6A-1.099822(5)(a), F.A.C.

⁸⁷ Section 1008.341(4), F.S.

⁸⁸ Section 1008.341(2), F.S., *as amended by* s. 7, ch. 2014-23, L.O.F.

⁸⁹ Section 1008.341(2), F.S.

⁹⁰ Section 1008.341(3)(a) and (b), F.S.

Student data used in determining a school improvement rating includes student performance results based on statewide, standardized assessments, including retakes, for all eligible students who were assigned to and enrolled in the school during the October or February FTE count and who either have assessment scores or comparable scores for the preceding school year.⁹¹

Are there rewards for schools earning high grades?

Yes. Under the Florida School Recognition Program,⁹² a school is eligible for recognition if it:

- Earns a school grade of A;
- Improves at least one letter grade; or
- Improves more than one letter grade and maintains the improved grade the following school year.⁹³

Schools that maintain a “commendable” rating or improve at least one improvement level are also eligible for recognition.⁹⁴ In FY 2013-14, eligible schools received financial awards of up to \$100 per student, and a total of \$107,563,635 was awarded.⁹⁵ The funds awarded during FY 2013-14 were for schools eligible based upon their 2012-13 school grades and school improvement ratings.⁹⁶ Eligible schools in FY 2014-15 may receive financial awards of up to \$100 per student.⁹⁷

If a school district is classified as academically high performing,⁹⁸ then that district is exempt from certain laws and applicable implementing rules pertaining to school districts, provided the district continues to meet all eligibility criteria.⁹⁹

In addition, school districts have discretion to allow schools that receive a grade of “A” or improve at least two letter grades greater budgetary authority.¹⁰⁰

How do parents learn about school grades?

The department annually publishes school grades and school improvement ratings.¹⁰¹ To assist parents in understanding school grades, the department issues an easy-to-read report card for each school which is provided to each parent and published on the department’s website.¹⁰² An alternative school, including an alternative charter school that serves at least 10 students who are tested on the statewide, standardized assessments in the current and previous year must provide an individual student report card to parents that includes the student’s learning gains and progress toward meeting high school graduation requirements. The report card must also include the school’s industry certification rate, college readiness rate, dropout rate, and graduation rate.¹⁰³ For charter schools that are not graded or do not receive a school improvement rating, the department must report statewide assessment data to parents of students attending the charter school,

⁹¹ Section 1008.341(3), F.S.

⁹² See Staff of the Florida House of Representatives, *School Recognition Program Fact Sheet* (October 2014).

⁹³ Section 1008.36(2), F.S.

⁹⁴ Section 1008.341(2), F.S.

⁹⁵ Email, Florida Department of Education, Governmental Relations Office (Oct. 24, 2014).

⁹⁶ Email, Florida Department of Education, Governmental Relations Office (Oct. 24, 2014).

⁹⁷ Specific Appropriation 11, s. 1, ch. 2014-51, L.O.F.

⁹⁸ A school district earns the designation of “high performing” by earning a grade of “A” for two consecutive years, having no district-operated schools with a grade of “F,” complying with all class size requirements, and having no material weaknesses or instances of material noncompliance in the annual financial audit. Section 1003.621(1)(a), F.S. For a list of districts designated as “Academically High-Performing School Districts,” for 2014, see State Board of Education, *Approval of Designation of Academically High-Performing School Districts* (May 20, 2014), available at https://www.fldoe.org/board/meetings/2014_05_20/academic.pdf.

⁹⁹ Section 1003.621(1)(b), F.S. Certain exceptions apply. Section 1003.621(2), F.S.

¹⁰⁰ Rule 6A-1.09981(1)(a)7., F.A.C.

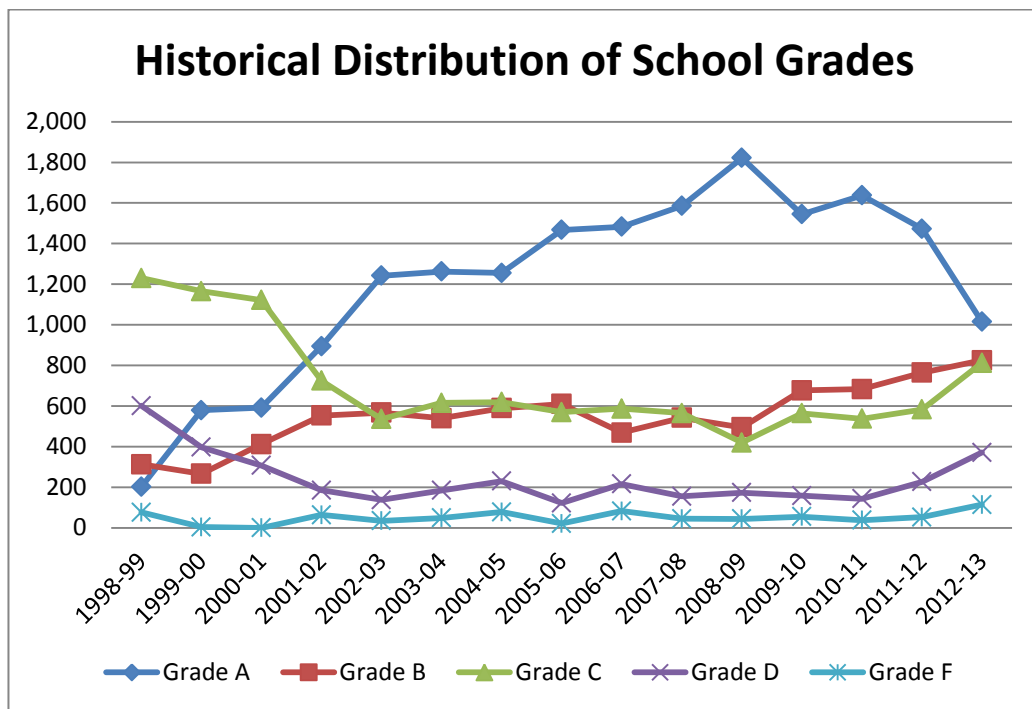
¹⁰¹ Sections 1008.34(5) and 1008.341(5), F.S.

¹⁰² *Id.*; see Florida Department of Education, *School Accountability Reports*, <http://schoolgrades.fldoe.org> (last visited June 6, 2013).

¹⁰³ Section 24, ch. 2013-51, L.O.F., codified at s. 1008.341(5), F.S.

parents of children on the charter school's waiting list, the district in which the charter school is located, and the governing board of the charter school.¹⁰⁴

How many schools have earned each letter grade?¹⁰⁵



How is a district's performance reported?

District performance is also reported using an A through F scale. Beginning with the 2014-2015 school year, FDOE is required to develop a district report card for each district, to include:

- The district grade, which is based on a district-level calculation of each school grade component;¹⁰⁶
- The percentage of students, by school and grade level, demonstrating learning growth in ELA and math;¹⁰⁷
- The percentage of students, by school and grade level, in both the highest and lowest quartiles demonstrating learning growth in ELA and math;¹⁰⁸
- The intervention and support strategies used by the school board for students in both the highest and lowest quartiles if those students exceed the statewide average learning growth for those quartiles;¹⁰⁹
- The intervention and support strategies used by the school board if their schools provide educational services to youth in Department of Juvenile Justice programs that demonstrate learning growth in ELA and math that exceeds the statewide average;¹¹⁰
- Measures of the district's progress in closing the achievement gap between higher- and lower-performing student subgroups;
- Measures of the district's progress in demonstrating learning gains of its highest-performing students;

¹⁰⁴ Section 1002.33(21)(b)1. and 2., F.S.

¹⁰⁵ Email, Florida Department of Education, Governmental Relations Office (Oct. 22, 2014). The most recent results of school grades are posted at <http://schoolgrades.fldoe.org/>.

¹⁰⁶ This calculation must include each eligible student who has transferred among schools within the district or who is enrolled in a school that does not receive a grade. Section 1008.34(5), F.S.

¹⁰⁷ Section 1008.345(5)(a)1., F.S.

¹⁰⁸ Section 1008.345(5)(a)2., F.S.

¹⁰⁹ Section 1008.345(5)(b), F.S.

¹¹⁰ Section 1008.345(5)(c), F.S.

- Measures of the district's success in improving student attendance; the district's grade-level promotion of students scoring achievement levels 1 and 2 on statewide, standardized ELA and math assessments; and
- Measures of the district's performance in preparing students for the transition from elementary to middle school, middle to high school, and high school to postsecondary institutions and careers.¹¹¹

How will the transition to new statewide, standardized math and ELA assessments affect the school grading system?

The 2013-2014 school year was the final year statewide, standardized ELA and math assessments aligned to an earlier set of academic standards¹¹² were used to calculate school grades, school improvement ratings, and district grades and evaluate public education personnel. This coincided with the transition to instruction based on Florida's new state standards, adopted by the state board on February 18, 2014, in the 2014-2015 school year.¹¹³ On March 17, 2014, the commissioner announced that the American Institutes for Research had been selected to develop the new statewide assessments aligned to the new state standards.¹¹⁴

When Florida students take the new assessments for the first time during the 2014-2015 school year, cut scores will not yet exist. Because the 2014-2015 assessments will be different than the 2013-2014 assessments, basing school accountability measures and personnel evaluations on growth in student performance and learning gains compared to the 2013-2014 assessments could result in consequences that do not accurately reflect the actual performance of students.

Accordingly, based on recommendations the commissioner made to the House Education Committee on February 24, 2014,¹¹⁵ legislation enacted in 2014 included a hold harmless provision to insulate schools from any penalty or reclassification that would otherwise result from the school's 2014-2015 grade. The law established the 2014-2015 school year as an informational baseline for schools to work toward improved performance in future years. Thus, a school is not required to select and implement a turnaround option¹¹⁶ in the 2015-2016 school year based on the school's 2014-2015 grade or school improvement rating.¹¹⁷

Beginning with the 2016-2017 school year, schools will again be subject to consequences related to school grades and improvement ratings earned in the 2015-2016 school year.

Where can I get additional information?

Florida Department of Education

Division of Accountability, Research and Measurement
(850) 245-0429
<http://www.fldoe.org/evaluation>

Florida Department of Education

Office of Assessment
(850) 245-0513
<http://www.fldoe.org/asp>

¹¹¹ Section 1008.34(5), F.S.

¹¹² Statewide assessments include FCAT writing, FCAT 2.0, and end of course (EOC) assessments. *See* Section 1008.22, F.S.

¹¹³ Florida State Board of Education, Minutes of Feb. 18, 2014 State Board of Education Meeting (2014), *available at* http://www.fldoe.org/board/meetings/2014_02_18/agenda.asp.

¹¹⁴ Florida Department of Education, Press Office, *With Students as Top Priority, Florida Chooses Replacement for FCAT*, Press Release (Mar. 17, 2014).

¹¹⁵ *See supra* text accompanying note 7.

¹¹⁶ *See* Section 1008.33(4), F.S. and text accompanying note 43.

¹¹⁷ Section 1, ch. 2014-23, L.O.F.

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

Florida House of Representatives

Appropriations Committee

(850) 717-4810

<http://www.myfloridahouse.gov>



What is the Florida School Recognition Program?

The Florida School Recognition Program was created in 1997 to recognize the “outstanding faculty and staff in highly productive [public] schools.”¹ The program provides public recognition and financial awards to schools sustaining high student performance or schools that demonstrate exemplary improvement in student performance.² Funds were first awarded to eligible schools in the 1999-2000 school year.³

Which schools are eligible?

Public schools, including charter schools, that receive a school grade of “A,” improve at least one letter grade from the prior year, or improve more than one letter grade and sustain the improvement the following year are eligible for awards.⁴ In addition, alternative schools that maintain an “commendable” rating or improve at least one improvement-rating level are also eligible for awards.⁵

What do schools receive from the School Recognition Program?

Eligible schools receive a financial award based upon the availability of appropriated funds and the number and size of schools eligible to receive an award.⁶ Additionally, schools earning a school grade of “A” or improving at least two letter grades may have greater authority over the allocation of the school’s total budget.⁷

Do schools have to apply to receive the award?

No. A school’s eligibility for an award is based exclusively upon the school meeting statutorily established performance criteria.⁸

¹ Section 3, ch. 1997-212, L.O.F., initially codified at s. 231.2905 (1), F.S., redesignated in 2002 as s. 1008.36 (1), F.S.

² Section 1008.36(2), F.S.; Florida Department of Education, Accountability Reporting, *Florida School Recognition Program: Frequently Asked Questions*, <http://www.fldoe.org/faq/default.asp?ALL=Y&Dept=177> (last visited July 23, 2014). [hereinafter: School Recognition FAQ].

³ *School Recognition FAQ*, supra note 2.

⁴ Section 1008.36(2) and (3), F.S. A school that serves any combination of students in kindergarten through grade 3 that does not receive a school grade because its students are not tested and not included in the school grading system receive the school grade designation of a K-3 feeder pattern school, if at least 60 percent of the students in the K-3 school are scheduled to be assigned to the graded school. Section 1008.34(3)(a)2., F.S.

⁵ Section 1008.341(2), F.S. Alternative schools have the option of receiving a school improvement rating. There are 3 ratings: commendable, maintaining, and unsatisfactory. *Id.*

⁶ Section 1008.36(4), F.S.

⁷ Section 1008.34(2), F.S.; rule 6A-1.09981(1)(a)7., F.A.C.

⁸ See s. 1008.36(2), F.S.; *School Recognition FAQ*, supra note 2.

How much funding has been provided for the School Recognition Program?

School Recognition Awards⁹		
Year	Per FTE	Total Award
1999-00	\$100	\$27,603,881
2000-01	\$100	\$80,707,094
2001-02	\$100	\$76,407,868
2002-03	\$100	\$121,051,799
2003-04	\$100	\$137,958,067
2004-05	\$100	\$117,209,388
2005-06	\$100	\$134,162,296
2006-07	\$100	\$157,587,811
2007-08	\$100	\$129,385,669
2008-09	\$85	\$147,235,894
2009-10	\$75	\$122,505,802
2010-11	\$75	\$119,858,088
2011-12	\$70	\$110,832,956
2012-13	\$100	\$107,544,493
2013-14	\$100	\$134,582,877 ¹⁰

How may funds from the financial awards be used?

Financial awards may be used for:

- Nonrecurring bonuses for faculty and staff;
- Nonrecurring expenditures for educational equipment or materials; or
- Temporary personnel to assist in maintaining and improving student performance.¹¹

⁹ Florida Department of Education, Accountability Reporting, *Florida School Recognition Program*, <http://www.fldoe.org/evaluation/schrmmain.asp> (last visited August 14, 2014). The award per FTE is set annually in the General Appropriations Act pursuant to s. 1008.36(4), F.S.

¹⁰ Specific Appropriation 11, s. 1, ch. 2014-51, L.O.F.

¹¹ Section 1008.36(5), F.S.

Who decides how the award is spent?

The school's staff and school advisory council jointly determine how the financial award is spent among the authorized purposes.¹² If a school's staff and school advisory council do not reach a joint decision by February 1, the award is equally distributed to all classroom teachers currently teaching in the school. If a school that earned a school recognition award is no longer in existence at the time the award is paid, the district school superintendent must distribute the funds to teachers who taught at the school in the previous year in the form of a bonus.¹³

May former faculty and staff employed at the school during the year the award was earned receive a bonus?

Yes. If the school's staff and school advisory council jointly approve bonuses before February 1, the school may pay the bonuses to faculty and staff employed during the school year for which the award was earned, even if a faculty or staff member is no longer employed by the school.¹⁴

Are the financial awards subject to collective bargaining?

No. Current law specifies that "notwithstanding statutory provisions to the contrary, incentive awards are not subject to collective bargaining."¹⁵

Where can I get additional information?

Florida Department of Education

The Bureau of Accountability Reporting
(850) 245-0429
www.fldoe.org/evaluation/

Florida House of Representatives

Education Committee
(850) 717-4830
<http://www.myfloridahouse.gov>

¹² Section 1008.36(4), F.S.; *see also* Op. Att'y Gen. Fla. 2012-25 (2012) (concluding that classroom teachers are considered school staff).

¹³ Section 1008.36 (4), F.S.

¹⁴ *See id.*; *School Recognition FAQ*, *supra* note 2.

¹⁵ Section 1008.36, F.S. (flush left language at the end of section); *see also Pinellas Classroom Teachers' Association v. Sch. Bd. of Pinellas Cty., Fla.*, 892 So.2d 1213 (Fla. 1st DCA 2005) (Per Curiam Affirmed. Upheld circuit court decision that the financial awards are not a wage, and therefore, are not subject to collective bargaining).

Programs - General



What opportunities are available to high school students who wish to earn college credit?

High school students in Florida have a variety of avenues by which they can earn college credit. These opportunities, known as articulated acceleration mechanisms, serve to shorten the time necessary for a student to complete the requirements for a high school diploma and a postsecondary degree. Such mechanisms also allow Florida schools to increase the depth of study in a particular subject and expand available curricular options.¹

Programs that provide high school students with the opportunity to earn college credit include, but are not limited to, dual enrollment, Advanced Placement (AP), the International Baccalaureate (IB) Program, and the Advanced International Certificate of Education (AICE) Program.²

What is dual enrollment?

The dual enrollment program is an acceleration mechanism that allows an eligible high school or home education student to enroll in a postsecondary course creditable toward an associate or baccalaureate degree or career certificate.³ Upon successful completion of a dual enrollment course, the student simultaneously receives high school and college, university, or career certificate credit. Eligible students are permitted to enroll in dual enrollment courses conducted during and after school hours and during the summer term.⁴

Early admission is a form of dual enrollment in which eligible secondary students enroll on a full-time basis in a postsecondary institution in courses that are creditable toward a high school diploma and baccalaureate degree, associate degree, or career certificate.⁵

Dual enrollment and early admission students are exempt from the payment of registration, tuition, and laboratory fees.⁶ Ten of Florida's 11 State University System (SUS) institutions and 28 Florida College System (FCS) institutions participate in dual enrollment.

What is the Advanced Placement Program?

The College Board's AP Program consists of over 30 rigorous high school courses and nationally standardized examinations in multiple subject areas ranging from art to statistics.⁷ The Department of Education (DOE), through the Articulation Coordinating Committee (ACC), recommends to the State Board of Education (SBE) and the Board of Governors (BOG) for approval the minimum scores required to obtain college credit and the course or courses for which credit is to be awarded for each AP examination.⁸

¹ Section 1007.27(1), F.S.

² *Id.*; s. 1007.22(2), F.S.

³ Section 1007.271(1), F.S.

⁴ Section 1007.271(2), F.S.

⁵ Section 1007.271(10), F.S. Students must enroll in a minimum of 12 college credit hours or the equivalent to participate in the early admission program, but may not be required to enroll in more than 15 college credit hours per semester or the equivalent. Participation in career early admission is limited to students who have completed at least six semesters of full-time secondary enrollment, including studies undertaken in the ninth grade. *Id.*

⁶ Section 1007.271(2), (10), and (11), F.S.

⁷ Florida Department of Education, *Florida Counseling for Future Education Handbook 2013-14 Edition*, at 57, (2013), available at <https://www.flvc.org/advising-manuals/counseling-for-future-education-handbook>.

⁸ Section 1007.27(2), F.S.

Currently, students may earn college credit only if they receive an examination score of three or higher on a 5-point scale.⁹ Public school students in Florida are exempt from the payment of any fees associated with the administration of the examinations¹⁰ regardless of whether they achieve a passing score.¹¹

What is the International Baccalaureate Program?

The International Baccalaureate (IB) Program is a program of studies administered by the International Baccalaureate Office.¹² The IB Program is an intensive two-year curriculum that allows students to earn an IB diploma in addition to the standard high school diploma.¹³ Students enrolled in an IB program are eligible to receive postsecondary credit only if they obtain a passing score on the corresponding IB examinations. Public school students in Florida are exempt from the payment of any fees associated with the administration of the examinations¹⁴ regardless of whether they achieve a passing score.¹⁵

The ACC identifies, and the SBE and the BOG approve, the scores required to obtain college credit. Currently, students are recommended for college credit if they receive an examination score of four or higher on a 7-point scale.¹⁶ Students may be awarded a maximum of 30 semester credit hours earned through the IB program.¹⁷

All Florida universities recognize and enroll IB diploma holders and the program is also recognized by more than 2,500 universities worldwide.¹⁸

What is the Advanced International Certificate of Education Program?

The Cambridge Advanced International Certificate of Education (AICE) Diploma Program is administered and assessed by Cambridge International Examinations (Cambridge), a not-for-profit department of the world-renowned University of Cambridge in the United Kingdom (UK). Cambridge offers a wide range of academic and vocational qualifications in more than 160 countries.¹⁹ The AICE program follows an international curriculum and is designed to provide accelerated courses that lead to college credit for students who achieve a passing score on AICE examinations.²⁰ Students who successfully complete six credits in mathematics, science, languages, and arts and humanities receive the AICE diploma.²¹

Public school students in Florida are exempt from the payment of any fees associated with the administration of the examinations regardless of whether they achieve a passing score²². Cut off scores and postsecondary course equivalencies are determined by the ACC and approved by the SBE and BOG. Students may be awarded a maximum of 30 semester credit hours earned through the AICE program.²³ Passing scores on

⁹ Section 1007.27(5), F.S.

¹⁰ There is a \$89 per student registration fee for each AP examination. College Board, AP Fees, *available at* http://www.collegeboard.com/student/testing/ap/cal_fees.html.

¹¹ Section 1007.27(5), F.S.

¹² Section 1007.27(7), F.S.

¹³ Florida Department of Education, *Florida Counseling for Future Education Handbook 2013-14 Edition*, at 59-61, (2013), *available at* <https://www.flvc.org/advising-manuals/counseling-for-future-education-handbook>.

¹⁴ There is a \$160 per student registration fee for the IB Program. For each subject examination taken, the cost is \$110. For a diploma student taking six examinations, the cost would be \$160 (registration fee) in addition to the six examination fees for a total of \$820 per student. International Baccalaureate Organization, Assessment fees and services, <http://www.ibo.org/become/fees/assessmentfees> (last visited August 7, 2014).

¹⁵ Section 1007.27(7), F.S.

¹⁶ Florida Department of Education, Articulation Coordinating Committee, *Credit-By-Exam Equivalencies*, at 13-16, (2012), *available at* <http://www.fldoe.org/articulation/pdf/ACC-CBE.pdf>.

¹⁷ Section 1007.27(7), F.S.

¹⁸ Florida Department of Education, *Florida Counseling for Future Education Handbook 2013-14 Edition*, at 60, (2013).

¹⁹ Florida Department of Education, *Florida Counseling for Future Education Handbook 2013-14 Edition*, at 62, (2013).

²⁰ Florida Department of Education, *Florida Counseling for Future Education Handbook 2013-14 Edition*, at 63-64, (2013).

²¹ *Id.*

²² Section 1007.27(8), F.S.

²³ Section 1007.27(8), F.S.

AICE examinations range from “A” to “E,” with “A” being the highest. A grade of “E” on an AICE Examination corresponds to an AP examination grade of 3.²⁴

How is college credit awarded?

The Department of Education (DOE) is required to identify the minimum scores, maximum credit, and courses for which credit is to be awarded for each AP, IB and AICE examination.²⁵ College credit for dual enrollment courses is awarded based on the statewide course number assigned and is accepted by all institutions that participate in the Statewide Course Numbering System.²⁶

What are the financial advantages for students who participate in certain articulated acceleration mechanisms?

High school students enrolled in dual enrollment courses or participating in early admission programs are not required to pay registration, tuition, or lab fees.²⁷ In addition, instructional materials assigned for use within dual enrollment courses must be made available to public school students free of charge.²⁸ An FCS institution may provide instructional materials at no cost to home education students or students from private schools participating in dual enrollment courses.²⁹

Public school students are also exempt from the payment of any fees for an AP, AICE, or IB course or examination, even if the student does not achieve a passing score on the examination.³⁰

Participation in postsecondary acceleration mechanisms can result in a considerable cost savings to the student and family.

Are financial incentives provided to school districts and teachers for offering acceleration mechanisms?

School districts that offer AP, IB, and AICE programs, as well as the teachers that provide the instruction in these programs, may be eligible for financial incentives.³¹

AP District Bonus. School districts are eligible for additional Florida Education Finance Program (FEFP) funding based on the examination scores of AP students.³² School districts receive an additional 0.16 full-time-equivalent (FTE) student membership for each student that takes an AP examination and receives a score of three or higher on the AP examination for the prior year. This amount is added to the total FTE student membership in basic programs for grades nine through 12 in the subsequent fiscal year. Each district must allocate at least 80 percent of these funds to the high school that generates the additional funds.³³

AP Teacher Bonus. School districts must award AP teachers a \$50 bonus for each student they instruct in an AP course who receives a score of three or higher on the AP examination. AP teachers in a school designated with a performance grade³⁴ of “D” or “F” who have at least one student scoring three or higher on

²⁴ Florida Department of Education, Articulation Coordinating Committee, Credit-By-Exam Equivalencies <http://www.fldoe.org/articulation/pdf/ACC-CBE.pdf> (last visited May 30, 2012).

²⁵ Section 1007.27(2), F.S.

²⁶ Section 1007.24(7), F.S.

²⁷ Section 1007.271(2), (10) and (11), F.S.

²⁸ Section 1007.271(17), F.S.

²⁹ *Id.*

³⁰ Section 1007.27(5), (7), and (8), F.S.

³¹ Section 1011.62(1), (l) - (n), F.S.

³² Section 1011.62(1)(n), F.S.

³³ *Id.*

³⁴ All public schools, including charter schools, which have at least 10 students with valid assessment scores in reading for the current and prior years and at least 10 students with valid assessment scores in mathematics for the current and prior years are assigned a school grade. Rule 6A-1.09981, F.A.C. A grade “D” means a school is making less than satisfactory progress and a grade “F” means a school has failed to make adequate progress. Section 1008.34(2), F.S.

the College Board AP examination receive an additional \$500 bonus regardless of the number of classes taught or the number of students scoring a three or higher on the College Board AP Examination.³⁵ Bonuses awarded to AP teachers may not exceed \$2,000 in any given school year. However, the maximum bonus awarded may be increased to \$3000 if at least 50 percent of students enrolled in a teacher's course at a school with an "A", "B", or "C" grade or at least 25 percent of students enrolled in a teacher's course at a school with a grade of "D" or "F" earn a score of three or higher on the AP examination.³⁶

IB District Bonus. School districts are eligible for additional FEFP funding based on the examination scores of IB students. School districts receive an additional 0.16 FTE student membership for each student enrolled in an IB course who receives a score of four or higher on the subject examination. In addition, school districts may receive a value of 0.3 FTE student membership for each student who receives an IB diploma. These values are added to the total FTE basic program membership for students in grades nine through 12 in the subsequent fiscal year. Each school district must allocate 80 percent of the funds received from IB bonus FTE funding to the school program whose students generate the funds and to school programs that prepare prospective students to enroll in IB courses.³⁷ Funds must be expended solely for the payment of allowable costs³⁸ associated with the IB program. School districts must allocate the remaining 20 percent of the funds received from IB bonus FTE funding for programs that assist academically disadvantaged students to prepare for more rigorous courses.³⁹

IB Teacher Bonus. School districts must award IB teachers a \$50 bonus for each IB student they instruct in each course who receives a score of four or higher on the IB examination. IB teachers in a school designated with a performance grade of "D" or "F" who have at least one student scoring four or higher on the IB examination are eligible for an additional bonus of \$500.⁴⁰ Bonuses awarded to IB teachers may not exceed \$2,000 in any given school year. However, the maximum bonus awarded may be increased to \$3000 if at least 50 percent of students enrolled in a teacher's course at a school with an "A", "B", or "C" grade or at least 25 percent of students enrolled in a teacher's course at a school with a grade of "D" or "F" earn a score of four or higher on the IB examination.⁴¹

AICE District Bonus. School districts are eligible for additional FEFP funding based on student AICE examination scores.⁴² School districts may receive an additional value of 0.16 FTE student membership for each student enrolled in a full-credit AICE course who receives a score of "E" or higher on the subject examination. Likewise, school districts may receive a value of 0.08 FTE student membership for each student enrolled in a half-credit AICE course who receives a score of "E" or higher on the subject examination. In addition, school districts may receive a value of 0.3 FTE student membership for each student who receives an AICE diploma. These additional values are added to the district's total FTE student membership for basic programs for grades nine through 12 in the subsequent fiscal year.⁴³

AICE Teacher Bonus. School districts must award AICE teachers a \$50 bonus for each student they instruct in an AICE course who receives a score of "E" or higher on a full-credit AICE course examination. Likewise, AICE teachers are awarded a \$25 bonus for each student they instruct in an AICE course who receives a score of "E" or higher on a half-credit AICE course examination. AICE teachers in a school designated with a performance grade of "D" or "F" who have at least one student scoring "E" or higher on a full-credit AICE examination may receive an additional bonus of \$500 and those who have at least one student scoring "E" or

³⁵ Section 1011.62(1)(n)1. and 2., F.S.

³⁶ Section 1011.62(1)(n), F.S. (flush left provision at the end of the paragraph).

³⁷ Section 1011.62(1)(l), F.S.

³⁸ Allowable costs include IB annual school fees; IB examination fees; salary, benefits, and bonuses for teachers and program coordinators for the IB program and teachers and coordinators who prepare prospective students for the IB program; supplemental books; instructional supplies; instructional equipment or instructional materials for IB courses; other activities that identify prospective IB students or prepare prospective students to enroll in IB courses; and training or professional development for IB teachers. *Id.*

³⁹ Section 1011.62(1)(l), F.S.

⁴⁰ Section 1011.62(1)(l)1. and 2., F.S.

⁴¹ Section 1011.62(1)(l), F.S. (flush left provision at the end of the paragraph).

⁴² Section 1011.62(1)(m), F.S.

⁴³ *Id.*

higher on a half-credit AICE examination may receive a bonus of \$250.⁴⁴ Bonuses awarded to AICE teachers may not exceed \$2,000 in any given school year.⁴⁵

How does student participation in articulated acceleration mechanisms affect School Recognition Program awards?

The Florida School Recognition Program⁴⁶ provides public recognition and financial awards to public schools that demonstrate high student performance by receiving a school grade of "A" or exemplary improvement due to innovation and effort by improving at least one letter grade or by improving more than one letter grade and sustaining the improvement in the following school year.⁴⁷ For a school comprised of grades 9, 10, 11, and 12, or grades 10, 11, and 12, the school's grade shall also include the percentage of students who were eligible to earn college and career credit through AP examinations, IB examinations, dual enrollment courses, or AICE examinations; or who, at any time during high school, earned national industry certification identified in the Industry Certification Funding List.⁴⁸ Accordingly, high schools with successful articulated acceleration mechanism programs have the opportunity to increase their eligibility for School Recognition Program awards.

Where may I get additional information?

Florida Department of Education

Office of Articulation

(850) 245-0427

<http://www.fldoe.org/articulation/>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

⁴⁴ Section 1011.62(1)(m)1.- 3., F.S.

⁴⁵ Section 1011.62(1)(m), F.S. (flush left provision at the end of the paragraph).

⁴⁶ Section 1008.36, F.S.

⁴⁷ Section 1008.36(2)(a) and (b), F.S.

⁴⁸ Section 1008.34(3)(b)2.b., F.S.



What is Exceptional Student Education?

Exceptional Student Education is specially designed instruction and related services that are provided to students with disabilities and students who are identified as gifted.¹ Student enrollment in ESE programs is one factor considered in determining the funding a school district receives.²

With regard to students with disabilities, the federal Individuals with Disabilities Education Act (IDEA) requires school districts to make a free appropriate public education (FAPE) available to such students ages three through 21.³ A school district, at its discretion, may provide services to eligible infants and toddlers with disabilities below three years of age.⁴ A FAPE must include special education and related services⁵ that are provided by the public school system at no cost to the parent, which meet the standards of the state and which are in conformity with the student's individual educational plan (IEP).⁶

The IDEA does not address gifted students; however, state law and State Board of Education rule require school districts to provide a FAPE to gifted students as well.⁷ State law specifies that districts must provide special instruction and services to gifted students, but does not mandate or describe the specific types of instruction and services required.⁸

What is the IDEA?

The federal Individuals with Disabilities Education Improvement Act (IDEA) was first enacted in 1975 and was most recently reauthorized in 2004.⁹ The purpose of the IDEA is to:

- Ensure that all children with disabilities are provided with a free appropriate public education (FAPE) designed to meet their unique needs and prepare them for employment and independent living.
- Ensure that the rights of children with disabilities and their parents are protected.

¹ Section 1003.57(1)(b), F.S.; rule 6A-6.03411(1)(m) and (n), F.A.C. The Office of Program Policy Analysis and Government Accountability (OPPAGA) identified the advantages and disadvantages of classifying gifted students as exceptional students by reviewing available research and holding focus group discussions with parents, gifted students, teachers, and district administrators. See Office of Program Policy Analysis and Government Accountability, *Florida Gifted Grew Faster Than the Overall School Enrollment*, Report No. 08-01, at 11 (Jan. 2008), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0801rpt.pdf> [hereinafter *OPPAGA Report No. 08-01*].

² See s. 1011.62(1)(c), F.S.

³ 20 U.S.C. s. 1400(d)(1)(A); 34 C.F.R. s. 300.101; rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.

⁴ Rules 6A-6.0331 and 6A-6.03026, F.A.C.

⁵ "Related services" means "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes." "Related services" also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34 (a).

⁶ 34 C.F.R. s. 300.17; Rule 6A-6.03411(1)(p), F.A.C.

⁷ See ss. 1003.01(3)(a) and 1011.62(1)(e)c.2., F.S.; rules 6A-6.0331(1) and 6A-6.03411(1)(m), F.A.C.

⁸ Section 1003.57(1), F.S.

⁹ U.S. Department of Education, *Archived: A 25 Year History of the IDEA*, July 2007, <http://www2.ed.gov/print/policy/speced/leg/idea/history.html> (last visited June 26, 2014).

- Assist states, localities, educational service agencies,¹⁰ and federal agencies to provide for the education of all children with disabilities.
- Assess and ensure the effectiveness of efforts to educate children with disabilities.¹¹

The IDEA requires states to have policies and procedures in place to identify, locate, and evaluate all children with disabilities in the state who need special education and related services. These policies and procedures are known as “child find.” State child find activities must include policies for identifying not only public school children, but also homeless, migrant, and children with disabilities attending nonprofit private schools.¹²

What disabilities qualify a student as an exceptional student?

Disabilities that qualify a student as an exceptional student are: an intellectual disability; an autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; an other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; deafness, hard of hearing, or dual sensory impaired; or developmental delays from birth through five years old or if the student is hospitalized or homebound.¹³

Children ages birth to two years who are diagnosed with physical or mental conditions known to have a high probability of resulting in developmental delay or disability may also be classified as exceptional students. Such conditions are referred to as “established conditions” and include genetic disorders, metabolic disorders, neurological disorders, a severe attachment disorder, an autism spectrum disorder, a sensory impairment (vision or hearing), or the infant’s birth weight was less than 1,200 grams.¹⁴

How are students determined eligible for Exceptional Student Education services?

Students may be referred for an evaluation for ESE services by their parents or by school staff.¹⁵ With few exceptions,¹⁶ prior to referring a student for evaluation as a student with a disability, school districts must use a problem solving/response to instruction or intervention (PS/RtI) method to develop and implement evidenced based general education interventions to address the student’s area(s) of academic or behavioral concern.¹⁷ If the school-based team determines that general education interventions are not sufficiently effective, a referral for evaluation is made. A student may not be evaluated for ESE eligibility without the prior informed consent of the parent. A team of professionals and the student’s parent (i.e., eligibility staffing committee) review the evaluation results to determine if the student meets the requirements for eligibility under one or more state board rules and if there is evidence of a need for special education and related services.¹⁸

¹⁰“Educational service agency” means a regional public multiservice agency authorized by state law to develop, manage, and provide services or programs to local education agencies or school boards and recognized as an administrative agency for purposes of providing special education and related services within elementary and secondary schools in the state. 34 C.F.R. s. 300.12.

¹¹ 20 U.S.C. s. 1400(d), 34 C.F.R. s. 300.1, and s. 1003.571, F.S.

¹² 34 C.F.R. ss. 300.111, 300.131, and 303.321.

¹³ Section 1003.01(3)(a), F.S.

¹⁴ Sections 1003.01(3)(a) and 1003.21(1)(e), F.S.; rule 6A-6.03030(1), F.A.C.

¹⁵ Rule 6A-6.0331(3), F.A.C.

¹⁶ The general education intervention requirements do not apply to children below mandatory school attendance age and children who are not yet enrolled in kindergarten. However, these children must have existing social, psychological, and medical data reviewed with a health screening, if necessary; and vision and hearing screenings are required to rule out sensory deficits. Additional screenings may be conducted, if warranted. Rule 6A-6.0331(2), F.A.C.

¹⁷ Rule 6A-6.0331(1) and (3)(a), F.A.C.

¹⁸ Section 1003.57 (1)(c); rule 6A-6.0331(3)(a), (4), (5) and (6), F.A.C.

In order for a student to be eligible for a gifted ESE program, a student must either:

- Demonstrate a need for a special program, superior intellectual development as measured by an intelligence quotient (IQ) of at least two standard deviations above the mean,¹⁹ and possess gifted characteristics according to a standard scale or checklist;²⁰ or
- Be a member of an underrepresented group, i.e. limited English proficient or of low socio-economic status and meet the criteria in an approved school district plan for increasing participation in gifted education by underrepresented groups.²¹
- These students must then meet the criteria set forth in the school district's plan.²²
- If a student is found eligible for an ESE program, a plan is developed for the student. This plan is referred to as an:
 - Individual educational plan (IEP) for students with disabilities ages three through 21;²³
 - Individualized family support plan (IFSP) for children ages birth through two (and may also be used for children ages three through five years in lieu of an IEP);²⁴ or
 - Educational plan (EP) for gifted students.²⁵

Within 30 days of determining a student's eligibility to receive exceptional student education or related services by a school district, or other state agency, an EP or IEP team must meet to develop a plan to address the student's needs.²⁶ The multidisciplinary team includes school and district staff, and other experts, if necessary.²⁷ Parents also participate in the development of the plans, which may not be implemented until the parent provides consent for initial placement in the ESE program.²⁸ Parents may invite another adult of their choice to attend a meeting with school district personnel. Meetings include, but are not limited to: determination of eligibility for exceptional student education or related services; the development of an IEP, IFSP, or EP; and other issues that may affect the educational environment, discipline, or placement of a student with a disability. School district personnel may not object to or discourage, in any way, the attendance of such individual.²⁹ At the conclusion of any such meeting, the parents and school district personnel must sign a document stating whether any school district personnel have prohibited, discouraged, or attempted to discourage the parent from inviting a person of their choice to the meeting.³⁰

During the 2013-14 academic year, 507,198 Florida public school students were served in programs for exceptional students. Of that number, 156,720 were gifted students and 350,478 were students with disabilities.³¹

If a school district determines, through child find, that a student with disabilities attending a nonprofit private school in the district is eligible to receive special education and related services, the school district must develop and implement a services plan for that student. The school district must initiate and conduct meetings

¹⁹ Two standard deviations above the mean or higher generally equates to a determination that a student has an intelligence quotient (IQ) of 130 or higher. *OPPAGA Report No. 08-01, supra* note 1 at 4.

²⁰ Rule 6A-6.03019(2)(a), F.A.C.

²¹ Rule 6A-6.03019(2)(b), F.A.C.

²² Rule 6A-6.03019(2), F.A.C.

²³ Rule 6A-6.03028, F.A.C.

²⁴ Rule 6A-6.03029, F.A.C. For children ages birth through two years, individual family support plans (IFSPs) must be developed within 45 days from referral. Rule 6A-6.03029(4)(a), F.A.C. For children ages three through five years, IFSPs must be developed within 30 days of determining a child is eligible for ESE or related services. Rule 6A-6.03029(5), F.A.C.

²⁵ Rule 6A-6.030191, F.A.C.

²⁶ Rules 6A-6.03028(3)(f) and 6A-6.030191(6)(b), F.A.C.

²⁷ Rules 6A-6.03028(3)(c), 6A-6.030191(3), and 6A-6.03029(6), F.A.C.

²⁸ Rule 6A-6.0331(9), F.A.C.

²⁹ Section 1002.20(21)(a), F.S.

³⁰ Section 1002.20(21)(a)2., F.S.

³¹ Florida Department of Education, Education Information and Accountability Services Data Report, *Membership Programs for Exceptional Students, 2013-14*, available at <http://www.fldoe.org/eias/eiaspubs/xls/ese1314.xls>

to develop, review, and revise a service plan for the child and must ensure that a representative of the nonprofit private school attends each meeting.³²

What does the IEP, IFSP, or EP include and how frequently must these documents be updated?

Each of these plans includes a description of the student's current academic and/or functional levels of performance, a statement of goals and objectives or benchmarks (for students who take the alternate assessment or any student at the discretion of the IEP team) for the student, and a statement of the specially designed instruction and related services, including supplemental aides and services, to be provided. The plans are designed to meet the individual needs of the student.³³

An IEP or IFSP team must meet at least annually to review and revise the plan for a student with a disability ages three through 21.³⁴ Before a student with a disability turns 14 years old, the IEP team must identify any need for transition services and incorporate those into the IEP in order for the student's postsecondary goals and career goals to be identified and in place when he or she turns 16 years old.³⁵ The IEP in effect when a student attains the age of 16, or earlier if determined appropriate by the parent and IEP team, must include the following specific statements that are to be updated annually:

- A statement of intent to pursue a standard high school diploma and a Scholar or a Merit designation, as determined by the parent;
- A statement of intent to receive a standard high school diploma before the student attains the age of 22 and a description of how the student will fully meet the requirements for obtaining such diploma; and
- A statement of appropriate measurable long-term postsecondary education and career goals.³⁶

Meetings shall be held to develop and revise an EP at least every three (3) years for students in grades K-8 and at least every four (4) years for students in grades 9-12. EPs may be reviewed more frequently as needed, such as when the student transitions from elementary school to middle school and middle school to high school or if the student's parent or teacher requests a review.³⁷ Students with disabilities must be reevaluated at least once every three years to determine their continuing eligibility for special education and related services.³⁸ In addition, a student's parent or teacher may request an IEP team meeting or a reevaluation at any time.³⁹ There is no requirement that gifted students be reevaluated.⁴⁰

The law requires parental consent and involvement if specific actions occur with a student's IEP. The specific actions include⁴¹:

- Administration of an alternate assessment⁴² and provision of instruction in the state standards access points curriculum; and,
- Except for a change in placement for a student with a disability that violates a district school board's code of student conduct,⁴³ placement of the student in an exceptional student education center.⁴⁴

³² 34 C.F.R. ss. 300.132 and 300.137(c).

³³ Rules 6A-6.03028(3)(h), 6A-6.03029(3), and 6A-6.030191(4), F.A.C.

³⁴ Rule 6A-6.03028(3)(f)3. and (j), F.A.C.

³⁵ Section 1003.5716(1), F.S. The IEP must also identify the digital tool certificates and industry certifications the student seeks to attain before high school graduation. Section 1003.4203(2), F.S.

³⁶ Section 1003.5716(2), F.S., as created by s. 20, ch. 2014-184, L.O.F. As of the time of the publication of this fact sheet, the provisions of ch. 2014-184, L.O.F., are the subject of a constitutional challenge on unrelated grounds. *See Faassee v. Scott*, No. 37 2014 CA 001859 (2d Cir. Ct. filed July 16, 2014) (challenging ch. 2014-184, L.O.F. based on alleged violation of the single subject rule).

³⁷ Rule 6A-6.030191(6)(c), F.A.C.

³⁸ Rule 6A-6.0331(7), F.A.C.

³⁹ Rule 6A-6.03028, F.A.C.

⁴⁰ See rule 6A-6.0331, F.A.C.

⁴¹ Section 1003.5715, F.S. and Rule 6A-6.0331(10), F.A.C.

⁴² Section 1008.22, F.S.; see Assessment FACT Sheet.

⁴³ Section 1003.57(1)(h), F.S.

A school district must obtain written parental consent using the Parental Consent Form adopted in state board rule prior to either of the above actions taking place. The form must be provided in the parent's native language⁴⁵ and include a statement that the parent is a participant of the IEP team and has the right to consent or refuse consent to either of the above actions. If a parent refuses consent, a school district may not proceed with either of the actions without a school district due process hearing in accordance with federal regulations.⁴⁶ During the pendency of a due process hearing or appellate proceeding regarding a due process complaint, the student shall remain in his or her current educational assignment, unless the parent and district school board agree otherwise.⁴⁷

How are instructional services provided to exceptional students?

Special programs for exceptional students (students with disabilities and students who are gifted) include instruction and related services to adapt curriculum, methodology, materials, equipment, or environment to meet individual learning needs.⁴⁸ Exceptional students must receive instruction in one or more of the following settings:

- Regular class.
- Special class.
- Special day school.
- Residential school.
- Special class in a hospital or facility operated by a noneducational agency.
- Individual instruction in a hospital or home.
- Supplementary instructional personnel to public or nonpublic preschool or day care programs for the instruction of pre-kindergarten exceptional students.⁴⁹

Public and private instructional personnel⁵⁰ must collaborate to promote educational progress and assist exceptional students in acquiring essential skills, including, but not limited to, readiness for pursuit of higher education goals or employment. Where applicable, public and private instructional personnel must use collaborative programming and the coordination of services and plans between the two is encouraged to avoid duplication or conflicting services or plans.⁵¹ Private instructional personnel hired by parents to collaborate with public instructional personnel must be permitted to observe the student in the educational setting, collaborate with instructional personnel in the educational setting, and provide services in the educational setting according to the following requirements:

- The student's public instructional personnel and principal consent to the time and place.
- The private instructional personnel satisfy the specific background screening requirements⁵².

Additionally, states are required to monitor school districts in order to measure their performance in providing a FAPE in the least restrictive environment (LRE).⁵³ To be in compliance with the LRE requirement, states must educate students with disabilities with their nondisabled peers to the maximum extent appropriate. Special classes, special schooling, or other removal of the student from the regular education environment

⁴⁴ An "exceptional student education center" or "special day school" is a separate public school to which nondisabled peers do not have access. Section 1003.57(1)(a)1.a., F.S.

⁴⁵ Section 1003.5715(2), F.S.

⁴⁶ Section 1003.5715(2)(a), F.S. and rule 6A-6.0331(10). Requirements for due process hearings are outlined in 34 C.F.R. ss. 300.507 and 300.508.

⁴⁷ Section 1003.5715(6), F.S.; 34 C.F.R. s. 300.518; rule 6A-6.0331(10)(d), F.A.C.

⁴⁸ Rule 6A-6.0311, F.A.C.

⁴⁹ 34 C.F.R. s. 300.115; rule 6A-6.0311, F.A.C.

⁵⁰ Private instructional personnel are defined as: individuals certified as behavior analysts; licensed applied behavior analysts; speech-language pathologists; occupational therapists; physical therapists; psychologists; or clinical social workers, Section 1003.572(1)(a), F.S.

⁵¹ Section 1003.572(2), F.S.

⁵² Section 1003.572(3), F.S.

⁵³ 34 C.F.R. s. 300.600 (d)(1).

should only occur if the nature and severity of his or her disability is such that an appropriate education in regular classes cannot be achieved satisfactorily.⁵⁴ The LRE must be considered during the development of the student's IEP.⁵⁵

What special education services are available to a student with a disability in grades K-12?

Special education services for students with disabilities in grades K-12 include specially designed instruction⁵⁶ and related services that are necessary to enable the student to benefit from education. Such services may include: transportation; diagnostic and evaluation services; social services; physical and occupational therapy; speech and language pathology; job placement; orientation and mobility training; braillists; typists; readers for the blind; interpreters and auditory amplification; rehabilitation counseling; transition services; mental health services; guidance and career counseling; specified materials; assistive technology devices; and other specialized equipment.⁵⁷

What special education services are available to a child with a disability prior to kindergarten?

For children below mandatory school attendance age and who are not yet enrolled in kindergarten, the general education intervention requirements are not applicable. However, these children are required to have existing social, psychological, and medical data reviewed with a health screening, if necessary; and vision and hearing screenings are required to rule out sensory deficits. Additional screenings may be conducted, if warranted.⁵⁸

The public agency conducting the initial evaluation must provide the parent written notice and obtain informed consent from the parent prior to conducting an evaluation.⁵⁹ Eligibility for an ESE program requires that the student has a disability and a need for special education and related services; i.e., having the exceptionality alone does not constitute eligibility.⁶⁰

Part C of the IDEA requires states to provide early intervention services for infants and toddlers ages birth to two.⁶¹ In Florida, early intervention services are provided to eligible infants and toddlers through the Early Steps Program. Infants and toddlers with disabilities means individuals from birth to two who are eligible for early intervention services when they have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; or have been diagnosed as experiencing developmental delays in one or more of the following developmental areas:

- Cognitive development, such as thinking, learning, and problem solving.
- Physical development, such as health, hearing, and vision.
- Communication development, such as babbling, languages, and speech.
- Social or emotional development, such as playing and interacting with others.
- Adaptive development, such as self-help skills.

⁵⁴ 34 C.F.R. s. 300.114(a)(2); s. 1003.57(1)(d); rule 6A-6.03028(3)(i), F.A.C.

⁵⁵ *L.G. et.al. v. School Bd. Of Palm Beach County, Fla.*, 512 F. Supp.2d 1240, 1247-1249 (S.D. Fla. 2007).

⁵⁶ School boards must modify basic courses, as necessary, to provide students with disabilities the opportunity to meet the graduation requirements for a standard diploma. Modifications to basic courses do not include modifications to the curriculum frameworks or student performance standards. See rule 6A-6.0312, F.A.C.; but see also Section 1003.4282(10), F.S., as created by s. 33, ch. 2014-184, L.O.F. As of the time of the publication of this fact sheet, the provisions of ch. 2014-184, L.O.F., are the subject of a constitutional challenge on unrelated grounds. See *Faassee v. Scott*, No. 37 2014 CA 001859 (2d Cir. Ct. filed July 16, 2014) (challenging ch. 2014-184, L.O.F. based on alleged violation of the single subject rule).

⁵⁷ Section 1003.01(3)(b), F.S.; rule 6A-6.03411(1)(dd), F.A.C.; see also Individuals with Disabilities Education Act (IDEA) Fact Sheet.

⁵⁸ Rule 6A-6.0331(2), F.A.C.

⁵⁹ 34 C.F.R. ss. 300.300, 300.503, and 300.504; rule 6A-6.0331(4)(a), F.A.C.

⁶⁰ 34 C.F.R. s. 300.306(c).

⁶¹ See U.S. Department of Education, *Building the Legacy: IDEA 2004*, <http://idea.ed.gov/> (last visited June 6, 2014). Florida law incorporates the requirements under Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) in ss. 1003.01(3), 1003.57 - 1003.576, F.S. Florida Law incorporates the requirements under Part C of the IDEA in ss. 391.301- 391.308, F.S.

- Gross and fine motor skills, such as moving, walking, and coordination.⁶²

For purposes of determining eligibility for early intervention services, states are required to define “developmental delay” and may elect to include children who are “at risk” for developmental delays in its eligibility formula. In defining the “at risk” population, states may include conditions such as genetic or congenital disorders, severe sensory impairments, congenital infections, and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.⁶³

Evaluations for infants and toddlers must be conducted by a multidisciplinary team. The multidisciplinary team may consist of medical, mental health, education, and early childhood development professionals. The team must evaluate and assess each child’s family to identify its needs for assisting in the child’s development. When a child is determined to be eligible for ESE or early intervention services, the evaluation team then identifies the services appropriate to meet the child’s development needs.⁶⁴

If the parents of a disabled child disagree with the evaluation, then they may request an independent educational evaluation (IEE) at the public agency’s expense. Should this occur, the public agency must either file a due process complaint to request a hearing to show that its evaluation is appropriate or provide the IEE at public expense. If the public agency prevails in the hearing, the parent may still obtain an IEE, just not at public expense. The parents may also request a due process hearing to contest the team’s evaluation.⁶⁵

What is the specialized instructional services program for children with disabilities under the Voluntary Prekindergarten Education Program?

The specialized instructional services program for children with disabilities is an option under the Voluntary Prekindergarten Education (VPK) Program.⁶⁶ A child who has a disability is eligible for specialized instructional services if the child is eligible for the VPK Program and has a current IEP developed by the district school board.⁶⁷

The parent of a child who is eligible for the VPK Program option for children with disabilities may select one or more specialized services that are consistent with the child’s IEP. Those services may include, but are not limited to, applied behavior analysis, speech-language pathology, occupational therapy, physical therapy, and listening and spoken language specialists.⁶⁸ Specialized instructional services must be delivered according to accepted professional standards and VPK Program performance standards adopted by the Department of Education (DOE).⁶⁹

The DOE must approve specialized instructional service providers, maintain a list of approved providers, and notify each school district and early learning coalition of the approved provider list.⁷⁰ Upon the request of a child’s parent, DOE may approve a specialized instructional service provider that is not on the approved list if the provider’s services meet accepted professional standards and VPK Program performance standards and the service is consistent with the child’s IEP.⁷¹

⁶² 20 U.S.C. s. 1432(5); 34 C.F.R. s. 303.21; *see also* Florida Department of Health, Division of Children’s Medical Services, Early Steps Eligibility, http://www.floridahealth.gov/alternatesites/cms-kids/families/early_steps/eligibility.html (last visited June 12, 2014).

⁶³ 20 U.S.C. s. 1432(1) and (5); 34 C.F.R. ss. 303.5 and 303.21 and 303.300. Florida has elected to include children who are at risk of having developmental delays. Florida Department of Health, *Early Steps Policy Handbook and Operations Guide, July 2010, Policy 3.1.1*, http://www.floridahealth.gov/AlternateSites/CMS-Kids/home/resources/es_policy_0710/es_policy.html (last visited June 12, 2014).

⁶⁴ 20 U.S.C. s. 1432(4); 34 C.F.R. ss. 303.24, 303.31, and 303.321.

⁶⁵ 34 C.F.R. ss. 300.502 and 300.507.

⁶⁶ Section 1002.53(3), F.S.

⁶⁷ Section 1002.66(1), F.S.

⁶⁸ Section 1002.66(2), F.S.

⁶⁹ Section 1002.66(3), F.S.

⁷⁰ Section 1002.66(4), F.S.

⁷¹ Section 1002.66(4), F.S. An early learning coalition must reimburse an approved specialized instructional service provider for authorized services provided to an eligible child. The reimbursement may not exceed the Voluntary Prekindergarten Education (VPK) Program base student allocation. Section 1002.66(5), F.S.

The Office of Early Learning is required to adopt procedures for determining eligibility and enrolling children in the VPK Program option for children with disabilities and for paying specialized instructional service providers under this option.⁷² A parent of a child receiving specialized instructional services may withdraw from the program for good cause and reenroll in another program if no more than 70 percent of the funds authorized have been expended.⁷³

How do school districts provide special instruction and services to gifted students?

While current law requires districts to provide special instruction and services to all ESE students, it does not specify the types of instruction and services required for gifted students or the methods used to provide gifted instruction. School districts may restructure basic content area courses as gifted program offerings in order to meet the needs of gifted students.⁷⁴ School districts also utilize several models to provide instruction to gifted students, such as cluster schools; co-teaching; self-contained gifted classes; and courses with gifted and other students in which the teacher differentiates instruction in a mixed ability course.⁷⁵

School district gifted education services generally fall into the categories of enrichment or acceleration. Enrichment activities provide students with more complex and in-depth study of subjects than is available via the regular education curriculum.⁷⁶ Acceleration allows a student to work at a faster pace or engage in higher level work and may include whole-grade or subject matter acceleration, as well as acceleration mechanisms including dual enrollment; early admission to a postsecondary institution; advanced placement; credit by examination; the International Baccalaureate Program; and the Advanced International Certificate of Education Program.⁷⁷

Acceleration programs for elementary and middle school students are not specifically addressed in law; however, school districts may adopt policies addressing these issues pursuant to their statutory authority to adopt rules to admit, classify, promote, and graduate students.⁷⁸

In addition, all students, including gifted, may take advantage of the Credit Acceleration Program (CAP).⁷⁹ The CAP allows a student who is not enrolled in a course that requires a statewide, standardized end-of-course (EOC) assessment to earn high school credit in the course if the student attains a score indicating satisfactory performance on the corresponding EOC assessment.⁸⁰

How does the Florida Department of Education monitor Exceptional Student Education?

The IDEA requires states to assess and ensure the effectiveness of efforts to educate children with disabilities.⁸¹ In accordance with IDEA, DOE's Bureau of Exceptional Education and Student Services is responsible for ensuring that the requirements of the federal law and the educational requirements of the state are implemented.⁸² The bureau is required to examine and evaluate ESE procedures, records, and programs;

⁷² Section 1002.75(3), F.S.

⁷³ Section 1002.71(4)(a), F.S.

⁷⁴ *OPPAGA Report No. 08-01*, *supra* note 1 at 7; s. 1003.57(1)(b), F.S.

⁷⁵ *OPPAGA Report No. 08-01*, *supra* note 1 at 7.

⁷⁶ Florida Department of Education, Exceptional Student Education Program Development and Services, *Acceleration of Gifted Students Brief*, (2003), available at http://www.fldoe.org/ESE/pdf/gift_accel.pdf.

⁷⁷ See ss. 1007.27 and 1007.271, F.S.; Florida Department of Education, Exceptional Student Education Program development and Services, *Acceleration of Gifted Students Brief*, (2003), available at http://www.fldoe.org/ESE/pdf/gift_accel.pdf.

⁷⁸ See s. 1003.02(1)(a), F.S.

⁷⁹ Section 5, ch. 2010-22, L.O.F., *codified at* s. 1003.4295(3), F.S.

⁸⁰ End-of-course (EOC) assessments are subject-specific assessments that are administered at the end of a particular course. EOC assessments must be statewide, standardized, and developed or approved by DOE. Section 1008.22(3)(b)2.a., F.S.

⁸¹ 34 C.F.R. s. 300.1(d).

⁸² 34 C.F.R. s. 300.149 (a)(1) and (2).

provide information and assistance to school districts; and assist the districts in operating effectively and efficiently.⁸³ However, school districts are not required to report to the bureau how ESE funds are expended.⁸⁴

IDEA and its implementing regulations⁸⁵ require that states focus their oversight activities on the following priority areas:

- Provision of a free appropriate public education (FAPE) in the least restrictive environment (LRE)
- General supervision, including child find; effective monitoring; and the use of resolution meetings, mediation, and a system of transition services designed to facilitate the student's articulation from school to post-school activities
- Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.⁸⁶

Each state must develop a Part B State Performance Plan (SPP) that addresses indicators identified by the Office of Special Education Programs (OSEP) as representative of the monitoring priority areas noted. States must establish rigorous performance targets for each of the indicators and to submit an Annual Performance Report (APR) that details progress toward those targets. Florida's general supervision system ensures that school districts meet federal and state requirements related to the SPP indicators and make progress toward indicator targets as well as comply with all other federal and state requirements related to ESE programs.⁸⁷

All school districts participate in a leveled system of compliance monitoring that includes both self-assessment activities and on-site monitoring visits. The results of monitoring activities are used for LEA determinations required under federal regulations⁸⁸ and to inform future monitoring activities.⁸⁹

DOE developed an electronic statewide IEP system called the Portal to Exceptional Education Resources (PEER), a free, web-based tool for the uniform development of educational plans for exceptional students for district use.⁹⁰ PEER provides improved district compliance with built-in compliance checks and updates that keep the application congruent with current education legislation and allows users to create a number of documents, including but not limited to: IEPs; EPs; service plans; matrix of services; and goal-related progress reports. PEER also facilitates the electronic transmission of data and provision of services for transferring students.⁹¹

How is Exceptional Student Education funded?

Services for exceptional education students are funded primarily via the Florida Education Finance Program (FEFP) through the use of basic funding, an ESE Guaranteed Allocation, and two weighted cost factors. FEFP funding reflects approximately 87 percent of the total funding for Florida's public school students. FEFP funds are calculated by multiplying the number of full-time equivalent (FTE) students in each of the funded education programs by cost factors to obtain weighted FTE students.⁹² Weighted FTE students are then multiplied by a base student allocation and by a district cost differential. For FY 2014-15, \$950.7 million was appropriated to school districts through the ESE Guaranteed Allocation.⁹³

⁸³ Florida Department of Education, Bureau of Exceptional Student Education and Student Services, *Exceptional Student Education Compliance Manual 2013-2014*, at 1, available at <http://www.fldoe.org/ese/pdf/m-compli.pdf> [hereinafter Compliance Manual 2013-2014].

⁸⁴ *OPPGA Report No. 08-01*, supra note 1, at 3.

⁸⁵ 34 C.F.R., s. 300.600.

⁸⁶ Compliance Manual 2013-2014, at 1.

⁸⁷ 34 C.F.R., s. 300.601.

⁸⁸ 34 C.F.R., s. 300.603.

⁸⁹ Compliance Manual 2013-2014, at 2.

⁹⁰ Florida Department of Education, Bureau of Exceptional Education and Student Services, *Peer – Portal to Exceptional Education Resources*, available at <http://www.fldoe.org/ese/pdf/peer.pdf>.

⁹¹ *Id.*

⁹² Florida Department of Education, Bureau of School Business Services, Office of Funding and Financial Reporting, *Funding for Florida School Districts 2013-2014 Statistical Report*, available at <http://www.fldoe.org/fefp/pdf/fefpdist.pdf>.

⁹³ Specific Appropriations 9 and 96, s. 2, ch. 2014-51, L.O.F.

ESE students who do not generate funds using the two weighted cost factors are reported under basic programs 111 (grades PK-3 basic, with ESE services), 112 (grades 4-8 basic with ESE services) or 113 (grades 9-12 basic with ESE services). In order to fund exceptional education and related services (including therapies) for these students, an ESE Guaranteed Allocation was established by the Legislature in addition to the basic funding. The guaranteed allocation is a fixed amount provided to each district.⁹⁴

For the remaining five percent of students with disabilities (those with the most intense needs), funding is determined using a matrix of services. Consistent with the services identified in the IEP, each matrix is completed by checking all the services that will be provided to the student. Students with the two highest matrix ratings (254 and 255) generate funding at a significantly higher weight than basic funding.⁹⁵

Each year the IDEA awards (IDEA, Part B and IDEA, Part B Preschool) are made to states from the USDOE. A major portion of these funds are distributed to school districts/agencies as entitlement grants. Allocations to districts/agencies are calculated using a federally-mandated formula. Funds must be used to supplement the excess costs of providing special education and related services for students with disabilities. Remaining award funds are used by DOE to support capacity building and other state-level activities as required by the IDEA.⁹⁶

IDEA provides a calculation for determining the level of funding a school district must spend on parentally-placed nonprofit private school children with disabilities. This “proportionate share calculation” is the total dollar amount of the school district’s IDEA subgrant divided by the total number of IDEA-eligible children enrolled in schools located within the district (including public and private school children). The result is the average allocation per eligible child, which is then multiplied by the number of IDEA-eligible parentally-placed private school children with disabilities to determine the amount to be expended for such children.⁹⁷ Funds provided to private schools must be used to meet the special education and related services needs of parentally-placed private school children with disabilities and not for meeting the needs of a private school or the general needs of the students enrolled in the private school.⁹⁸

Where may I get additional information?

Florida Department of Education

Bureau of Exceptional Education and Student Services
(850) 245-0475
<http://www.fldoe.org/ese/>

U.S. Department of Education

Office of Special Education and Rehabilitative Services and
Office of Special Education Programs
400 Maryland Avenue, S.W.
Washington, D.C. 20202-7100
(202) 245-7468
<http://www.ed.gov/about/offices/list/osers/index.html>
<http://idea.ed.gov/>

Florida House of Representatives

Education Committee
(850) 717-4830
<http://www.myfloridahouse.gov>

⁹⁴ Florida Department of Education, Bureau of School Business Services, Office of Funding and Financial Reporting, *Funding for Florida School Districts 2013-2014 Statistical Report*, available at <http://www.fldoe.org/feffp/pdf/feffpdist.pdf>.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ 34 C.F.R. s. 300.133

⁹⁸ 34 C.F.R. s. 300.141.



What is the dual enrollment program?

The dual enrollment program is an acceleration mechanism that allows an eligible secondary¹ or home education student to enroll in a postsecondary course creditable toward high school completion and an associate or baccalaureate degree or career certificate.² Upon successful completion of a dual enrollment course, the student simultaneously receives high school and college, university, or career certificate credit. College credit earned prior to high school graduation may reduce the average time-to-degree and increase the likelihood of completion of a postsecondary degree.³ Eligible students are permitted to enroll in dual enrollment courses conducted during and after school hours and during the summer term.⁴ Ten of Florida's 11 State University System (SUS) institutions and 28 Florida College System (FCS) institutions currently participate in dual enrollment.

Early admission is a form of dual enrollment that provides eligible secondary students an opportunity to enroll on a full-time basis at a postsecondary institution in courses that are creditable toward the high school diploma and associate or baccalaureate degree.⁵ Career early admission is a form of dual enrollment through which eligible secondary students enroll full time in a career center or a FCS institution in courses that are creditable toward the high school diploma and the certificate or associate degree.⁶ To participate in career early admission, students must have completed at least four semesters of full-time secondary enrollment, including studies undertaken in the ninth grade and must be enrolled in postsecondary programs that lead to industry certifications, as listed in the Postsecondary Industry Certification Funding List.⁷

Who is eligible to enroll as a dual enrollment student in a postsecondary course?

An eligible student is one who is enrolled in a Florida public secondary school or a Florida private secondary school conducting a secondary curriculum that satisfies the statutory high school graduation requirements.⁸

Students must demonstrate readiness for college-level or career-level coursework. The student must have a 3.0 unweighted grade point average (GPA) for enrollment in college-level courses and a 2.0 unweighted GPA for enrollment in career certificate courses. If enrolling in a college credit course, students must demonstrate adequate pre-collegiate preparation on a basic computation and communication skills assessment through the common placement examination. Exceptions to the required GPAs may be granted if the participating educational entities agree and the terms of such agreement are contained in the dual enrollment interinstitutional articulation agreement. FCS institutions may establish additional admissions criteria to ensure

¹ For purposes of dual enrollment, "secondary" is defined as a student who is enrolled in grades 6-12 in a Florida public school or Florida private school. Section 1007.271(2), F.S.

² Section 1007.271(1), F.S.

³ Florida Department of Education, Office of Articulation, *Dual Enrollment Frequently Asked Questions*, available at www.fldoe.org/articulation/pdf/DualEnrollmentFAQ.pdf (revised Jan. 2014).

⁴ Section 1007.271(2), F.S.

⁵ Section 1007.271 (10), F.S.

⁶ Section 1007.271 (11), F.S.

⁷ *Id.* The Postsecondary Industry Certification Funding List is defined in s. 1008.44, F.S.

⁸ Section 1007.271(2), F.S.; *see also* s. 1002.42(2), F.S. Section 1007.271(2), F.S., references the required curriculum with regard to the courses required for a standard high school diploma under s. 1003.4282, F.S., which applies to students entering grade 9 in the 2013-2014 school year.

student readiness for postsecondary instruction, but such requirements may not arbitrarily prohibit students who have demonstrated the ability to master advanced courses.⁹

To participate in the dual enrollment program, an eligible home education student must provide proof of enrollment in a home education program, be responsible for his or her own instructional materials and transportation unless provided for otherwise, and sign a home education dual enrollment articulation agreement.¹⁰

How is the dual enrollment program coordinated between the secondary and postsecondary educational institutions?

Each public postsecondary institution and school district in its service area is required to jointly develop and implement a comprehensive dual enrollment articulation agreement.¹¹ Additionally, an independent college or university which is located and chartered in Florida may participate in the dual enrollment or early admission program if the school is not-for-profit, is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools, and confers degrees.¹² The dual enrollment articulation agreement must be submitted annually to the Department of Education on or before August 1 and must include, but is not limited to, the following components:

- The available dual enrollment courses and programs¹³
- A description of the processes by which students and parents are informed about and exercise options to participate in dual enrollment, including registration.¹⁴
- The type of high school credit earned for completion of a dual enrollment course.¹⁵
- A listing of any additional student eligibility criteria.¹⁶
- Each institution's responsibilities for student screening and performance monitoring, transmission of grades, program costs including instructional materials, and student transportation.¹⁷

What courses are available for dual enrollment?

The Department of Education (DOE) must approve any postsecondary course for inclusion in the dual enrollment program that is contained within the Statewide Course Numbering System. College-preparatory and other forms of precollegiate instruction, physical education and other courses that focus on the physical execution of a skill, may not be approved, but must be evaluated individually for potential inclusion in the dual enrollment program.¹⁸ The Commissioner of Education may approve dual enrollment agreements for limited course offerings that have statewide appeal. Such programs must be limited to a single site with multiple county participation.¹⁹

⁹ Section 1007.271(3), F.S.

¹⁰ Section 1007.271(13), F.S.

¹¹ Section 1007.271(21), F.S.

¹² Sections 1007.271(23) and 1011.62(1)(i), F.S.

¹³ Section 1007.271(21)(c), F.S.

¹⁴ Section 1007.271(21)(b), (d), and (i), F.S. Career centers, FCS institutions, and SUS institutions must also delineate courses and programs for dually enrolled home education students. Courses and programs may be added, revised, or deleted at any time. Section 1007.271(13)(b)1., F.S.

¹⁵ Section 1007.271(21)(f), F.S.

¹⁶ Section 1007.271(21)(e), F.S. Career centers, FCS institutions, and SUS institutions must also identify eligibility criteria for home education student participation, not to exceed those required of other dually enrolled students. Section 1007.271(13)(b)2., F.S. Exceptions to the required grade point average may be granted on an individual student basis. Section 1007.271(21)(h), F.S.

¹⁷ Section 1007.271(21)(l), (m), (n), and (o), F.S.

¹⁸ Section 1007.271(14), F.S. Florida Department of Education, *2014-2015 Dual Enrollment Courses – High School Subject Area Equivalency List*, available at <http://www.fldoe.org/articulation/pdf/DEList.pdf>.

¹⁹ Section 1007.271(19), F.S.

What level of credit is awarded for dual enrollment?

The commissioner appoints faculty committees representing public school, FCS institution, and university faculties to identify postsecondary courses that meet the high school graduation requirements. These committees also establish postsecondary and high school credit equivalencies for each identified course. The credit equivalencies must be based on comparable course content and not on seat time traditionally allocated for such courses in high school.²⁰

The commissioner provides the committees' credit equivalency recommendations to the State Board of Education for its consideration.²¹ The state board issues an approved list of dual enrollment courses that meet high school graduation requirements. The list also indicates the level of credit that must be awarded once the course has successfully been completed. The most recently approved list is published on DOE's website.²²

School districts and FCS institutions must weigh dual enrollment courses the same as Advanced Placement, International Baccalaureate, and Advanced International Certificate of Education courses when calculating GPAs.²³

Beginning with students admitted for Summer Semester 2009, dual enrollment courses that meet core state university admission requirements in English/Language Arts, Mathematics, Natural Sciences, Social Sciences, or specified Foreign Languages must receive the same weighting as Advanced Placement, International Baccalaureate, and Advanced International Certificate of Education courses in the calculation of the high school GPA used for state university admission decisions.²⁴ For purposes of calculating the GPA to be used when determining initial eligibility for a Florida Bright Futures Scholarship, DOE is directed to assign additional weights for dual enrollment courses.²⁵

How does a secondary student learn about dual enrollment?

Each district school board is required to inform all secondary students of dual enrollment as an educational option and mechanism for acceleration. Specifically, students must be provided with information on the eligibility criteria, the option for taking dual enrollment courses beyond the regular school year, and the minimum academic credits required for graduation.²⁶ Additionally, a DOE-developed statement must be provided to students, prior to enrollment in a dual enrollment course, which indicates whether the dual enrollment course articulates as an elective or a general education course into a postsecondary education certificate or degree program.²⁷

What is the Collegiate High School Program?

The 2014 Legislature created the Collegiate High School Program to offer public school students the opportunity to complete 30 credit hours through a dual enrollment program toward the first year of college for an associate degree or baccalaureate degree. The collegiate high school program must, at a minimum,

²⁰ Section 1007.271(9), F.S., references the required curriculum with regard to the courses required for a standard high school diploma under s. 1003.4282, F.S., which applies to students entering grade 9 in the 2013-2014 school year.

²¹ *Id.*

²² Florida Department of Education, *2014-2015 Dual Enrollment Course – High School Subject Area Equivalency List*, available at <http://www.fldoe.org/articulation/pdf/DEList.pdf>.

²³ Section 1007.271(18), F.S.

²⁴ State University System of Florida, Board of Governors Regulation 6.006(5), Acceleration Mechanisms, (March 2008), available at http://www.flbog.org/documents_regulations/regulations/6.006%20Acceleration%20Mechanisms.pdf.

²⁵ Section 1009.531(3)(b), F.S.

²⁶ Section 1007.271(8), F.S. Section 1003.4295, F.S. also requires school districts to advise each student of programs through which a high school student can earn college credit, including dual enrollment. Beginning with the 2011-12 school year, each high school must offer an International Baccalaureate Program, an Advanced International Certificate of Education Program, or a combination of at least four courses on dual enrollment or Advanced Placement, including one course each in English, mathematics, science, and social studies.

²⁷ Section 1007.271(15), F.S.

include an option for public school students in grade 11 or 12 to participate for one full school year and earn CAPE industry certifications within the 30 credits.²⁸

Each FCS institution is required to execute a contract with the each district school board in its designated service area to establish one or more collegiate high school programs at a mutually agreed upon location or locations. The contract must:

- Identify the grade levels to be included, but at a minimum, include grade 12.
- Describe the collegiate high school program, including: delineation of courses and industry certifications offered; high school and college credits earned (including online) for each postsecondary course completed and industry certification earned; student eligibility criteria; and the enrollment process and relevant deadlines.
- Describe the methods, medium, and process by which students and their parents are annually informed about the program.
- Identify delivery methods for instruction; instructors; student advising services; progress monitoring mechanisms; and terms of funding arrangements to implement the program.
- Establish a program review and reporting mechanism for student performance outcomes.²⁹

Each student participating in the program must enter into a student performance contract that must be signed by the student, the parent, and a representative of the school district and FCS institution, state university or other participating institution.³⁰ A district school board may also execute a contract to establish a collegiate high school program with a state university or an institution that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program, that is a nonprofit independent college or university located and chartered in this state and is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to grant baccalaureate degrees.³¹

What is the cost to the student to participate in dual enrollment?

Students are not required to pay registration, tuition, or lab fees for dual enrollment courses taken at a public postsecondary career center, FCS institution, or state university.³² Instructional materials must be provided to dual enrollment students from Florida public high schools free of charge.³³ Private school and home education students are responsible for their instructional materials and transportation. However, a FCS institution is not prohibited from providing instructional materials at no cost to a home education student or student from a private school.³⁴ The exemption from payment of fees does not apply to students dually enrolled in an eligible independent postsecondary institution.³⁵

How is dual enrollment funded?

Funding for dual enrollment programs is provided to school districts through the Florida Education Finance Program. Students who enroll in these programs are included in their school districts' full-time equivalent (FTE) student count and districts receive allocations based on their FTE enrollment. Students who participate in dual enrollment programs with Florida's FCS institutions and state universities are also included in the FCS institution or universities' FTE count for funding purposes.³⁶

For dual enrollment courses offered on a postsecondary institution campus during the fall or spring term, the school district is required to pay the standard tuition rate per credit hour from the Florida Education Finance

²⁸ Section 1007.273(2), F.S.

²⁹ Section 1007.273(3), F.S.

³⁰ Section 1007.273(4), F.S.

³¹ Section 1007.273(5), F.S.

³² Section 1009.25(1)(a), F.S.; section 1007.271(2) and (16), F.S.

³³ Section 1002.20(19)(d), F.S.; s. 1007.271(17), F.S.

³⁴ Section 1007.271(17), F.S.

³⁵ Section 1011.62(1)(i), F.S.

³⁶ *Id.*

Program (FEFP). For dual enrollment courses offered on the high school campus by postsecondary faculty, the school district must reimburse the costs associated with the postsecondary institution's proportion of salary and benefits to provide the instruction. For dual enrollment offered on the high school campus by an appropriately credentialed high school teacher, the school district is not responsible for payment to the postsecondary institution.³⁷ Colleges do not receive reimbursement for tuition that is waived for home education students,³⁸ but may negotiate tuition payment options with private schools³⁹ provided that students remain exempt from the payment of tuition, registration, or laboratory fees.⁴⁰

Where can I get additional information?

Florida Department of Education

Office of Articulation

(850) 245-0427

<http://www.fldoe.org/articulation/>

Florida Department of Education

Division of Florida Colleges

(850) 245-0407

<http://www.fldoe.org/cc/>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

³⁷ Section 1007.271(21)(n), F.S.

³⁸ Florida Department of Education, Office of Articulation, *Dual Enrollment Frequently Asked Questions*, # 38, available at <http://www.fldoe.org/articulation/pdf/DualEnrollmentFAQ.pdf> (Revised Jan. 2013)

³⁹ Florida Department of Education, Office of Articulation, *Dual Enrollment Frequently Asked Questions*, # 39.

⁴⁰ Section 1009.25(1)(a), F.S.; section 1007.271(2) and (16), F.S.



What are career and professional academies?

A career and professional academy is a researched-based program that integrates a rigorous academic curriculum with an industry-specific curriculum aligned directly to priority workforce needs established by the regional workforce board¹ or the Department of Economic Opportunity (DEO).² “Students completing career and professional academy programs must receive a standard high school diploma, the highest available industry certification, and opportunities to earn postsecondary credit if the academy partners with a postsecondary institution approved to operate in the state.”³ Academies are an important component of the state’s efforts to increase high school graduation rates and better prepare students for employment.⁴

School boards must develop a three-year strategic plan in collaboration with regional workforce boards, economic development agencies, and state-approved postsecondary institutions to better align academy programs with local and regional workforce needs.⁵ The strategic plan must be based upon strategies to develop and implement academies based upon those careers determined to be in high-wage, high-skill, and high demand and ensure that courses offered through academies are academically rigorous, meet or exceed appropriate state-adopted subject area standards, result in attainment of industry certification, and when appropriate, result in postsecondary credit, among other things.⁶

In the 2013-14 school year, school districts registered 1,650 high school and 166 middle school academies, representing all 67 of Florida’s school districts.⁷

What are career-themed courses?

Career-themed courses are courses or a series of courses, that lead to an industry certification identified in the Career and Professional Education Industry Certification Funding List.⁸ Career-themed courses have an industry-specific curriculum aligned directly to priority workforce needs established by the regional workforce board or DEO.⁹

¹ Section 445.007, F.S., establishes regional workforce boards and designates their function. See Career Source Florida, *Regional Workforce Boards*, <http://careersourceflorida.com/about-careersource-florida> (last visited June 17, 2014). Workforce services in Florida are provided by 24 regional workforce boards who deliver services through nearly 100 One-Stop Career Centers around the state. During the 2012 Legislative session Workforce Florida, Inc., was required to evaluate the means to establish a single, statewide workforce-system brand for Florida and to submit its recommendations to the Governor by November 1, 2012. On February 10, 2014, Florida’s workforce system launched its new statewide brand, CareerSource Florida. Workforce Florida, Inc., plans to propose a legislative name change from “Workforce Florida, Inc.” to “CareerSource Florida” during the 2015 regular session. Telephone interview with Director of Government Relations, CareerSource Florida (June 16, 2014).

² Section 1003.493(1)(a), F.S.

³ *Id.*

⁴ Section 1003.493(2), F.S.

⁵ Section 1003.491(2), F.S.

⁶ Section 1003.491(3), F.S.

⁷ Email, Florida Department of Education, Legislative Affairs Director (July 17, 2014).

⁸ Section 1003.493(1)(b), F.S. See *infra* text accompanying notes 26-37 for an explanation of the Career and Professional Education Industry Certification Funding List.

⁹ Section 1003.493(1)(b), F.S.

Students completing a career-themed course must be provided opportunities to earn postsecondary credit if the credit for the career-themed course can be articulated to a postsecondary institution approved to operate in the state.¹⁰

In the 2013-14 school year, school districts registered 12,141 career-themed courses.¹¹

Where are career and professional academies and career-themed courses offered?

Each school board must operate at least one high school career and professional academy and have as part of its three-year strategic plan the implementation of an academy or a career-themed course in at least one middle school in the district.¹² Two or more school districts may collaborate in the development of the strategic plan and jointly offer an academy or career-themed courses.¹³

An academy may be offered as a school-within-a-school or as part of an existing high school that provides courses in one or more occupational clusters. Students attending the school do not necessarily attend the academy. An academy may also be offered as a total school configuration providing multiple academies, each structured around an occupational cluster. In this case, each student attending the school also attends the academy.¹⁴

Career-themed courses may be offered in any public secondary school. Existing career education courses may serve as a foundation for the creation of an academy.¹⁵ School districts must offer at least two career-themed courses and each secondary school is encouraged to offer at least one career-themed course.¹⁶ The Florida Virtual School is encouraged to develop and offer rigorous career themed courses and career and professional courses as appropriate.¹⁷

Each middle school academy or career-themed course must be aligned with at least one high school academy or career-themed course offered in the district and maintain partnership with local business and industry and economic development boards.¹⁸ Students who complete a middle school academy or career-themed course must have the opportunity to earn an industry certification and high school credit, and participate in career planning, job shadowing, and business leadership development activities.¹⁹

Are career courses and career-themed courses required to lead to industry certification or postsecondary credit?

Yes. Each career course offered in a career and professional academy and each career-themed course offered by a secondary school must lead to industry certification or postsecondary credit. If the passage rate on an industry certification examination that is associated with an academy or a career-themed course falls below 50 percent, the three-year strategic plan must be amended to include specific strategies to improve the passage rate of the academy or career-themed course.²⁰

As part of the strategic three-year plan, school districts, regional workforce boards, economic development agencies, and state-approved postsecondary institutions must take measures to ensure that career-themed courses and courses offered through career and professional academies are academically rigorous, meet or

¹⁰ *Id.*

¹¹ Email, Florida Department of Education, Legislative Affairs Director (July 17, 2014).

¹² Sections 1003.493(3) and 1003.4935(1), F.S.

¹³ Section 1003.491(2), F.S.

¹⁴ Section 1003.493(3)(b), F.S.

¹⁵ *Id.*

¹⁶ Section 1003.493(1)(b), F.S.

¹⁷ Section 1003.493(1)(a) and (b), F.S.

¹⁸ Section 1003.4935(2), F.S.

¹⁹ Section 1003.4935(1), F.S.

²⁰ Section 1003.493(5), F.S.

exceed appropriate state-adopted academic standards, result in industry certification, and when appropriate, result in postsecondary credit.²¹

What are industry certifications?

Industry certification is defined as a voluntary process, through which individuals are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, resulting in the award of a credential that is nationally recognized and must be at least one of the following:

- Within an industry that addresses a critical local or statewide economic need;
- Linked to an occupation that is included in the workforce system's targeted occupation list; or
- Linked to an occupation that is identified as emerging.²²

Industry certification for nonfarm occupations must be based on the highest national standards available for specific industry certification.²³ Industry certification for farm occupations must demonstrate student skill proficiency and be based upon the best available data to address critical local or statewide economic needs.²⁴

In order for an industry certification to be included on the Career and Professional Education Industry Certification Funding List a certification must:

- Be on the Workforce Florida, Inc.'s Comprehensive Industry Certification List;
- Be achievable by secondary students; and
- Require a minimum of 150 hours of instruction.²⁵

How are industry certifications, certificates, and courses identified and approved for the Career and Professional Education Industry Certification Funding List?

The state board must work with Workforce Florida, Inc. and the Department of Agriculture and Consumer Services, to develop and adopt rules for implementing an industry certification process.²⁶

The selection of industry certifications for career and professional academy courses and career-themed courses occurs in two phases. First, Workforce Florida, Inc. must identify industry certifications that meet the definition provided in s. 1003.492(2), F.S. and compile them into a Comprehensive Industry Certification List.²⁷ Second, the Department of Education (DOE) must:

- Review Workforce Florida, Inc.'s Comprehensive Industry Certification List;²⁸
- Identify industry certifications that qualify for additional weighted funding;²⁹
- Consider district requests that industry certifications be added to the approved list;³⁰ and
- Annually publish a final list.³¹

Workforce Florida, Inc.'s, comprehensive list includes 431 industry certifications.³² From this list, DOE has identified 226 industry certifications as funding-eligible for the 2014-15 school year.³³ Most industry

²¹ Section 1003.491(3)(g), F.S.

²² Section 1003.492(2), F.S.

²³ Section 1003.492(3)(a), F.S.

²⁴ Section 1003.492(3)(b), F.S.

²⁵ Rule 6A-6.0573((7)(a), F.A.C.

²⁶ Section 1003.492(3), F.S.

²⁷ Section 1003.492(4), F.S.; rule 6A-6.0573(2)(d), F.A.C.

²⁸ Rule 6A-6.0573(3), F.A.C.

²⁹ Rule 6A-6.0573(4), F.A.C.

³⁰ Rule 6A-6.0573(9), F.A.C.

³¹ Section 1003.492(4), F.S.; rule 6A-6.0573(8), F.A.C.

³² Workforce Florida, Inc. Career and Professional Education (CAPE), *2014-15 Comprehensive Industry Certification List*, (2014 available at http://careersourceflorida.com/wp-content/uploads/2014/02/2014-15_CAPECondensedList.pdf).

certifications on DOE's list require passage of a subject area examination and some combination of work experience, educational attainment, or on-the job training. DOE has approved industry certification in such career fields as information technology, automotive and aircraft mechanics, welding, and nursing. Certifying entities include Adobe System, Apple Computer, Inc., Hewlett-Packard, Microsoft Corporation, the National Institute for Automotive Services Excellence, the American Welding Society, the Federal Aviation Administration, and Florida Department of Health.³⁴

The Career and Professional Education Industry Certification Funding List may include both industry certifications that are achievable in a secondary education program and those that have minimum age, grade-level, diploma or degree, post-graduation work experience of at least 12 months, or other requirements that make it impossible for the student to obtain full certification while in a public secondary school program. Funding industry certifications in which full certification cannot be achieved in a secondary program allows students to begin working toward these certifications while in high school, without having to fulfill all requirements before graduation.³⁵

The Career and Professional Education Industry Certification Funding List includes career and professional education industry certification, career and professional education acceleration industry certifications, and career and professional education digital tool certificates.

What is career and professional education acceleration?

Career and professional education acceleration is an industry certification, annually approved by the commissioner that articulate for 15 or more college credit hours and, if successfully completed, must be eligible for additional FTE funding. Each approved industry certification must be specifically identified in the Industry Certification Funding List as a Career and Professional Education Acceleration Industry Certification.³⁶

In order for a career and professional education acceleration industry certification to be included on the Career and Professional Education Industry Certification Funding List a career and professional education acceleration industry certification must meet the same requirements as an industry certification and also have a statewide articulation agreement with 15 hours or more of college credits.³⁷

What are career and professional education digital tool certificates?

Career and professional education digital tool certificates recognize a student's competencies. DOE is required to "identify, by June 15 of each year, ... Digital Tool certificates that indicate a student's digital skills. DOE must notify each school district when a digital tool certificate is available. The digital tool certificates must be made available to all elementary and middle grades student. The Legislature intends that by July 1, 2018, on an annual basis, at least 75 percent of public middle grades students earn at least one digital tool certificate.³⁸

In order for a career and professional education digital tool certificate to be included on the Career and Professional Education Industry Certification Funding List a certificate must:

³³ Rule 6A-6.0573(6), F.A.C. The Industry Certification Funding List is incorporated by reference in the rule. *See also* Florida Department of Education, Division of Career and Adult Education, *2014-15 Final Industry Certification Funding List* (2013), available at <http://www.fldoe.org/workforce/fcpea/pdf/1415icfl.pdf>.

³⁴ Workforce Florida, Inc., Career and Professional Education Act, Comprehensive Industry Certification List – Including Detailed Certification Descriptions and Requirements, available at http://careersourceflorida.com/wp-content/uploads/2014/02/2014-15_CapeComprehensiveList.pdf.

³⁵ Section 1008.44(3), F.S. For industry certifications in which full certification cannot be achieved in a secondary program, the Commissioner of Education must differentiate the content, instructional, and assessment requirements for such industry certifications in determining funding. This allows students to work toward these certifications while in high school, without having to fulfill all requirements before graduation. *Id.*

³⁶ Section 1003.4203(5)(b), F.S.

³⁷ Rule 6A-6.0573(7)(c), F.A.C.

³⁸ Section 1003.4203(3), F.S.

- Be achievable by elementary school and middle grades students;
- Assess at least one of the following digital skills: word processing; development of spreadsheets; digital arts; cybersecurity; coding; and development of sound, motion, and color presentations; and
- Be part of a career pathway leading to the attainment of a career and professional education industry certification on the career and professional education funding list.³⁹

The Commissioner of Education may at any time recommend adding to the Career and Professional Education Industry Certification Funding List no more than 15 career and professional education digital tool certificates limited to the areas of word processing; development of spreadsheets; digital arts; cybersecurity; coding; and development of sound, motion, and color presentations that do not articulate for college credit.⁴⁰

The Chancellor of Career and Adult Education may identify certificates and certifications for students with disabilities, which must be included on the Career and Professional Education Industry Certification Funding List, i.e., digital tool certifications, workplace industry certification, and occupation safety and health administration industry certifications.⁴¹

What are career and professional education innovation courses?

Career innovation courses are up to five courses, annually approved by the commissioner, that combine academic and career content. The courses must incorporate at least two third-party assessments that, if successfully completed, articulate for college credit, and at least one of the assessments must be associated with an industry certification identified on the Career and Professional Education Industry Certification Funding List.⁴²

What are “career clusters?”

Career clusters were initially developed by the Career Clusters Initiative, a collaborative effort by the U.S. Department of Education, the Office of Vocational and Adult Education, the National School-to-Work Office, and the National Skills Standards Board.⁴³ Career clusters are designed to identify the knowledge and skills necessary to prepare students for a broad range of career opportunities within a career field. The DOE has developed 2013-14 school year curriculum frameworks in the following areas:

- Agriculture, Food & Natural Resources;
- Architecture & Construction;
- Arts, A/V Technology & Communication;
- Business, Management & Administration;
- Education & Training;
- Energy;
- Engineering & Technology Education;
- Finance;
- Government & Public Administration;
- Health Science;
- Hospitality & Tourism;
- Human Services;
- Information Technology;
- Law, Public Safety & Security;
- Manufacturing;
- Marketing, Sales & Service;

³⁹ Rule 6A-6.0573(7)(d), F.A.C.

⁴⁰ Section 1008.44(1)(b), F.S.

⁴¹ Section 1008.44(1)(c), F.S.

⁴² Section 1003.4203(5)(a), F.S.

⁴³ U.S. Department of Education, *Career Clusters—Cooperative Agreement*, at 76525 (2000), available at www.gpo.gov/fdsys/pkg/FR-2000-12-06/html/00-31034.htm.

- Science, Technology, Engineering & Mathematics (STEM);
- Transportation, Distribution & Logistics; and
- Additional CTE Programs/Courses:
 - Diversified Education;
 - Instructional Support Services (Special Needs);
 - Other Vocational Programs; and
 - M/J Exploratory Career Education Wheel.⁴⁴

These curriculum frameworks form the basis of more specialized programs offered by career and professional academies and are included in secondary and postsecondary career and technical education programs. In the 2013-14 school year, the most frequent career cluster represented by academies was Arts, A/V Technology & Communication with 223 registered academies followed by Health Sciences with 213 academies.⁴⁵

Is there a process for creating career education courses that allow students to simultaneously earn credit in both the career education course and core academic courses required for graduation?

Yes. There are two ways in which students may use career education or industry certification courses to satisfy core academic credits required for a standard high school diploma. DOE must develop, for approval by the state board, multiple, career education courses, or a series of courses, that allow students to earn both career education course and academic course credit in courses required for graduation.⁴⁶ Such courses must include workforce and digital literacy skills, practical applications of academic course content, and lead to one or more industry certifications or clearly articulated credit or advanced standing in a two-year or four-year certificate or degree program, including work-related internships or apprenticeships.⁴⁷ Students may substitute industry certification courses that lead to college credit for up to 2 mathematics credits and up to 1 science credit, except for Algebra I, Geometry, and Biology I.⁴⁸ Industry certification that can be substituted for credit must have a statewide college credit articulation agreement approved by the state board.⁴⁹

Additionally, school districts, postsecondary institutions, education consortia, local workforce boards, businesses, and industry may collaborate in creating career education courses that lead to academic course credit. Courses developed through this collaborative process must meet the same rigorous standards as those created by DOE and be approved by the state board.⁵⁰

Are parents notified once their child earns an industry certification?

Yes. District school boards must notify the parent of students who earn an industry certification which articulates for college credit. The notification includes:

- The estimated cost savings of earning an industry certification prior to high school graduation versus the costs of acquiring such certification after high school graduation;
- The postsecondary credits available and the tuition and fees associated with those postsecondary credits; and
- Any additional industry certifications available to the student.⁵¹

⁴⁴ Florida Department of Education, Division of Career and Adult Education, Curriculum Frameworks, <http://www.fldoe.org/workforce/dwdframe> (last visited June 16, 2014).

⁴⁵ Email, Florida Department of Education, Legislative Affairs Director (July 17, 2014).

⁴⁶ Section 1003.4282(9)(a), F.S.

⁴⁷ Section 1003.4282(9)(a)2., F.S.

⁴⁸ Section 1003.4282(3)(b) and (c), F.S.

⁴⁹ Section 1003.4282(9)(a), F.S.

⁵⁰ Section 1003.4282(9)(b)-(c), F.S.

⁵¹ Section 1003.02(1)(j), F.S.

How are career themed courses and certificates funded?

Industry certifications on the final approved Career and Professional Education Industry Certification Funding list are eligible for additional weighted funding through the Florida Education Finance Program (FEFP).⁵² A value of 0.1 or 0.2, full-time equivalent (FTE) student membership in the FEFP is calculated for each student who successfully completes a course or course with embedded career and professional education industry certification and receives an industry certification. A value of 0.025 FTE is calculated for career and professional digital tool certificates earned by students in elementary and middle school.

Industry certifications that do not articulate to college credit are valued at 0.1 FTE and those articulating to college credit are valued at 0.2 FTE. The value is added to the total FTE in secondary career education programs for grades nine through 12 in the subsequent year for courses that were not provided through dual enrollment. Each district must allocate at least 80 percent of the funds provided for career and professional education industry certification to the program that generated the funds.⁵³

An additional FTE student membership of 0.3 for student completion of certificates earned through career innovation courses that are identified on the list and approved by the commissioner, an additional FTE student membership of 0.5 for student completion of acceleration industry certifications that articulate for 15 to 29 college credit hours, and an additional 1.0 FTE student membership for acceleration industry certifications that articulate for 30 or more college credit hours.

For industry certifications earned in the 2013-14 school year and thereafter, bonuses are available for teachers of courses in which students earn industry certifications. The bonus amounts are \$25 for students earning 0.1 FTE weighted certifications and \$50 for those earning 0.2, 0.3, 0.5, and 1.0 FTE weighted certifications. The maximum bonus such teachers may earn is \$2,000 in any given school year.⁵⁴

Does the Department of Education collect data on career and professional academies and career-themed courses?

Yes. DOE is required to collect student achievement and performance data in industry-certified career education programs and career-themed courses and must work with Workforce Florida, Inc., and the Department of Agriculture and Consumer Services in the analysis of collected data. The data collection and analyses must examine the performance of participating students over time. Performance factors must include, but not be limited to, graduation rates, retention rates, Florida Bright Futures Scholarship awards, additional educational attainment, employment records, earnings, industry certification, return on investment, and employer satisfaction.⁵⁵

In the 2012-13 school year, career and professional academies served a total of 277,954 students, 45,277 of whom earned at least one industry certification. According to DOE, middle school and high school students enrolled in an academy were slightly more likely to graduate with a standard diploma and had on average, higher cumulative grade-point averages and lower absence rates than students not enrolled in an academy.⁵⁶

What are the requirements for the middle grades career and education planning course?

The course in career and education planning must be completed in 6th, 7th, or 8th grade. It may be delivered as a stand-alone course or integrated into another course and may be taught by any member of the instructional staff. The course should incorporate the standards and benchmarks established in the curriculum frameworks. The course numbers for the approved stand-alone and integrated courses are listed in the Course Code Directory. The course must:

⁵² Section 1011.62(1)(o), F.S.; rule 6A-6.0573(12), F.A.C.

⁵³ Section 1011.62(1)(o), F.S.

⁵⁴ Section 1011.62(1)(o)3., F.S.

⁵⁵ Section 1003.492(5), F.S. A report of data on academies and career-themed courses must be submitted to the President of the Senate and Speaker of the House of Representatives by December 31 of each year. *Id.*

⁵⁶ Florida Department of Education, *Career and Professional Academy Enrollment and Performance Report, 2012-13*, at 22 -25 (Dec. 2013), available at <http://www.fldoe.org/workforce/pdf/1213cpaep.pdf>.

- Be Internet-based, easy to use, and customizable to each student and include research-based assessments to assist students in determining educational and career options and goals;
- Result in a completed personalized academic and career plan for the student;
- Emphasize the importance of entrepreneurship skills;
- Emphasize technology or the application of technology in career fields; and
- Include information from the Department of Economic Opportunity's economic security report (beginning in the 2014-15 school year).

The required personalized academic and career plan must inform students of high school graduation requirements; including a detailed explanation of the diploma designation options; high school assessment and college entrance test requirements; Florida Bright Futures Scholarship Program requirements; state university and Florida college admission requirements; opportunities to earn college credit in high school, including Advanced Placement, International Baccalaureate, Advanced International Certificate of Education, dual enrollment, including career dual enrollment; career education courses, including career themed courses; and opportunities to earn industry certification.⁵⁷

Where can I get additional information?

Florida Department of Education

Division of Career and Adult Education

(850) 245-0446

<http://www.fldoe.org/workforce/>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

⁵⁷ Section 1003.4156(1)(e), F.S.

Charter Schools



What are charter schools?

Charter schools are nonsectarian, public schools that operate under a performance contract with a sponsor. This performance contract is known as a “charter.”¹ The charter exempts the school from many regulations applicable to traditional public schools to encourage the use of innovative learning methods.² One of the guiding principles of charter schools is to “meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state’s public school system.”³

Like traditional public schools, charter school operations are funded through the Florida Education Finance Program and charter schools may not charge tuition.⁴ Charter school students must take the statewide assessments and charter schools receive an annual school grade.⁵ Teachers employed by or under contract with a charter school must be certified like those in traditional public schools.⁶ Charter schools must comply with constitutional class size limitations; however, such compliance must be maintained at the school-level average, rather than at the classroom level required of traditional public schools.⁷

Florida’s first charter school law was enacted in 1996.⁸ In the 2013-14 academic year, there were 615 charter schools operating in 45 of Florida’s 67 school districts and at two state universities. Charter schools currently serve 229,428 students.⁹ Approximately two-thirds of Florida’s charter schools are located in nine districts -- Broward, Dade, Duval, Hillsborough, Lee, Orange, Palm Beach, Pinellas and Polk.¹⁰

Who is eligible to attend charter schools?

Charter schools are open to all students residing within a school district and students who are covered by an interdistrict enrollment agreement.¹¹ Prospective students must apply for enrollment in the charter school and, if the number of applications exceeds the school’s capacity, a random lottery must be used to determine which students are enrolled.¹² Enrollment preference may be given to:

- Siblings of current charter school students;
- Children of a member of the charter school governing board;
- Children of charter school employees;
- Children who complete a Voluntary Prekindergarten Education program provided by the charter school; and

¹ Section 1002.33(5)(a), (6)(h), (7) and (9)(a), F.S.

² Section 1002.33(2)(b)3. and (16), F.S.

³ Section 1002.33(2)(a)1., F.S.

⁴ Section 1002.33(9)(d) and (17), F.S.

⁵ Section 1002.33(16)(a)2., F.S.

⁶ Section 1002.33(12)(f), F.S.

⁷ Section 1002.33(16)(b)3., F.S. Prior to FY 2010-11, class size maximums were measured first at the district-level average (FYs 2003-06), then at the school-level average (FYs 2006-10). Art. IX, s. 1, Fla. Const.; s. 1003.03(2), F.S. (2010).

⁸ Chapter 96-186, L.O.F., initially codified at s. 228.056, F.S., redesignated in 2002 as s. 1002.33, F.S.

⁹ Email, Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 17, 2014).

¹⁰ Florida Department of Education, *Charter Schools Directory*, http://www.floridaschoolchoice.org/Information/Charter_Schools/Directory/default.aspx (last visited June 16, 2014).

¹¹ Section 1002.33(10)(a), F.S. A charter school receiving federal Charter School Program grant funds must use a lottery if more students apply for admission to the charter school than can be admitted, but may use a weighted lottery under certain circumstances. See U.S. Department of Education, *Charter Schools Program Title V, Part B, Non-Regulatory Guidance*, (January 2014), available at <http://www2.ed.gov/programs/charter/fy14cspnonregguidance.doc>.

¹² Section 1002.33(10)(b), F.S.

- Children of active-duty United States Armed Forces personnel.¹³

Additionally, a charter school-in-the-workplace may give an enrollment preference to children whose parents are employees of the school's business partner and children whose parents are residents of the municipality in which the school is located. A charter school-in-a-municipality may give an enrollment preference to children whose parents are residents of the municipality in which the school is located.¹⁴

A charter school may limit the enrollment process in order to target the following student populations:

- Students within specific age groups or grade levels;
- Students considered at risk of dropping out of school;
- Exceptional students;
- Children of the business partner who seek to enroll in a charter school-in-the-workplace or children of municipal residents who seek to enroll in a charter school-in-a-municipality;
- Students residing within a reasonable distance of the charter school;
- Students who meet reasonable academic, artistic, or other eligibility standards established by the charter school;
- Students articulating from one charter school to another pursuant to an articulation agreement between the charter schools that has been approved by the sponsor; and
- Students living in a development in which a business entity provides the school facility and related property having an appraised value of at least \$10 million to be used as a charter school for the development.¹⁵

Generally, the student capacity of a charter school is annually determined by the governing board, in conjunction with the sponsor.¹⁶ The governing board of a high-performing charter school may unilaterally increase its enrollment to more than the capacity identified in the charter, but not to exceed the current facility capacity.¹⁷

How do the demographic characteristics of students in charter schools compare with students in traditional public schools?

Demographically, charter school student populations are very similar to traditional public school student populations, except that traditional public schools serve a larger percentage of students who are reported as eligible for free or reduced-price lunch.¹⁸ The following table compares the characteristics of students enrolled in charter schools and in traditional public schools:

¹³ Section 1002.33(10)(d), F.S.

¹⁴ *Id.*

¹⁵ Section 1002.33(10)(e), F.S.

¹⁶ Section 1002.33(10)(h), F.S.

¹⁷ Section 1002.331(2)(a)-(b), F.S.

¹⁸ According to the Department of Education, charter schools often face challenges in becoming approved National School Lunch Program providers, which may result in inaccurate reporting of free and reduced-price lunch eligible students. Email, Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 17, 2014).

2013-14 Demographic Data for Charter School Students Compared to Traditional Public School Students¹⁹		
Student Population		
Demographic Group	Charter Schools	Traditional Schools
White	34.5%	41.5%
African American	22.0%	23.0%
Hispanic	38.1%	29.2%
Asian	2.3%	2.6%
American Indian	0.4%	0.3%
Multiracial	2.6%	3.2%
Educational Needs		
Exceptional Student Education	9.0%	13.2%
Economic Indicator		
Free or Reduced-Price Lunch Eligible	49.1%	59.3%

Who can sponsor a charter school and what are the sponsor's duties?

Several types of entities may sponsor charter schools:

- School districts may sponsor charter schools.²⁰
- State universities may sponsor charter lab schools.²¹
- School districts, Florida College System (FCS) institutions, or a consortium of school districts or FCS institutions may sponsor a charter technical career center.²²

Almost all of Florida's charter schools are sponsored by school districts.²³

A sponsor's responsibilities include:

- Approving or denying charter school applications.
- Overseeing each sponsored charter school's progress toward the goals established in the charter.
- Monitoring the revenues and expenditures of the charter school.
- Ensuring that the charter school participates in the state's education accountability system.
- Intervening when a sponsored charter school demonstrates deficient student performance or financial instability.²⁴

A sponsor must provide various administrative services to sponsored charter schools, such as contract management, student enrollment and achievement data reporting, exceptional student education program administration, eligibility determination and reporting for federal school lunch programs, assessment test administration, processing of teacher certification data, and student information services.²⁵

¹⁹ Email, Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 17, 2014).

²⁰ Section 1002.33(5)(a)1., F.S.

²¹ Sections 1002.32(2) and 1002.33(5)(a)2., F.S.

²² Section 1002.34(3)(b), F.S.

²³ See, e.g., Florida Department of Education, *Florida Charter School List by District*, http://www.floridaschoolchoice.org/Information/charter_schools/Directory/ (last visited June 18, 2014).

²⁴ Section 1002.33(5)(b), F.S.

²⁵ Section 1002.33(20)(a)1., F.S.

How are charter schools created, organized, and governed?

An application for a new charter school may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under Florida law.²⁶ The school must be operated by a FCS institution, municipality, or nonprofit organization. While a charter school must be a public or nonprofit entity, it may be managed by a for-profit education management organization.²⁷

Each charter school must have a governing board. The board is responsible for:

- Negotiating the school's charter agreement with its sponsor;
- Exercising continuing oversight over the school's operations;
- Adopting and maintaining an annual operating budget;
- Ensuring that annual audits are conducted;
- Submitting monthly financial statements to the sponsor and implementing corrective actions to remedy financial instability; and
- Submitting the school's annual progress report to the sponsor.²⁸

Each board member must participate in governance training that includes such topics as government in the sunshine, conflicts of interest, ethics, and financial responsibility.²⁹ Members must complete a minimum of four hours of initial training and a two hour refresher course at least once every three years thereafter.³⁰

What is the process for establishing a charter school?

An applicant must submit a charter school application on a model application form developed by the Department of Education (DOE) to the sponsor by August 1.³¹ However, a sponsor may not refuse to receive a charter school application submitted before August 1 and may receive an application submitted later than August 1 if it chooses.³²

Charter school applications must:

- Demonstrate how the school will utilize the guiding principles.³³
- Provide a detailed curriculum plan aligned with the Next Generation Sunshine State Standards.
- Contain goals and objectives for improving student learning and measuring such improvement.
- Describe the reading curricula and differentiated strategies for serving students at various levels of reading ability.
- Contain an annual financial plan.

The sponsor may require the applicant to submit additional information as an addendum to the application.³⁴

²⁶ Section 1002.33(3)(a), F.S.

²⁷ Section 1002.33(12)(i), F.S.

²⁸ Section 1002.33(6)(h), (7), and (9)(h)-(k), F.S.

²⁹ Section 1002.33(9)(j)4., F.S.

³⁰ Rule 6A-6.0784(1)(b), F.A.C.

³¹ Section 1002.33(6)(a), F.S.; rule 6A-6.0786, F.A.C. (model charter school applications and application evaluation instruments).

³² Section 1002.33(6)(b), F.S. A sponsor may not charge an applicant for a charter any fee for the processing or consideration of an application, and a sponsor may not base its consideration or approval of a final application upon the promise of future payment of any kind. *Id.*

³³ The legislative guiding principles for charter schools provide that they are to meet high standards of student achievement while increasing parental choice; increase learning opportunities for all students, with special emphasis on low-performing students and reading; and utilize innovative learning methods. Charter schools may also serve to provide rigorous competition to stimulate improvement in traditional public schools, expand the capacity of the public school system, mitigate the educational impact created by the development of new residential dwelling units, and create new professional opportunities for teachers, including ownership of the learning program at the school site. Section 1002.33(2), F.S.

³⁴ Section 1002.33(6)(a), F.S.

A sponsor must approve or deny a charter school application within 60 calendar days of receipt, unless an extension of the deadline is mutually agreed to by the sponsor and applicant.³⁵

If an application is denied, the sponsor must provide within 10 calendar days specific written reasons, based upon good cause, for its denial to the applicant and DOE.³⁶ The applicant has 30 calendar days to file an appeal with the State Board of Education after the denial of, or failure to act upon, an application. The state board's decision is a final action subject to judicial review in the district court of appeal.³⁷

Additionally, an applicant may submit a draft charter school application on or before May 1 with an application fee of \$500. If a draft application is timely submitted, the sponsor must review and provide feedback as to material deficiencies in the application by July 1. The applicant then has until August 1 to resubmit a revised and final application. The sponsor may approve the draft application.³⁸

What is the Charter School Appeal Commission?

The Charter School Appeal Commission is a nine-member commission comprised of four charter school representatives and four sponsors, who are appointed by the Commissioner of Education. The Commissioner of Education, or his or her designee, serves as the chair of the commission.³⁹ The commission reviews charter school appeals filed with the state board, arising from the sponsor's denial of, or failure to act upon, charter applications.⁴⁰

The commission must review the appeal and make a written recommendation to the state board. The state board must consider the commission's recommendation, but is not bound by it when making its final decision.⁴¹ The state board must remand the application to the sponsor with the state board's written decision to approve or deny the application. The sponsor must implement the state board's decision.⁴²

During the 2013-14 academic year, 11 appeals were filed with the charter school appeal commission. The appeals were based on denials of charter school applications that were submitted to sponsors prior to the August 1, 2013 deadline.

Of the 11 appeals, two were withdrawn prior to an appeal commission hearing and two others never made it to a hearing. The seven remaining appeals were all heard by the commission. The appeal commission made a recommendation to uphold the district's denial in three cases, and recommended overturning the district's denial in four cases.

Of the seven appeals forwarded to the State Board of Education for a final ruling, two were withdrawn prior to state board action. The state board adopted the appeal commission recommendations in each of the remaining five appeals, resulting in four denials being overturned and one denial being upheld.⁴³

³⁵ Section 1002.33(6), F.S.

³⁶ Section 1002.33(6)(b)3., F.S.

³⁷ Section 1002.33(6)(c)(d), F.S.; *see also* s. 120.68, F.S.

³⁸ Section 1002.33(6)(b), F.S.; *Id.*

³⁹ Section 1002.33(6)(e)3., F.S.; Florida Department of Education, *Charter School Appeal Commission: Membership Information* (2012), available at http://www.floridaschoolchoice.org/information/Charter_schools/files/CSAC_Member_Info.pdf. The Commissioner must appoint a number of members to the commission that is sufficient to avoid conflicts of interest. Section 1002.33(6)(e)3., F.S.

⁴⁰ Section 1002.33(6)(e)1., F.S. In addition to application denials, a charter school and its sponsor may request a dispute resolution hearing before the commission if mediation fails to resolve a contractual dispute between the parties regarding matters negotiated separately from the charter. Section 1002.33(20)(b), F.S. A high-performing charter school may submit an application in any school district in the state to establish a new charter school that replicates its educational program. Section 1002.33(3)(a), F.S. The grounds upon which the sponsor may deny the application and the process for appealing denials differs from that of other start-up applications. Section 1002.33(6)(b)3.b. and (c)3., F.S. (flush-left provisions at end of paragraph (c)).

⁴¹ Section 1002.33(6)(e)2., F.S.

⁴² Section 1002.33(6)(c)3.a., F.S.

⁴³ Email, Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 17, 2014).

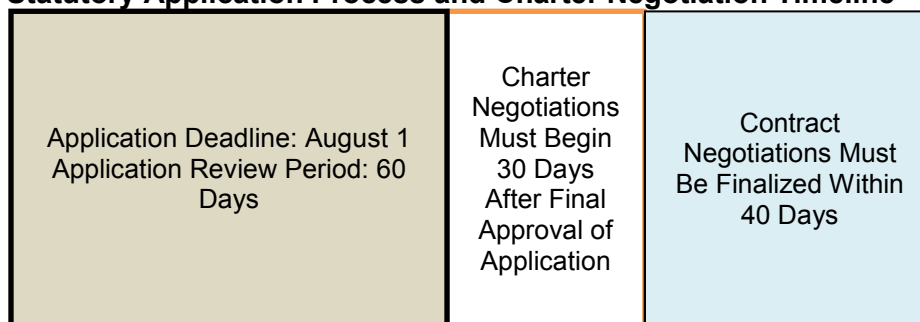
What is the process for negotiating the charter?

After a charter school application is approved, the applicant and sponsor must then negotiate the terms of the charter. Charter negotiations must begin within 30 days after approval of the application. The parties then have 40 days to finalize the charter.⁴⁴ The initial term of a charter is four or five years. The charter must include:

- The students to be served, including ages and grade levels.
- The curriculum's focus and instructional methods to be used.
- Baseline standards of student academic achievement, outcomes to be achieved, and methods of measurement to be used.
- The method for determining the strengths and needs of students and whether they are meeting educational goals.
- The method for resolving conflicts between the governing body and the sponsor.
- Admission and dismissal procedures and the school's student conduct code.
- Methods for achieving a racial/ethnic balance reflective of the community served.
- The financial and administrative management of the school, including experience required for management positions and a description of internal audit controls.
- Asset and liability projections.
- A description of plans to identify various risks, reduce losses, and ensure student and faculty safety.
- An agreement that the charter may be cancelled if the school has made insufficient progress with student achievement.
- The facilities to be used.
- Teacher qualifications, governance structure, and timetables for implementing each element of the charter.
- Full disclosure of all charter school employees who are relatives of charter school officials and employees who have decision making authority over charter school operations.
- Provisions for implementing high-performing charter school benefits if the charter school is designated as "high-performing."⁴⁵

The charter may be renewed at the end of its term if a program review conducted by the sponsor demonstrates that the goals and criteria stated in the charter have been met and that none of the grounds for nonrenewal have occurred.⁴⁶

Statutory Application Process and Charter Negotiation Timeline



May a charter school be granted a long-term initial charter or charter renewal?

Yes. Charter schools operated by a municipality or other public entity and charter lab schools are eligible for a 15-year initial charter. Charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation may receive a 15-year initial charter upon approval by the district school board. The charter is subject to annual review and may be terminated during its term for specified reasons.⁴⁷

⁴⁴ Section 1002.33(6)(h), F.S.

⁴⁵ Section 1002.33(7), F.S.

⁴⁶ Section 1002.33(7)(b)1., F.S.; *see infra* text accompanying note 48 (charter termination or nonrenewal).

⁴⁷ Section 1002.33(7)(a)12., F.S.; *see infra* text accompanying note 48 (charter termination or nonrenewal).

Additionally, Florida law provides opportunities for charter schools that demonstrate strong academic performance and fiscal stability to be granted a 15-year charter renewal. A sponsor:

- May grant a 15-year charter renewal to a charter school that has operated for at least three years, demonstrates exemplary academic programming and fiscal management, and for which no documented grounds for nonrenewal exist. Such a long-term charter is subject to annual review and may be terminated during its term at the discretion of the sponsor.⁴⁸
- Must grant a 15-year charter renewal to a charter school that meets the above requirements, receives a school grade of “A” or “B” in three out of four years, and is not in a state of financial emergency or deficit position. If granted, a long-term charter is subject to annual review and may only be terminated for specified reasons.⁴⁹

A high-performing charter school may receive a modification of its charter to a term of 15 years or a 15-year charter renewal. The charter may be modified or renewed for a lesser term at the option of the charter school, is subject to annual review by the sponsor, and may be terminated for specified reasons.⁵⁰

What are the grounds for nonrenewal or termination of a charter?

The charter of a charter school that earns two consecutive grades of “F” is terminated automatically.⁵¹ A sponsor must make student academic achievement for all students the most important factor when determining whether to renew or terminate a charter, but it also has discretion to terminate or not renew a charter for any of the following reasons:

- Failure to participate in the state’s education accountability system or failure to meet the charter’s requirements for student performance;
- Failure to meet generally accepted standards of fiscal management;
- Violation of law; or
- Other good cause shown.⁵²

A sponsor must provide 90-days written notice to the charter school prior to termination or nonrenewal, except that a charter may be terminated immediately if the sponsor sets forth particular facts and circumstances indicating an immediate and serious danger to the health, safety, or welfare of the students.⁵³ Under these circumstances, the school district is to assume operation of the charter school.⁵⁴ The governing board is entitled to a formal hearing and may appeal the sponsor’s decision to terminate or not renew its charter to the District Court of Appeals.⁵⁵

Upon initial notification of nonrenewal, closure, or termination of its charter, a charter school is prohibited from expending more than \$10,000 per expenditure without prior written approval from the sponsor, except in limited circumstances, and the school must have an independent financial audit completed within 30 days of the notice of nonrenewal, closure, or termination.⁵⁶

⁴⁸ Section 1002.33(7)(b)1., F.S.

⁴⁹ Section 1002.33(7)(b)2., F.S.; *see infra* text accompanying note 48 (charter termination or nonrenewal).

⁵⁰ Section 1002.33(2)(e), F.S.; *see infra* text accompanying note 48 (charter termination or nonrenewal).

⁵¹ Section 1002.33(9)(n)4., F.S. A charter school that earns two consecutive grades of “F” may receive an additional year to improve its grade if it is established in a school zone served by a historically low-performing public school or targets hard-to-serve students.

Id.

⁵² Section 1002.33(8)(a), F.S.

⁵³ Section 1002.33(8)(b) and (d), F.S.

⁵⁴ Section 1002.33(8)(d), F.S. A charter school may be awarded attorney’s fees and costs if the sponsor fails to assume operations and the charter school prevails on appeal. *Id.*

⁵⁵ Section 1002.33(8)(c)-(d), F.S.

⁵⁶ Section 1002.33(9)(o), F.S. Charter schools may exceed the \$10,000 per expenditure if such expenditure was included in the annual budget submitted to the sponsor, is for reasonable attorney fees and costs during the pendency of an appeal, or is for reasonable fees and costs to conduct an independent audit. *Id.*

In the 2013-14 academic year, 28 charter schools closed, seven of which were closed by the sponsor.⁵⁷

What background screening and ethical requirements apply to charter school personnel?

Instructional and noninstructional personnel who are employed or contracted with to fill positions in a charter school and members of the charter school governing board must undergo a Level 2 background screening.⁵⁸ Level 2 background screening is a state and national fingerprint-based criminal history check conducted to determine whether an individual has a criminal history and, if so, whether such history contains one or more statutorily designated offenses that disqualify an individual from employment.⁵⁹ A charter school must disqualify any individual convicted of a disqualifying offense from employment in an instructional or school administrator position that requires direct student contact.⁶⁰

Additionally, charter schools must, prior to hiring an individual for an instructional or school administrator position with direct student contact, conduct an employment history check and screen the person using DOE-provided educator screening tools. Such efforts, including any inability to contact previous employers, must be documented.⁶¹

Charter schools must also adopt policies establishing standards of ethical conduct for all instructional personnel and school administrators. The policies must:

- Require instructional personnel and school administrators to complete training on the standards;
- Establish a duty to report, and procedures for reporting, alleged misconduct by other instructional personnel and school administrators which affects the health, safety, or welfare of a student; and
- Explain available liability protections pertaining to reporting misconduct.⁶²

Charter schools are prohibited from entering into a confidentiality agreement regarding an instructor or school administrator who is terminated or dismissed or who resigns in lieu of termination due to misconduct affecting the health, safety, or welfare of a student. Furthermore, schools may not provide employment references for such personnel without disclosing such misconduct.⁶³

What statutory exemptions apply to charter schools?

Charter schools are exempt from a number of Florida K-20 Education Code statutes,⁶⁴ except for statutes that pertain specifically to charter schools, general statutory provisions that expressly include charter schools within their scope, and statutes pertaining to student assessment and school grading; the provision of services to students with disabilities; civil rights; student health, safety, and welfare; public records, public meetings, and public inspection; criminal and civil penalties; and provisions relating to educator compensation, contracts, and the substantive requirements relating to performance evaluations.⁶⁵

Additionally, charter schools are exempt from compliance with the State Requirements for Educational Facilities, but must comply with the Florida Building Code and the Florida Fire Prevention Code.⁶⁶ A local governing authority may not impose local building requirements or site-development restrictions, such as

⁵⁷ Email, Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 17, 2014).

⁵⁸ Sections 1002.33(12)(g)1., 1012.32(2)(b), 1012.465, and 1012.56(10), F.S.

⁵⁹ Section 435.04, F.S. The disqualifying offenses specific to Level 2 background screening are supplemented by additional disqualifying offenses specific to educator certification and employment of instructional personnel and school-based administrators. Section 1012.315, F.S.

⁶⁰ Sections 435.04, 1002.33(12)(g)2., 1002.33(12)(g)2., and 1012.315, F.S.

⁶¹ Sections 1001.10(5) and 1002.33(12)(g)4., F.S.

⁶² Section 1002.33(12)(g)3., F.S.

⁶³ *Id.*

⁶⁴ Chapters 1000 through 1013, F.S., comprise the Florida K-20 Education Code. Section 1000.01(1), F.S.

⁶⁵ Section 1002.33(16), F.S.

⁶⁶ Section 1002.33(18)(a) and (b), F.S. Conversion charter school facilities must comply with the State Requirements for Educational Facilities provided that the school district and the charter school have entered into an agreement in which the school district agrees to maintain the facilities in the same manner as other district public schools. Section 1002.33(18)(a), F.S.

parking or site-size criteria, that are addressed by and more stringent than those found in the State Requirements for Educational Facilities. Additionally, local governments must treat charter schools and traditional public schools equitably when regulating facilities.⁶⁷

Charter school facilities are exempt from ad valorem taxation. Libraries, community service organizations, museums, performing arts venues, theatres, cinemas, churches, FCS institutions, and universities may provide space to charter schools within their facilities under their preexisting zoning and land use designations.⁶⁸ Charter schools are also exempt from fees charged for building and occupational licenses, service availability fees, impact fees and exactions, and assessments for special benefits.⁶⁹

What are conversion charter schools?

Conversion charter schools are traditional public schools that have been converted to charter schools. The school must have operated for at least two years as a traditional public school (including a school-within-a-school) before conversion. An application for a conversion charter school may be made by a parent, teacher, principal, district school board, or school advisory council and must be approved by a majority of the teachers and a majority of the parents. A majority of the parents must participate in the vote.⁷⁰ During the 2013-14 academic year, 20 conversion charter schools operated in Florida, representing approximately three percent of the total number of charter schools in the state.⁷¹

The charter for a conversion charter school must identify the alternative arrangements that will be used to serve current students who choose not to attend the school after it is converted.⁷² Upon conversion, the school must give an enrollment preference to students who would otherwise be assigned to the school.⁷³

A conversion charter school is not eligible for charter school capital outlay funding if it operates in facilities provided by the school district.⁷⁴

What are community partnership charter schools?

School boards and businesses, municipalities, or community colleges may collaborate in the operation of community partnership charter schools. Community partnership charter schools target specific student populations or neighborhoods or focus on specific areas of interest.⁷⁵ Community partnership charter schools include:

- Charter schools-in-the-workplace;⁷⁶
- Charter schools-in-a-municipality;⁷⁷ and
- Florida College System institution charter schools.⁷⁸

⁶⁷ Section 1002.33(18)(a) and (b), F.S.

⁶⁸ Section 1002.33(18)(c), F.S.

⁶⁹ Section 1002.33(18)(d), F.S. Impact fees and exactions are used by local governments to control development and offset the impact of growth on local infrastructure and services. Florida courts have held that local governments have broad authority to impose impact fees or exactions on development, unless such authority conflicts with constitutional or statutory provisions. Art. VIII, s. 1(f)-(g) and 2(b), Fla. Const.; s. 125.01(1) and (3), F.S.; s. 166.021(1)-(4), F.S.; *Hollywood, Inc. v. Broward County, Florida*, 431 So. 2d 606, 609-610 (4th DCA 1983)(Holding that Florida counties have implicit authority to impose impact fees or exactions on development so long as such fee or exaction is: (1) not inconsistent with general law; and (2) rationally related to the need for additional infrastructure or services caused by the development).

⁷⁰ Section 1002.33(3)(b), F.S.

⁷¹ Email, Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 17, 2014).

⁷² Section 1002.33(7)(a)17., F.S.

⁷³ Section 1002.33(10)(c), F.S.

⁷⁴ Section 1013.62(1)(d), F.S.

⁷⁵ Section 1002.33(15), F.S.

⁷⁶ Section 1002.33(15)(b), F.S.; *see infra text accompanying notes 75-76.*

⁷⁷ Section 1002.33(15)(c), F.S.; *see infra text accompanying notes 77-79.*

⁷⁸ Section 1002.33(5)(b)4., F.S. *see infra text accompanying notes 80-87.*

What are charter schools-in-the workplace?

Charter schools-in-the-workplace are sponsored by district school boards in partnership with a company or business. Such charter schools usually target the children of the employees of a company or business. The business partner provides the school facility to be used; enrolls students based upon a random lottery that involves all of the children of the employees of the business; and enrolls students according to the racial/ethnic balance reflective of the community or other public schools in the same school district.⁷⁹

Two charter schools-in-the-workplace operated in Florida during the 2013-14 academic year. These schools are the Villages Charter Schools in Sumter County and JFK Medical Center Charter School in Palm Beach County.⁸⁰

What are charter schools-in-a-municipality?

Charter schools-in-a-municipality are sponsored by district school boards in partnership with a municipality. Such schools enroll students based upon a random lottery that involves all of the children of the residents of the municipality who are seeking enrollment and according to the racial/ethnic balance reflective of the community or other public schools in the same school district.⁸¹ Charter schools-in-a-municipality may limit enrollment or give an enrollment preference to students who are residents of the municipality that operates the school.⁸² If a municipality applies to establish a charter school feeder pattern and the district school board has approved each individual charter for each elementary, middle, and high school in the feeder pattern, the schools are designated as one charter school.⁸³

May Florida College System institutions operate charter schools?

Yes. Florida College System (FCS) institutions are statutorily authorized to operate charter schools that offer secondary education⁸⁴ and allow students to obtain an associate degree⁸⁵ upon graduation from high school. Students have full access to all college facilities, activities, and services. Such a charter school must be sponsored by the school board or boards within the FCS institution's service area.⁸⁶ There are 10 FCS institution charter schools operating in Florida:

- Florida State College at Jacksonville (FSCJ): FSCJ Pathways Academy;
- Northwest Florida State College (NFSC): NFSC Collegiate High School in Okaloosa County;
- St. Petersburg College: St. Petersburg Collegiate High School in Pinellas County;
- Polk State College (PSC): PSC Lakeland Collegiate High School and PSC Chain of Lakes Collegiate High School in Polk County;
- Indian River State College: Clark Advanced Learning Center in Martin County;
- State College of Florida Sarasota-Manatee: State College of Florida Collegiate School;

⁷⁹ Section 1002.33(15)(b), F.S.

⁸⁰ Email, Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 17, 2014).

⁸¹ Section 1002.33(15)(c), F.S.

⁸² Section 1002.33(10)(e)3., F.S.

⁸³ Section 1002.33(15)(c), F.S. Fifteen charter schools-in-a-municipality operated in Florida during the 2013-14 academic year. These schools are the City of Pembroke Pines Charter Elementary School, City of Pembroke Pines Charter Middle School, City of Pembroke Pines Charter High School, and City of Coral Springs Charter School in Broward County; Christa McAuliffe Charter School, Oasis Charter Elementary School, Oasis Charter Middle School, and Oasis Charter High School in Lee County; The City of Kissimmee Charter Academy in Osceola County; Aventura City of Excellence Charter School, Doctors Charter School of Miami Shores, and City of Hialeah Education Academy in Miami-Dade County; and Oakland Avenue Charter School, Cornerstone Academy Charter School, and Cornerstone Academy Charter High School in Orange County. Email, Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 17, 2014).

⁸⁴ In this context, the term "secondary education" is synonymous with "middle or high school" (grades 6 through 12).. Generally speaking, elementary schools serve students in kindergarten through grade 5, middle schools serve students in grades 6 through 8, and high schools serve students in grades 9 through 12. *See* s. 1003.01(2), F.S. (definition of "school").

⁸⁵ Associate degrees include the associate in arts, associate in science, and associate in applied science degrees. *See* rule 6A-14.030(2)-(4), F.A.C.

⁸⁶ Section 1002.33(5)(b)4., F.S.

- Edison State College: Edison Collegiate High School in Charlotte County and Edison Collegiate High School in Lee County; and
- Florida Keys Community College: Key West Collegiate School.⁸⁷

The secondary grade levels served by FCS institution charter schools vary. For example, St. Petersburg Collegiate High School serves students in grades 10 through 12.⁸⁸ Edison State College's two collegiate high schools serve students in grades 9 through 12.⁸⁹ In contrast, State College of Florida Collegiate School serves students in grades 6 through 12.⁹⁰

If a FCS institution operates an approved teacher preparation program, the institution may operate no more than one charter school serving students in kindergarten through grade 12. In kindergarten through grade 8, the charter school must implement innovative blended learning instructional models.⁹¹

What are lab schools?

Florida law authorizes state universities to establish developmental research schools (lab schools). Lab schools may not serve students beyond grade 12 and must be affiliated with the college of education within the state university of nearest geographic proximity to the school.⁹² Lab schools feature curricula emphasizing mathematics, science, computer science, and foreign languages. Lab schools conduct research regarding teaching, learning, and school management.⁹³ The admission process at a lab school must comprise a representative sample of public school enrollment based on gender, race, socioeconomic status, and academic ability.⁹⁴

Lab schools are funded through the Florida Education Finance Program (FEFP).⁹⁵ The FEFP consists of each school district's share of gross federal funds, state funds, discretionary lottery funds, and locally generated required local effort funds and nonvoted ad valorem millage.⁹⁶ The calculation of a lab school's proportionate share of FEFP funding differs from that of district public schools. Federal, state, and discretionary lottery funds are calculated based upon the school district in which the lab school operates; however, required local effort funds and nonvoted ad valorem millage for a lab school is allocated from state funds because state universities lack the power to levy taxes.⁹⁷ Excluding categorical funds for student transportation, each lab school may also receive its proportionate share of categorical funds included in the FEFP for students who qualify for the categorical.⁹⁸

Operating funds are deposited in a Lab School Trust Fund and the state university operating a lab school is the fiscal agent for these funds. All rules of the state university governing the budgeting and expenditure of state funds apply to these funds unless otherwise provided by law or state board rule.⁹⁹

⁸⁷ Email, Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 17, 2014).

⁸⁸ See, e.g., St. Petersburg Collegiate High School, *Admissions*, <http://www.spcollege.edu/spchs/Admission.html> (last visited June 18, 2014).

⁸⁹ See, e.g., Edison Collegiate High School, *Admissions*, <http://echs.edison.edu/about/admission-process/> (last visited May 3, 2012).

⁹⁰ See, e.g., State College of Florida Collegiate School, *Prospective Students and Parents*, <http://scfcs.scf.edu/prospective-parents/> (last visited June 18, 2014).

⁹¹ Section 1002.33(5)(b)4., F.S.

⁹² Section 1002.32(2) and (3), F.S.

⁹³ Section 1002.32(3), F.S.

⁹⁴ Section 1002.32(4), F.S.

⁹⁵ Sections 1002.32(9)(a), F.S.

⁹⁶ Section 1011.62, F.S.

⁹⁷ Section 1002.32(9)(a), F.S.; see Art. VII, s. 9, Fla. Const.

⁹⁸ Section 1002.32(9)(a), F.S. Categorical funds include student transportation, safe schools, supplemental academic instruction, digital classrooms, instructional materials, class-size reduction operating funds, and Florida Teachers Classroom Supply Assistance Program and must be spent for these specific purposes. See, e.g., s. 1011.62(1)(f), F.S. (supplemental academic instruction); s. 1011.62(6), F.S. (general categoricals); s. 1011.62(12), F.S. (digital classrooms); s. 1011.67, F.S. (instructional materials), s. 1011.68, F.S. (student transportation), s. 1011.685, F.S. (class size reduction), and s. 1012.71, F.S. (Florida Teachers Classroom Supply Assistance Program).

⁹⁹ Section 1002.32(9)(c), F.S.

Lab schools receive funding for facility construction, repair, renovation, remodeling, site improvement, or maintenance through the Lab School Educational Facility Trust Fund. This trust fund is administered by the Commissioner of Education.¹⁰⁰ Charter lab schools that meet the statutory qualifications may receive charter school capital outlay funding. In such cases, the charter lab school receives funding through the Lab School Facilities Trust Fund only to the extent that charter school capital outlay funds are insufficient to provide capital outlay funds at one-fifteenth of the cost per student station.¹⁰¹

State universities are also authorized to establish “charter lab schools.”¹⁰² Unlike lab schools, charter lab schools operate under a charter and are not required to be established by the nearest state university.¹⁰³ In considering an application to establish a charter lab school, a state university must consult with the district school board of the county in which the school is located. If a state university does not act on or denies the application, the applicant may appeal such decision to the state board.¹⁰⁴

Florida had three charter lab schools operating during the 2013-14 academic year. These charter lab schools are Florida State University School, FAU-SLCSB Tradition University Charter School, and Pembroke Pines/FSUS Charter Elementary School.¹⁰⁵

What are charter technical career centers?

Charter technical career centers (centers) are publicly-funded schools or technical centers operated under a charter granted by a district school board, community college board of trustees, or a consortium comprised of one or more of each. A sponsoring consortium must include the school district in which the facility is located.¹⁰⁶

Three centers currently operate in Florida:

- Advanced Technology College in Volusia County sponsored by Daytona State College, the School Board of Flagler County, and the School Board of Volusia County;
- First Coast Technical College in St. Johns County sponsored by the St. Johns County School Board; and
- Lake Technical Center in Lake County sponsored by the Lake County School Board.¹⁰⁷

Like charter schools, a center must be nonsectarian in its programs, admission policies, employment practices, and operations. Centers are managed by a board of directors.¹⁰⁸ Centers are exempt from a number of K-20 education statutes except provisions pertaining to civil rights; student health, safety, and welfare; the provision of services to students with disabilities; and student antidiscrimination.¹⁰⁹

Centers may offer secondary or postsecondary career and technical education, apprenticeships, adult general education, and continuing workforce education programs. Depending on program type, students attending centers may earn a high school diploma, career certificate, or postsecondary or dual enrollment credit.

¹⁰⁰ Section 1002.32(9)(b), F.S.

¹⁰¹ Section 1002.32(9)(h), F.S.

¹⁰² Section 1002.33(5)(a)2., F.S.

¹⁰³ Section 1002.32(2), F.S.

¹⁰⁴ Section 1002.33(6)(g), F.S.

¹⁰⁵ Email, Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 17, 2014).

¹⁰⁶ Section 1002.34(3) and (11), F.S.

¹⁰⁷ Florida Department of Education, *A Comparison of State of Florida Charter Technical Career Centers to District Non-Charter Technical Career Centers, 2012-2013*, available at www.fldoe.org/workforce/pdf/CharterReview13.pdf [hereinafter *Charter Technical Career Centers*].

¹⁰⁸ Section 1002.34(3)(a), F.S.

¹⁰⁹ Section 1002.34(10), F.S.

Students attending the Advanced Technology College in Volusia County may also earn an associate degree that is awarded by the center's sponsor, Daytona State College.¹¹⁰

What are virtual charter schools?

Virtual charter schools provide full-time online instruction to eligible students in kindergarten through grade 12.¹¹¹ A virtual charter school may contract with a DOE-approved provider or the Florida Virtual School to provide online instruction.¹¹² A virtual charter school may serve students who reside in the school district in which the school is chartered.¹¹³ A student may enroll in a virtual charter school if he or she:

- Spent the prior school year in attendance at a public school in the state and was enrolled and reported by the school district for funding during October and February for purposes of the FEFP surveys;
- Is a dependent child of a member of the armed forces whose parent was transferred to this state in the last 12 months;
- Was enrolled in a school district operated virtual instruction program in the prior school year;
- Is a sibling of a student currently enrolled a virtual instruction program;
- Is eligible to enter kindergarten or first grade; or
- Is eligible to enter grades 2 through 5 and is enrolled full-time in a school district virtual instruction program, virtual charter school, or the Florida Virtual School.¹¹⁴

A total of seven virtual charter schools operated during the 2013-14 academic year. In August 2013, Florida school districts received five applications to establish virtual charter schools to be opened in the 2014-15 academic year.¹¹⁵

In addition to virtual charter schools, Florida law authorizes brick-and-mortar charter schools to offer blended learning courses. Blended learning courses are provided at the charter school's physical location and consist of both traditional classroom and online instruction. Blended learning courses may be provided by part-time or full-time employees of the charter school or by contracted instructional providers. Instructors must be certified in the subject area of the course. The online portion of a blended learning course may be provided from a remote location. Blended learning courses are considered in the same manner as traditional courses for funding and accountability purposes.¹¹⁶

Where can I get additional information?

Florida Department of Education

Office of Independent Education and Parental Choice

(850) 245-0502

http://www.floridaschoolchoice.org/Information/Charter_Schools/

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

¹¹⁰ *Charter Technical Career Centers*, *supra* note 103, at 2-5. Advanced Technology College also offers three baccalaureate degree programs with concentrations in engineering technology, electrical engineering technology, and information systems technology respectively. *Id.* at 3.

¹¹¹ Section 1002.33(1), F.S.

¹¹² Section 1002.45(1)(d), F.S. Virtual instruction providers that meet specified statutory criteria may earn DOE-approval to offer virtual instruction services. *See s.* 1002.45(2), F.S.

¹¹³ Section 1002.455(1), F.S.

¹¹⁴ Section 1002.455(2), F.S. These student eligibility requirements also apply to school district virtual instruction programs, virtual courses delivered in a physical school setting through a virtual learning environment or blended virtual and physical learning environment, and virtual courses identified in the course code directory provided to a student by his or her home school district or another school district. Section 1002.455(3), F.S.

¹¹⁵ Email, Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 17, 2014).

¹¹⁶ Section 1002.33(7)(a)2.b., F.S.



How are charter schools held accountable?

Parental choice holds charter schools accountable through the parent's ability to choose whether to enroll their children in a charter or traditional public school. Parents can base their decisions on specific and pertinent information that each charter school must provide on its website, including: its academic performance; names of governing board members; programs; any management company, service provider or education management corporation associated with the school; its annual budget and fiscal audit; its school grade; and minutes of the governing board meetings.¹

If parents are dissatisfied with their original choice of school, they may withdraw their students from that charter school and seek another charter school or return their students to a traditional public school. This creates an incentive for the charter school to provide quality educational programs for its students and can foster healthy competition between charter schools and traditional public schools.

Florida law also establishes several requirements designed to hold charter schools² accountable both financially and academically, including:

- A detailed application and rigorous review and approval process.³
- The execution and maintenance of charter agreements between the charter school and its sponsor.⁴
- Annual reporting,⁵ annual financial audits,⁶ and sponsor monitoring of monthly financial statements.⁷
- Participation in statewide assessments and Florida's school grading system.⁸
- Interventions for unsatisfactory academic performance and financial instability.⁹
- Reporting of student performance information to parents and the public.¹⁰
- Compliance with ethical standards for employees and governing board members.¹¹

How does the application process enable sponsors to evaluate the potential for long term academic and financial success of charter schools?

An application for a new charter school must be submitted to, and approved by, the sponsor before the school may begin operations.¹² Each application must include information that allows the sponsor to evaluate the

¹ Section 1002.33(9)(p), F.S.

² Sections 218.39, 218.503, 1002.33, and 1002.345, F.S. Charter technical career centers are subject to many of the same accountability requirements as charter schools. There are two charter technical career centers operating in Florida – the First Coast Technical College in St. Johns County, and the Lake Technical Center in Lake County. See 218.39, 218.503, 1002.34, and 1002.345, F.S.; Florida Department of Education, *List of Charter Technical Career Centers* (2012), available at <http://www.fldoe.org/workforce/pdf/chartertechnicalcenterlist.pdf>.

³ Section 1002.33(6), F.S.

⁴ Section 1002.33(6)(h) and (7), F.S.

⁵ Section 1002.33(9)(g), F.S.

⁶ Sections 218.39(1)(e) and (f), 1002.33(9)(j)1. and 2., F.S.

⁷ Section 1002.33(9)(g), F.S.

⁸ Section 1002.33(7)(a)4. and (16)(a)2., F.S.

⁹ Section 1002.345, F.S.

¹⁰ Section 1002.33(21)(b) and (23), F.S.

¹¹ Section 1002.33(24) and (26), F.S.

charter school's potential for long term academic and financial success.¹³ A charter school application must include:

- A detailed curriculum plan aligned with state academic standards.
- Goals and objectives for improving student learning and measuring improvement. The goals and objectives must indicate how much academic improvement students are expected to show each year, how success will be evaluated, and the specific results to be obtained through instruction.
- The reading curriculum and differentiated strategies that will be used for students who read at grade level or higher and a separate curriculum and strategies for students who read below grade level.
- An annual financial plan for each year of operation requested (up to five years) which sets forth the school's anticipated funds and assets, a spending plan, and sound fiscal policies for managing the school.
- Additional information the sponsor may require, attached as an addendum to the application.
- Documents verifying the applicant has contracted with a virtual instruction services provider, if applying to establish a virtual charter school.¹⁴

Charter school sponsors must use a model application and standard application evaluation instrument developed by the Department of Education (DOE).¹⁵ DOE has adopted model applications and application evaluation instruments for start-up charter schools, replicating high-performing charter schools, and virtual charter schools, and a standard charter school contract.¹⁶ These tools provide applicants and sponsors with uniform standards for review and approval of charter school applications. The model application for start-up charter schools is comprised of 19 total components divided among three main topic headings -- educational plan, organizational plan, and business plan. The model application specifies the types of information that the applicant must include in its application to complete each component.¹⁷

Model Charter School Application Components¹⁸

Educational Plan	Organizational Plan	Business Plan
Mission, Guiding Principles, & Purpose	Governance	Facilities
Target Population & Student Body	Management	Transportation
Educational Program Design	Education Service Providers	Food Service
Curriculum Plan	Human Resources	Budget
Evaluation of Student Performance	Student Recruitment & Enrollment	Financial Management
Exceptional Students		Action Plan
English Language Learners		
Student Climate and Discipline		

¹² Section 1002.33(6)(b), F.S. An application for a new charter school may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under the laws of Florida. Section 1002.33(3)(a), F.S. Charter schools may be sponsored by district school boards, and in the case of charter lab schools, state universities. Section 1002.33(5)(a), F.S.

¹³ Section 1002.33(6)(b), F.S.

¹⁴ Section 1002.33(6)(a), F.S.

¹⁵ Section 1002.33(6)(a) and (b), (21), and (28), F.S.

¹⁶ Rule 6A-6.0786, F.A.C.; see Florida Department of Education, *Charter School Forms Referenced in Rule*, https://www.floridaschoolchoice.org/Information/Charter_Schools/Forms_Charter.asp (last visited July 21, 2014). The 2013 Legislature required DOE to develop a statewide standard charter contract through state board rule which will be considered for adoption in November 2014. See State Board Rules Under Review at <https://app1.fldoe.org/rules/default.aspx>.

¹⁷ Florida Department of Education, *Standard Model Florida Charter School Application* (May 2012), available at https://www.floridaschoolchoice.org/Information/Charter_Schools/Forms_Charter.asp [hereinafter *Model Application for Start-Up Charter Schools*]; Florida Department of Education, *Standard Model Charter School Application Evaluation Instrument*, at 1 (May 2012), available at https://www.floridaschoolchoice.org/Information/Charter_Schools/Forms_Charter.asp [hereinafter *Application Evaluation Instrument for Start-Up Charter Schools*].

¹⁸ See *Standard Model Florida Charter School Application*, *supra* note 17.

The model application evaluation instrument specifies three categories for rating application responses under each component – “Meets the Standard,” “Partially Meets the Standard,” and “Does Not Meet the Standard.” The evaluation instrument describes the quality of response required to receive each rating from the sponsor.¹⁹

The application deadline for charter schools to be opened in the following school year is August 1. Applicants may submit a draft application on or before May 1, with an application fee of \$500. For timely submissions, the sponsor shall review and provide feedback as to material deficiencies in the application by July 1. The applicant then has until August 1 to resubmit a revised and final application. Sponsors may approve a draft application.²⁰

Overall Charter School Application Approval Rate²¹

Date Submitted	Submitted	Approved	%	Denied	%	Withdrawn	%
2013	236	95	40.25%	44	18.64%	97	41.10%
2012	286	79	27.62%	67	23.43%	140	48.95%
2011	358	124	34.64%	93	25.98%	141	39.39%
2010	251	84	33.47%	52	20.72%	115	45.82%
2009	131	61	46.56%	23	17.56%	47	35.88%
2008	145	66	45.52%	31	21.38%	48	33.10%
2007	94	51	54.26%	19	20.21%	24	25.53%
2006	83	45	54.22%	22	26.51%	16	19.28%
2005	123	68	55.28%	35	28.46%	20	16.26%
2004	126	86	68.25%	27	21.43%	13	10.32%

Applications to Replicate a High-Performing Charter School²²

Date Submitted	Submitted	Approved	%	Denied	%	Withdrawn	%
2013	9	6	66.67%	0	0.00%	3	33.33%
2012	7	5	71.43%	0	0.00%	2	28.57%
2011 ²³	46	33	71.74%	6	13.04%	7	15.22%

Virtual Charter School Applications²⁴

Date Submitted	Submitted	Approved	%	Denied	%	Withdrawn	%
2013	12	7	58.33%	2	16.67%	3	25.00%
2012	21	7	33.33%	10	47.62%	4	19.05%
2011 ²⁵	55	3	5.45%	26	47.27%	26	47.27%

How does the charter hold charter schools accountable?

Each charter school must enter into a performance contract with its sponsor, known as a charter. The charter lists specific objectives that the charter school must meet to remain in operation. A sponsor must make student academic achievement for all students the most important factor when determining whether to renew or terminate a contract. The sponsor may also terminate or not renew a charter for any of the following reasons:

¹⁹ See *Application Evaluation Instrument for Start-Up Charter Schools*, *supra* note 17.

²⁰ Section 1002.33(6)(b), F.S.

²¹ Florida Department of Education, Office of Independent Education and Parental Choice (Oct. 13, 2014).

²² Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 29, 2014).

²³ The State Board of Education overturned 3 school district decisions to deny applications replicating high-performing charter schools in 2011. Email, Florida Department of Education, Charter Schools Director (Nov. 26, 2012).

²⁴ Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 29, 2014).

²⁵ The State Board of Education overturned 6 school district decisions to deny virtual charter school in 2011. Email, Florida Department of Education, Charter Schools Director (Nov. 26, 2012).

- Failure to participate in the state’s education accountability system or meet the requirements for student performance stated in the charter;
- Failure to meet generally accepted standards of financial management;
- A violation of law; or
- Other good cause shown.²⁶

The sponsor may immediately terminate a charter school’s charter if conditions at the school threaten the health, safety, or welfare of students.²⁷

Charter School Closures: 1996-Present²⁸

Total Closures	276
Sponsor Closure	106 (8 nonrenewals and 98 terminations)
Voluntary Closure	170

Is the financial standing of a charter school monitored by the sponsor?

Yes. Each charter school must submit a monthly financial statement summary sheet.²⁹ A monthly summary sheet must include a balance sheet and a statement of revenue, expenditures, and changes in fund balance in a governmental funds format prescribed by the Governmental Accounting Standards Board.³⁰

Additionally, each charter school must provide for an annual audit.³¹ The Auditor General may choose to conduct the audit. If not, the charter school must arrange for an audit by an independent certified public accountant.³² The audit must:

- Examine the school’s financial statements to determine if its financial position and any changes in financial position comply with generally accepted accounting principles;
- Examine the school’s operations to determine compliance with legal and regulatory requirements; and
- Examine any additional financial information necessary to comply with generally accepted accounting principles.³³

Each charter school must file a copy of its audit report with the sponsor; the district school board, if not the sponsor; the Auditor General; and DOE.³⁴

²⁶ Section 1002.33(8)(a), F.S.

²⁷ Section 1002.33(8)(d), F.S. Due process in the form of notice and, if requested, formal hearings and appeals must be provided to the charter school prior to a charter termination or nonrenewal. For immediate termination of a charter school, the hearing, if requested, may occur after termination. Sections 1002.33(6)(c) and (8)(b)-(d), F.S.

²⁸ Florida Department of Education, Office of K-12 School Choice (Sept. 29, 2014).

²⁹ Section 1002.33(9)(g)3., F.S. A high-performing charter school may submit quarterly rather than monthly financial statements. 1002.331(2)(c), F.S. Pursuant to Rule 6A-1.0081, F.A.C., DOE adopted two monthly financial statement forms for use by charter schools: *Government Accountability and Standards Board (GASB) Monthly Financial Form*, available at https://www.floridaschoolchoice.org/Information/Charter_Schools/files/GASB_Form.xls, and the *Non-Profit Monthly Financial Form*, available at https://www.floridaschoolchoice.org/Information/Charter_Schools/files/Not_for_Profit_Form.xls.

³⁰ Section 1002.33(9)(g)3., F.S.

³¹ Sections 218.39(1)(e) and (f) and 1002.33(9)(j)1. and 2., F.S.

³² Sections 11.45(3)(c) and 218.39(1)(e) and (f), F.S.

³³ Rule 10.855(2), (11) and (12) Rules of the Auditor General; *see footnote text infra* note 39 (deteriorating financial conditions).

³⁴ Section 218.39(10), F.S.

Is intervention required when financial monitoring detects financial instability?

Yes. Each charter school is subject to an expedited review of its financial condition if one of the following conditions occurs:

- Failure to provide for an annual audit;
- Failure to comply with requirements for annual financial reporting, monthly financial statements, program cost reporting, and annual school accountability reporting;
- A monthly financial statement, annual audit, or quarterly financial statement reveals a deteriorating financial condition;³⁵ or
- Notification that a financial emergency condition has occurred or will occur if action is not taken.³⁶

The sponsor must notify the charter school's governing board and the Commissioner of Education within seven business days of finding that one of these four conditions has occurred. The sponsor and governing board must develop, and file with the Commissioner of Education, a corrective action plan.³⁷ If the sponsor and governing board are unable to agree on the components or necessity of the plan, the commissioner determines the plan. The governing board shall include the corrective action plan and the status of its implementation in the annual progress report to the sponsor. If a governing board fails to implement the plan within one year, the State Board of Education must prescribe steps for compliance. In such cases, the chair of the governing board must annually appear before the state board to report on the implementation of the state board's compliance steps.³⁸ The sponsor may choose to terminate or not renew the charter school's charter if financial deficiencies noted in the corrective action plan are not corrected within one year or if the school exhibits one or more financial emergency conditions for two consecutive years.³⁹

During an annual financial audit a financial emergency is determined to exist when any one of the following conditions occurs due to lack of funds:

- Failure to pay short-term loans or make bond debt service or other long-term debt payments when due;
- Failure to pay uncontested claims from creditors within 90 days after the claim is presented;
- Failure to timely transfer taxes withheld from employees or employer or employee contributions for federal social security, pension, or retirement plans; and
- Failure for one pay period to pay wages, salaries, or retirement benefits.⁴⁰

The commissioner must determine whether the charter school is in need of a financial recovery plan and, if so, the school is considered to be in a state of financial emergency.⁴¹ The plan must be filed with the sponsor

³⁵ A deteriorating financial condition is a circumstance that significantly impairs the ability of a charter school to generate enough revenue to meet its expenditures without causing the occurrence of a financial emergency condition. Deteriorating financial conditions include, without limitation, circumstances in which actual enrollment is 70 percent less than the enrollment projection for which its annual budget is based, enrollment is insufficient to generate enough revenue to meet expenditures, actual expenses exceed budgeted expenses for a period of three months or more and there are insufficient reserves to compensate, or an unbudgeted financial event occurs and there are insufficient reserves to compensate. Section 1002.345(1)(a)3., F.S.; rule 6A-1.0081(2)(a), F.A.C.

³⁶ Section 1002.345(1)(a)1.-4., F.S.; rule 6A-1.0081(2)(a)1. and 2., F.A.C. If an annual audit by a certified public accountant (CPA) reveals that a financial emergency condition has occurred or will occur if action is not taken, the CPA must notify the charter school's governing board, the sponsor, and the Commissioner of Education within seven days of such finding. Section 1002.345(2)(a)1., F.S.

³⁷ The corrective action plan must state the financial conditions which must be corrected, the actions the board will take to correct the conditions, the board's procedures for monitoring plan implementation and providing progress reports, and any other components deemed necessary by the board and sponsor. Rule 6A.1.0081(3)(c), F.A.C.

³⁸ Section 1002.345(1)(b)-(f), F.S.

³⁹ Section 1002.345(5), F.S.

⁴⁰ Section 218.503(1)(a)-(d), F.S.

⁴¹ Sections 218.503(4) and 1002.345(2)(a)2., F.S. The financial recovery plan must state the financial conditions which must be corrected, the actions the board will take to correct the conditions, the board's procedures for monitoring plan implementation and providing progress reports, and any other components deemed necessary by the board and sponsor. Rule 6A.1.0081(5)(b), F.A.C.

and the commissioner within 30 days after being notified by the commissioner that a financial recovery plan is needed. The governing board must annually report on the status of plan implementation to its sponsor.⁴²

DOE must provide technical assistance to governing boards and sponsors in developing financial recovery and corrective action plans.⁴³

Charter Schools Placed on Financial Interventions⁴⁴

School Year	Corrective Action Plan	Financial Recovery Plan
2012-13	9	0
2011-12	1	0
2010-11	27	0
2009-10	9	0

Is the performance of charter school students on statewide assessments compared to that of students enrolled in traditional public schools?

Yes. DOE must annually provide a statewide analysis and comparison of charter school students and traditional public school students, as measured by the statewide assessment program and information reported in each school’s annual progress report.⁴⁵ DOE’s analysis compares the overall performance of charter school and traditional public school students and that of student subgroups, e.g, minority and low-income and students with disabilities. Comparison data must also be broken down by the following grade groupings:

- Grades 3 through 5;
- Grades 6 through 8; and
- Grades 9 through 11.⁴⁶

The report compares charter and traditional public schools in 177 different comparisons in terms of proficiency, learning gains and achievement gap.⁴⁷

Are charter schools graded annually?

Yes. All eligible charter schools receive a school grade annually. Charter schools that meet the definition of an alternative school may choose to receive a school grade or a school improvement rating.⁴⁸ Like traditional public schools, each charter school must assess at least 95 percent of its eligible students and have at least 10 students with complete data for each grading component to be incorporated into the overall grade. If the school does not have 10 or more students for a particular grading component, that component may not be used in calculating the school’s grade.⁴⁹

The school grade is based on the percentage of points earned from specific components outlined in law.⁵⁰ Eight components are based on calculating the percentage of eligible students, who pass required statewide, standardized assessments, and these apply to all eligible schools. School grades for schools comprised of grades 6-8 or grades 7 and 8 also include the percentage of students passing high school level statewide, standardized end-of-course assessments or attaining national industry certifications.⁵¹ School grades for

⁴² Section 1002.345(2)(b), F.S.

⁴³ Section 1002.345(4), F.S.

⁴⁴ Florida Department of Education, Office of K-12 School Choice (Oct. 14, 2014).

⁴⁵ Section 1002.33(23), F.S.

⁴⁶ Section 1002.33(21)(b)3.a., F.S.

⁴⁷ Florida Department of Education, *Student Achievement in Florida’s Charter Schools: A Comparison with Achievement in Traditional Public Schools*, at iii-iv (April 2014), available at

http://www.floridaschoolchoice.org/Information/Charter_Schools/report_links.asp.

⁴⁸ Section 1008.34(3)(a)1., F.S.

⁴⁹ Section 3, ch. 2014-23, L.O.F.,

⁵⁰ Section 1008.34(3)(c)1., F.S.

⁵¹ Section 1008.34(b)1.i., F.S.

schools serving grades 9-12 or schools serving 10-12, also include graduation rate, students eligible to earn college and career credit through acceleration programs, and students who earned national industry certifications.⁵²

Comparison of School Grade Data 2011-12 to 2012-13 School Years⁵³

2011-12 School Year					
School Grade	Total Traditional Public Schools: 3,129			Total Charter Schools: 494	
	Total Graded Schools: 2,741			Total Graded Schools: 359	
	Percent Graded A-F: 87.6%			Percent Graded A-F: 72.7%	
A	1280	46.7%	193	53.8%	
B	692	25.2%	72	20.1%	
C	53	19.3%	53	14.8%	
D	204	7.4%	23	6.4%	
F	35	1.3%	18	5.0%	

2012-13 School Year					
School Grade	Total Traditional Public Schools: 3,136			Total Charter Schools: 538	
	Total Graded Schools: 2,865			Total Graded Schools: 425	
	Percent Graded A-F: 91%			Percent Graded A-F: 79%	
A	847	31%	167	42%	
B	747	27%	78	20%	
C	728	27%	84	21%	
D	331	12%	40	10%	
F	90	3%	26	7%	

How are charter alternative schools held accountable for student academic performance?

A charter alternative school may choose to receive a school grade or a school improvement rating.⁵⁴ Schools that choose a school improvement rating are designated as “commendable,”⁵⁵ “maintaining,”⁵⁶ or “unsatisfactory.”⁵⁷ In order to receive a school improvement rating, a charter alternative school must have a minimum of 10 students with valid statewide assessment reading and mathematics scores in the current and previous year.⁵⁸ If an alternative school does not have at least 10 students with complete data for a component used in calculating the school improvement rating, that component will be omitted from the grading scale. Beginning with the 2016-17 school year, if an alternative school does not meet the requirements for the issuance of a school improvement rating in the current year, and has not received a rating for the prior 2 consecutive years, the school shall receive a rating for the current year based upon a compilation of all student learning gains, for all grade levels, for those 3 years.⁵⁹ In the 2013-14 school year, all 61 charter alternative schools operating in Florida chose to receive a school improvement rating, and of those, 42 had the required number of students with valid FCAT scores to receive a rating.⁶⁰

⁵² Section 1008.34(b)2., F.S.

⁵³ Florida Department of Education, Office of K-12 School Choice (Oct. 20, 2014). The total number of traditional public and charter schools listed on this chart only includes schools with membership in grades tested on state assessments, i.e., students in grades 3 through 10 with at least two years of valid assessment data. The total count of graded schools does not include schools that elected to receive a school improvement rating instead of a school grade, schools with an “I” school grade for incomplete data (less than 90% tested or results withheld during investigation), and schools with less than 30 students tested on statewide assessments in reading and mathematics for full-year students. Section 1008.34(3)(a), F.S.

⁵⁴ Sections 1008.34(3)(a)1. and 1008.341, F.S. Charter schools can be designated as alternative schools for the purposes of school accountability improvement ratings if the school’s charter explicitly states that the mission of the charter school is to provide dropout prevention and academic intervention services through alternative education. Rule 6A-1.099822(2)(a), F.A.C.

⁵⁵ “Commendable” means a significant percentage of the students attending the school are making Learning Gains. Section 1008.341(2)(a), F.S..

⁵⁶ “Maintaining” means a sufficient percentage of the students attending the school are making Learning Gains. Section 1008.341(2)(b), F.S.

⁵⁷ “Unsatisfactory” means an insufficient percentage of the students attending the school are making Learning Gains. Section 1008.341(2)(c), F.S.

⁵⁸ Section 1008.341(2), F.S. and Rule 6A-1.099822(5)(a), F.A.C.

⁵⁹ Section 1008.341(2), F.S.

⁶⁰ Florida Department of Education, Bureau of Accountability Reporting (Oct. 20, 2014).

**School Improvement Rating of Charter Alternative Schools⁶¹
2013-14 School Year**

Improving	5
Maintaining	15
Declining	22
Incomplete	19

Are charter schools required to report academic and financial data to parents and the public?

Yes, each charter school is required to submit an annual report to its sponsor. At a minimum, each charter school's annual report must include student achievement and financial data, the facilities currently used or planned for use by the school, and descriptive information about the charter school's personnel.⁶²

DOE must report statewide assessment data to charter schools that receive a grade or school improvement rating, which, in turn, must report the data to parents of students attending the charter school, parents of children on the charter school's waiting list, the district in which the charter school is located, and the governing board of the charter school.⁶³

The charter school must post the statewide assessment data of its students and comparison data on its internet website and also provide notice to the public at large.⁶⁴ Charter schools are accountable to the sponsor for meeting the student performance goals stated in the charter and may have their charters terminated or not renewed for failure to meet such goals.⁶⁵

What intervention and support strategies are charter schools that struggle academically required to implement?

Charter schools that earn a grade of "D" or "F" must develop a school improvement plan, which must be approved by the sponsor.⁶⁶ Corrective actions are required for charter schools earning three consecutive grades of "D," two consecutive grades of "D" followed by a grade of "F," or two nonconsecutive grades of "F" within a three-year period. Such a charter school may choose to:

- Contract for educational services to be provided directly to students, instructional personnel, and school administrators;
- Contract with an outside entity with a track record of effectiveness to operate the school;
- Hire a new director or principal who has authority to hire new staff; or
- Voluntarily close the school.⁶⁷

The charter school must implement the corrective action in the school year following receipt of a third consecutive grade of "D," a grade of "F" following two consecutive grades of "D," or a second nonconsecutive grade of "F" within a 3-year period.⁶⁸ Corrective actions are no longer required if the charter school improves by at least one letter grade; however, the school must continue to implement its school improvement plan.⁶⁹ If

⁶¹ *Id.*

⁶² Section 1002.33(9)(k), F.S. The sponsor must submit the report to the Commissioner of Education. *Id.*

⁶³ Section 1002.33(21)(b)1. and 2., F.S.

⁶⁴ Section 1002.33(21)(b)3.b., F.S.

⁶⁵ Section 1002.33(8)(a) and (9)(c), F.S.

⁶⁶ Section 1002.33(9)(n)1., F.S.

⁶⁷ Section 1002.33(9)(n)2.a., F.S.

⁶⁸ Section 1002.33(9)(n)2.b., F.S.

⁶⁹ Section 1002.33(9)(n)2.d., F.S.

a charter school does not improve by at least one letter grade after two full school years of implementing a corrective action, the school must choose another action.⁷⁰

The sponsor must terminate a charter school that earns two consecutive grades of “F,” unless the charter school qualifies for an exception.⁷¹ A sponsor may terminate, at any time, the charter of a charter school that is required to implement a school improvement plan or corrective actions; however, this discretionary authority does not extend to charter schools that meet an exception to mandatory termination.⁷²

The director and a representative of a charter school that is required to implement a school improvement plan or corrective action must annually appear before the sponsor to report the progress of the corrective strategies being implemented by the school.⁷³

What exceptions to mandatory termination exist for charter schools that earn two consecutive grades of “F”?

A charter school that earns two consecutive grades of “F” may qualify for one of three exceptions to mandatory termination. The first two exceptions provide charter schools that specifically target hard-to-serve students with an additional year to raise student performance. A charter school may qualify for one of these exceptions if:

- It is in its first three years of operation and serves a student population in the same school zone as a failing public school. Such a charter school must earn at least a grade of “D” by year three. In year four and thereafter, the exception no longer applies to the charter school.
- The state board grants the charter school a waiver of termination. To obtain a waiver, the charter school must demonstrate that the learning gains of its students on statewide assessments are comparable or better than the learning gains of similarly situated students enrolled in nearby district public schools. The waiver is valid for one year and may only be granted once. Charter schools that have been in operation for more than five years are not eligible for a waiver.⁷⁴

The third exception applies to traditional public schools that are reconstituted as charter schools pursuant to the differentiated accountability process. The law governing differentiated accountability controls in such cases.⁷⁵

What ethical standards apply to charter school employees and governing board members?

Florida law prohibits charter school personnel⁷⁶ from appointing, employing, promoting, or advancing, or advocating for the appointment, employment, promotion, or advancement of a relative⁷⁷ in the school in which the personnel works or exercises jurisdiction or control. Furthermore, the law prohibits an individual from being appointed, employed, promoted, or advanced in or to a position in the charter school if such action has been advocated by the individual’s relative who serves in or exercises jurisdiction or control over the charter

⁷⁰ Section 1002.33(9)(n)2.c. and e., F.S. Implementation of the new corrective action must begin in the school year following the implementation period of the existing corrective action. The sponsor may waive corrective actions if it determines that the charter school is likely to improve its grade if additional time is given to implement the school improvement plan. The sponsor may also extend the implementation period for a corrective action based upon a similar standard. The sponsor may not waive or extend corrective actions if the charter school earns a second consecutive grade of “F” while in corrective action. *Id.* Unless an exception applies, such a charter school must be terminated by the sponsor. Section 1002.33(9)(n) 4, F.S.

⁷¹ Section 1002.33(9)(n)4., F.S.

⁷² Section 1002.33(9)(n)6., F.S.

⁷³ Section 1002.33(9)(n)5., F.S.

⁷⁴ Section 1002.33(9)(n)4.b.-c., F.S.

⁷⁵ Section 1002.33(9)(n)4.a., F.S.; s. 1008.33(4)(b)3. and (e), F.S.

⁷⁶ “Charter school personnel” is defined as the charter school owner, president, governing board chairperson, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school who is empowered to make personnel related decisions at the school. Section 1002.33(24)(a)1., F.S.

⁷⁷ “Relative” is defined as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. Sections 112.3135(1)(d) and 1002.33(24)(a)2., F.S.

school, or if such appointment, employment, promotion, or advancement is made by the governing board of which a relative of the individual is a member.⁷⁸

The law also prohibits an employee of the charter school, or his or her spouse, or an employee of a charter management organization, or his or her spouse, from being a member of the governing board of a charter school.⁷⁹ Charter school governing board members, including those operated by private entities are subject to the same requirements that apply to public employees for the solicitation and acceptance of gifts, business transactions, conflicting employment or contractual relationships, and voting conflicts.⁸⁰ Board members who violate any of these provisions are subject to various penalties, including fines; impeachment, removal, or suspension from office for officers; dismissal from employment; and reduction in, or forfeiture of, salary.⁸¹

Where can I get additional information?

Florida Department of Education

Office of K-12 School Choice

(850) 245-0502

Toll-Free Information Hotline: (800) 447-1636

http://www.floridaschoolchoice.org/Information/Charter_Schools/

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

⁷⁸ Section 112.3135(1), F.S. (charter schools operated by municipalities); s. 1002.33(24), F.S. (charter schools operated by private entities). These provisions do not apply to charter lab schools and Florida College System schools because state universities and state colleges are expressly exempted from statutory prohibitions against the employment of relatives by public entities. Sections 1002.33(24)(flush-left provisions at end of subsection) and 112.3135(1)(a)1. and 3., F.S.

⁷⁹ Section 1002.33(26)(c), F.S.

⁸⁰ Sections 112.313(2), (3) and (7) and 112.3143, F.S. A board member, like public employees or officers, may seek a waiver from the governing board after providing full disclosure of a transaction or relationship, from the provisions for business transactions and conflicts of interest. Section 112.313(12), F.S.

⁸¹ Section 112.317, F.S.



How are charter school operations funded?

Charter school students are funded through the Florida Education Finance Program (FEFP) the same as students in traditional public schools. Each charter school reports student enrollment to its sponsoring school district for inclusion in the district’s report of student enrollment.¹ The following chart summarizes how a charter school’s share of FEFP funds is determined:

Calculating a Charter School’s Share of FEFP Funds²
Sum of the school district’s operating funds from the FEFP as provided in s. 1011.62, F.S., and the General Appropriations Act, including the district’s gross state and local funds, discretionary lottery funds, and funds from the district’s current operating discretionary tax levies.
÷ The total funded weighted full-time equivalent students in the district.
x The weighted full-time equivalent students for the charter school.

A charter school is also entitled to receive its proportionate share of categorical funds included in the FEFP for students who qualify for the categorical.³ Categorical funds must be spent for specified purposes, which include student transportation, safe schools, supplemental academic instruction, research-based reading, instructional materials, digital classrooms, and class-size reduction operating funds.⁴

Operating funds from the FEFP are distributed by the school district to the charter school. A school district may initially distribute funds for up to three months based upon projected full-time equivalent (FTE) student membership. Thereafter, FTE membership surveys must be used to determine the amount of the charter school’s funding distribution. Such distributions are to be made monthly and no later than 10 working days after the school district receives the funding.⁵

May a sponsor withhold a fee for its provision of administrative services to a charter school?

Yes. A school district must provide various administrative services to sponsored charter schools, such as contract management; FTE and student achievement data reporting; exceptional student education program administration; eligibility and reporting for federal school lunch programs; test administration, including payment of the costs of state- or school district-required assessments; processing of teacher certification data; and student information services.⁶ As compensation for services provided, a school district may withhold an administrative fee of up to five percent of each charter school’s total operating funds, based upon weighted

¹ Section 1002.33(17)(a)-(b), F.S. To reflect any changes in enrollment, the charter school’s funding is recalculated during the school year, based upon the October and February full-time equivalent (FTE) enrollment surveys. *See* s. 1002.33(17)(b), F.S.; Email, Florida Department of Education, Legislative Affairs (May 25, 2012).

² Section 1002.33(17)(b) and (c), F.S.

³ Section 1002.33(17)(b), F.S.

⁴ *See, e.g.*, s. 1011.62(1)(f), F.S. (supplemental academic instruction); s. 1011.62(6), F.S. (general categoricals), s. 1011.67, F.S. (instructional materials), s. 1011.62(12), F.S. (digital classrooms); s. 1011.68, F.S. (student transportation), s. 1011.685, F.S. (class size reduction), and s. 1012.71, F.S. (Florida Teachers Classroom Supply Assistance Program).

⁵ Section 1002.33(17)(e), F.S.

⁶ Section 1002.33(20)(a)1., F.S. *See also*, Florida Attorney General Opinion, AGO 2013-04, stating that the administrative fee includes costs to administer state district assessments, available at <http://www.myfloridalegal.com/ago.nsf/Opinions/D20AD30420BB793B85257B3C0052B3A6>.

FTE students.⁷ A sponsor may only withhold the administrative fee for the first 250 students enrolled in each charter school.⁸ A sponsor may withhold a five percent administrative fee for the first 500 students enrolled within a system of charter schools if the system:

- Includes both conversion charter schools and nonconversion charter schools;
- Has all schools located in the same county;
- Has a total enrollment exceeding the total enrollment of at least one school district in the state;
- Has the same governing board; and
- Does not contract with a for-profit service provider for management of school operations.⁹

If the system meets these criteria and also qualifies for high-performing charter school system status, it may receive a reduction in the administrative fees from five to two percent for enrollments up to and including 500 students per system.¹⁰ The total administrative fee for high-performing charter schools is up to two percent for enrollment up to and including 250 students per school.¹¹

When 75 percent or more of the students enrolled in the charter school are exceptional students, including gifted students, the five percent administrative fee is calculated based upon unweighted FTE students.¹² For virtual charter schools, the sponsor may withhold a fee of up to five percent of the school's total operating funds; however, the fee must be used to cover the cost of sponsor-provided services and for implementation of the school district's digital classrooms plan.¹³ School districts are prohibited from imposing additional fees or surcharges for services provided.¹⁴

Do charter schools receive federal funding?

Yes. Charter schools, like traditional public schools, receive federal education funding through such programs as the Individuals with Disabilities Education Act (IDEA),¹⁵ Title I programs for disadvantaged students,¹⁶ and Title II programs for improving teacher quality.¹⁷ Additionally, 214 charter schools in 27 school districts and one university charter lab school have participated in Florida's Race to the Top Grant.¹⁸

Typically, federal education programs are structured so that funding flows from the federal government to a state educational agency (SEA),¹⁹ which then awards subgrants to local education agencies (LEA) within the state.²⁰ The Florida Department of Education (FDOE) is Florida's SEA for federal funding purposes and school districts are the LEA for district public schools. Thus, federal education funds received by FDOE are

⁷ Section 1002.33(20)(a)2., F.S.

⁸ Section 1002.33(20)(a)2., F.S. When a charter school's enrollment exceeds 250 students, it must reserve an amount of total operating funds equal to the difference between the total administrative fee calculation and the actual amount withheld for capital outlay purposes. *Id.*

⁹ Section 1002.33(20)(a)4., F.S. When the enrollment within a system of charter schools exceeds 500 students, an amount of total operating funds equal to the difference between the total administrative fee calculation and the actual amount withheld may only be used for instructional, administrative, or capital outlay purposes. Section 1002.33(20)(a)5., F.S.

¹⁰ Section 1002.33(20)(a)4. and 6., F.S.

¹¹ Section 1002.33(20)(a)3., F.S.

¹² Section 1002.33(20)(a)2., F.S.

¹³ Section 1002.33(20)(a)8., F.S. Legislation enacted in 2014 created the Florida Digital Classrooms categorical fund and required each school district to adopt a digital classrooms plan for integrating technology in classroom teaching and learning. School districts must provide each charter school with its proportionate share of digital classrooms funds. *See s. 1011.62(12)*, F.S.

¹⁴ Section 1002.33(20)(a)7., F.S.

¹⁵ Section 1002.33(17)(c), F.S.; 20 U.S.C. s. 1411(e).

¹⁶ 20 U.S.C. s. 6301 et. seq.

¹⁷ 20 U.S.C. ss. 6601-6641; s. 1002.33(17)(c)-(d), F.S.

¹⁸ Email, Office of Independent Education and Parental Choice (Sept. 17, 2014). The participating charter lab school is the Florida Atlantic University Charter Lab School in St. Lucie County.

¹⁹ *See* 20 U.S.C. s. 1412(a).

²⁰ *See* 20 U.S.C. ss. 1412(a) and 1413(a).

distributed to school districts, which then distribute a proportionate share of the funds to each district school, including charter schools.²¹

According to the FDOE, school districts use a variety of methods to distribute federal funds to charter schools, including directly advancing funds, reimbursing expenditures, providing in-kind services, or making purchases on behalf of charter schools. Unless otherwise mutually agreed to by the charter school and its sponsor, and consistent with state and federal rules and regulations governing the use and disbursement of federal funds, the sponsor must reimburse the charter school on a monthly basis for all invoices submitted by the charter school for available federal funds. In order to be eligible for reimbursement, expenditures must comply with all applicable state and federal regulations, and the charter school must submit the invoice to the sponsor at least 30 days prior to the reimbursement date set by the sponsor. Funds may not be made available to the charter school until a plan for use of the funds is submitted to the sponsor and approved.²²

Additionally, the U.S. Department of Education's (U.S. DOE) Charter Schools Program (CSP) provides, among other things, start-up grants, dissemination grants, and replication and expansion grants to eligible charter schools on an as available, competitive basis. FDOE must apply to U.S. DOE for start-up and dissemination grant funds. Once approved, FDOE is responsible for approving charter schools' receipt of such grants.²³ Replication and expansion grants are awarded to charter school operators directly by U.S. DOE.²⁴

Start-Up Grants

Start-up grants are awarded to fund planning and initial implementation of a new charter school. Nonprofit applicants for a new or conversion charter school are eligible for a start-up grant. Start-up grants must be spent for such purposes as marketing the charter school to parents and students; curriculum development; and purchasing instructional materials and equipment. Start-up grants may not be expended on new construction or rent.²⁵ Such grants are 36 months in duration. In FY 2013, the average start-up grant awarded to charter schools was approximately \$400,000.²⁶

Dissemination Grants

Dissemination grants are awarded for the purpose of developing and disseminating charter school "best practices." To be eligible for a dissemination grant, a charter school must have been in operation for at least three consecutive years and demonstrate strong student achievement, parent satisfaction, management and leadership, and financial viability. Allowable expenditures include assisting other individuals with charter school planning and start-up; developing curriculum materials and assessments to improve student achievement; developing partnerships with other public schools to improve student achievement; and developing charter school best practices.²⁷ FDOE awarded three dissemination grants in FY 2013 and two in 2014, each amounting to \$250,000.²⁸

²¹ Section 1002.33(17)(c), F.S. Florida law authorizes a system of charter schools to serve as an LEA if it meets certain requirements. Section 1002.33(25), F.S.

²² Section 1002.33(17)(c), F.S.

²³ U.S. Department of Education, *Charter Schools Program Nonregulatory Guidance*, at 9-10 (January 2014), available at <http://www2.ed.gov/programs/charter/nonregulatory-guidance.doc> [hereinafter *CSP Guidance*]. Florida and New York were the only states awarded federal funds for start-up and dissemination grants in FY 2011. U.S. Department of Education, *Charter Schools Program State Educational Agency Grants, 2011 Award*, <http://www2.ed.gov/programs/charter/2011awards.html> (last visited June 16, 2014).

²⁴ Application for New Awards; Charter Schools Program; Grants for Replication and Expansion of High-Quality Charter Schools, 77 Fed. Reg. 13306 (Dep't of Education March 6, 2012).

²⁵ *CSP Guidance*, *supra* note 23, at 16-17.

²⁶ Email, Office of Independent Education and Parental Choice (Sept. 17, 2014).

²⁷ *CSP Guidance*, *supra* note 23, at 10-11.

²⁸ Email, Office of Independent Education and Parental Choice (Sept. 17, 2014).

Replication and Expansion Grants

Replication and expansion grants are awarded to support the replication or expansion of high-quality charter schools that target under-served student populations. To be eligible for a grant, the applicant must be a nonprofit charter management organization or other nonprofit entity with experience operating high-quality charter schools that serve diverse racial groups, students with disabilities, English language learners and demonstrate success improving the educational achievement and outcomes of such students. Grant funds may be used to expand enrollment at one or more of the grantee's existing charter schools or to open one or more new charter schools that replicate the grantee's charter school model. Such grants are 60 months in duration. In FY 2012, a maximum of \$800,000 may be awarded per replicated or expanded charter school.²⁹

A \$9.4 million grant was awarded to the Knowledge is Power Program (KIPP), which operates KIPP Impact Middle School in Jacksonville, Florida, as well as charter schools in 19 other states and the District of Columbia. KIPP will use the grant to open 18 new charter schools in nine states and the District of Columbia, including two new charter schools in Florida's Duval County School District.³⁰

What other financial incentives are available to charter schools?

Developers may designate impact fees for the construction of a new charter school facility, if the school is specifically created to mitigate the educational impact created by the development.³¹ In addition, several tax, zoning, and fee exemptions financially benefit charter schools. A facility that houses a charter school is exempt from ad valorem taxation. This includes charter schools-in-the-workplace and charter schools-in-a-municipality.³² Charter schools are also exempt from assessments of fees for building permits, building and occupational licenses, impact fees or exactions,³³ service availability fees, and assessments for special benefits.³⁴

What are the eligibility criteria for state charter school capital outlay funding?

To be eligible for charter school capital outlay funding, a charter school must:

- Have been in operation for at least three years, be governed by a governing board established in Florida for three or more years which operates both charter schools and conversion charter schools within the state, be part of an expanded feeder chain³⁵ with an existing charter school in the district that is currently receiving charter school capital outlay funds, be accredited by the Commission on

²⁹ Application for New Awards; Charter Schools Program; Grants for Replication and Expansion of High-Quality Charter Schools, 77 Fed. Reg. 13304-13306 (Dep't of Education March 6, 2012).

³⁰ Press Release, U.S. Department of Education, *Grants Awarded Under Charter Schools Program's Charter Management Organization Competition* (Sept. 30, 2011), <http://www.ed.gov/oii-news/grants-awarded-under-charter-schools-programs-charter-management-organization-competition> (last visited Sept. 17, 2014). KIPP's 18 new charter schools will be established in Atlanta, GA; Austin, TX; Chicago, IL; Washington, DC; Gaston, NC; Houston, TX; Jacksonville, FL; Los Angeles, CA; Memphis, TN; Newark, NJ; New York, NY; and San Antonio, TX. *Id.* Duval County conditionally approved both applications upon KIPP Impact Middle School's raising its achievement on statewide assessments in the 2011-12 school year. Email, Office of Independent Education and Parental Choice (Sept. 17, 2014).

³¹ Section 1002.33(2)(c)4. and (18)(f), F.S.

³² Section 1002.33(15)(b)-(c) and (18)(c), F.S.

³³ Impact fees and exactions are used by local governments to control development and offset the impact of growth on local infrastructure and services. Unless superseded by constitutional or statutory provisions, local governments have broad authority to impose impact fees or exactions on development. Sections 1(f)-(g) and 2(b), Art. VIII of the State Constitution; s. 125.01(1) and (3), F.S.; s. 166.021(1)-(4), F.S.; *Hollywood, Inc. v. Broward Cnty, Fla.*, 431 So.2d 606, 609-610 (4th DCA. 1983)(Holding that Florida counties have implicit authority to impose impact fees or exactions on development so long as such fee or exaction is not inconsistent with general law and is rationally related to the need for additional infrastructure or services caused by the development.).

³⁴ Section 1002.33(18)(d), F.S.

³⁵ A charter school may be considered a part of an expanded feeder chain under s. 1013.62, F.S., if it either sends or receives a majority of its students directly to or from a charter school that is currently receiving capital outlay funding pursuant to Section 1013.62, F.S. Rule 6A-2.0020 (1), F.A.C.

Schools of the Southern Association of Colleges and Schools, or serve students in facilities that are provided by a business partner for a charter school-in-the-workplace;

- Demonstrate financial stability for future operation as a charter school;
- Have satisfactory student achievement based upon the state accountability standards applicable to charter schools;
- Have received final approval from its sponsor for operation during that fiscal year; and
- Serve students in facilities that are not provided by the charter school sponsor.³⁶

What are the permissible uses of state capital outlay funds by charter schools?

Capital outlay funds may be used by a charter school's governing board for the:

- Purchase of real property.
- Construction of school facilities.
- Purchase, lease-purchase, or lease of permanent or relocatable school facilities.
- Purchase of vehicles to transport students to and from the charter school.
- Renovation, repair, and maintenance of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of five years or longer.
- Purchase, lease-purchase, or lease of new and replacement equipment, and enterprise resource software applications.³⁷
- Payment of the cost of premiums for property and casualty insurance necessary to insure the school facilities.
- Purchase, lease-purchase, or lease of driver's education vehicles, motor vehicles used for the maintenance or operation of plants and equipment, security vehicles, or vehicles used in storing or distributing materials and equipment.³⁸

How are state charter school capital outlay awards allocated?

Charter school capital outlay funding is allocated based upon the following priorities:

- First priority is given to charter schools that received capital outlay funding in FY 2005-06. Such a school receives the same per-student amount that it received in FY 2005-06 up to the lesser of:
 - The actual number of students enrolled in the current year; or
 - The number of students enrolled in FY 2005-06.
- After calculating the first priority, remaining funds are allocated with the same per-student amount to:
 - Those schools not included in the first priority allocation; and
 - Those schools in the first priority allocation with growth in excess of FY 2005-06 student enrollments.

Any excess funds remaining after the first and second priority calculations are allocated among all eligible charter schools.³⁹

Each charter school's capital outlay allocation must not exceed 1/15th of the statutory cost per student station.⁴⁰ FDOE must disburse these funds to the sponsoring school district monthly based upon 1/12th of the

³⁶ Section 1013.62(1)(a), F.S. A conversion charter school, i.e., a charter school created by the conversion of an existing public school to charter status, is not eligible for capital outlay funding if it operates in facilities provided by its sponsor at no charge or for a nominal fee or if it is directly or indirectly operated by the school district. Section 1013.62(1)(d), F.S.

³⁷ Enterprise resource software applications must be "classified as capital assets in accordance with definitions of the Governmental Accounting Standards Board, have a useful life of at least 5 years, and are used to support schoolwide administration or state-mandated reporting requirements." Section 1013.62(2)(f), F.S.

³⁸ Section 1013.62(2)(a)-(h), F.S.

³⁹ Section 1013.62(1)(b), F.S.

amount that it expects the charter school to receive during that fiscal year. The funding amount is recalculated during the fiscal year to reflect fluctuations in student enrollment indicated by the second and third enrollment surveys and impacts on available funds resulting from charter school closings and the addition of newly eligible charter schools.⁴¹

How much state funding has been appropriated to charter school capital outlay in recent years?

In the most recent five fiscal years, the Legislature appropriated the following charter school capital outlay funds:

Charter School Capital Outlay Appropriations⁴²				
Fiscal Year	Appropriation	Total Charter Schools Funded	First Priority	Second Priority
2009-10	\$56.1 million ⁴³	292	165	127
2010-11	\$56.1 million ⁴⁴	344	158	186
2011-12	\$55.2 million ⁴⁵	372	151	221
2012-13	\$55.2 million ⁴⁶	432	144	288
2013-14	\$90.6 million ⁴⁷	473	138	335

In addition to the appropriated state funds for charter school capital outlay, the law authorizes, but does not require, school boards to allocate local discretionary capital improvement funds to charter schools.⁴⁸

What happens to charter school funds and property when the school is closed?

When a charter is not renewed or is terminated, unencumbered public funds from the charter school revert to the district school board, except that capital outlay and federal charter school grant funds revert to the FDOE for redistribution among eligible charter schools. Additionally, all district school board property and improvements, furnishings, and equipment purchased with public funds automatically revert to the district school board subject to satisfaction of any liens or encumbrances.⁴⁹

Upon initial notification of nonrenewal, closure, or termination of its charter, a charter school may not expend more than \$10,000 per expenditure without prior written approval from the sponsor unless such expenditure was included within the annual budget submitted to the sponsor pursuant to the charter contract, is for reasonable attorney fees and costs during the pendency of any appeal, or is for reasonable fees and costs to conduct an independent audit. The charter school must provide for an independent financial audit which must be completed within 30 days after notice of nonrenewal, closure, or termination to account for all public funds and assets.⁵⁰

⁴⁰ Section 1013.62(1)(c), F.S. Effective January 2006, the cost per student station was \$17,952 for an elementary school, \$19,386 for a middle school, and \$25,181 for a high school. The cost per student station is adjusted annually to reflect increases or decreases in the Consumer Price Index. Section 1013.64(6)(b), F.S.

⁴¹ Section 1013.62(1)(f), F.S.

⁴² School totals provided by FDOE. Email, Office of Independent Education and Parental Choice (Sept. 17, 2014).

⁴³ Specific Appropriation 14, s. 2, ch. 2009-81, L.O.F.

⁴⁴ Specific Appropriation 17, s. 2, ch. 2010-152, L.O.F.

⁴⁵ Specific Appropriation 15A, s. 2, ch. 2011-69, L.O.F.

⁴⁶ Specific Appropriation 16, s. 2, ch. 2012-118, L.O.F.

⁴⁷ Specific Appropriation 18, s. 2, ch. 2013-40, L.O.F.

⁴⁸ Section 1011.71(2), F.S.

⁴⁹ Section 1002.33(8)(e), F.S.

⁵⁰ Section 1002.33(9)(o)1.-2., F.S.

A charter school may not enter into a contract with an employee that exceeds the term of the school's charter contract with its sponsor. The law provides that any charter provision containing an acceleration clause requiring the expenditure of funds based upon closure or upon notification of nonrenewal or termination is void and unenforceable. The sponsor may collect an amount equal to or less than the accelerated amount that exceeds normal expenditures if the charter school violates these requirements. The amount collected includes legal fees and costs incurred by the sponsor and is levied against the person or entity receiving the accelerated amount.⁵¹

Where can I get additional information?

Florida Department of Education

Office of Independent Education and Parental Choice

(850) 245-0502

Toll-Free Information Hotline: (800) 447-1636

www.floridaschoolchoice.org

Florida Department of Education

Finance and Operations

(850) 245-0406

<http://www.fldoe.org/cefo>

Florida Department of Education

Bureau of School Business Services

(850) 245-0351

<http://www.fldoe.org/dss/>

Florida Department of Education

Bureau of Contracts, Grants, and Procurements

(850) 245-0735

<http://www.fldoe.org/grants/>

Florida Department of Education

Office of Educational Facilities

(850) 245-0494

<http://www.fldoe.org/edfacil/>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov/>

⁵¹ Section 1002.33(9)(o)3.-5., F.S.



What are the eligibility criteria for high-performing charter school status?

A high-performing charter school is a charter school that during each of the three previous years:

- Received at least two school grades of “A” and no school grade below “B;”
- Has received an unqualified opinion¹ on each annual financial audit; and
- Has not received an annual financial audit that reveals a financial emergency condition.²

Virtual charter schools are not eligible for “high-performing” status.³

The Commissioner of Education, upon request by a charter school, must verify that the school meets the qualifications and provide a verification letter to both the school and sponsor. The commissioner must annually determine whether a high-performing charter school continues to meet the high-performing eligibility criteria, and if the charter school does not meet the criteria, the commissioner must send a letter to the school notifying it of its declassification as a high-performing charter school.⁴

What are the eligibility criteria for high-performing charter school system status?

A high-performing charter school system (system) is a system of charter schools that:

- Is operated by a municipality or other public entity that is authorized by law to operate a charter school; a private, not-for-profit, s. 501(c)(3) status corporation; or a private for-profit corporation;
- Operated at least three high-performing charter schools in Florida, during each of the previous 3 school years;
- Had at least 50 percent of its charter schools designated as “high-performing” and no charter school receiving a school grade of “D” or “F” in any of the previous 3 school years regardless of whether the entity currently operates the charter school; and
- Did not receive a financial audit that revealed a financial emergency condition for any charter school operated by the entity in Florida in the most recent 3 fiscal years for which audits are available.⁵

Upon request by the system, the Commissioner of Education must verify whether the system meets the eligibility requirements and provide it with a verification letter. The commissioner must annually determine whether a high-performing charter school system continues to meet the high-performing eligibility criteria, and

¹An unqualified audit opinion means that the charter school’s financial statements are materially correct. Telephone interview with Florida Auditor General staff (Mar. 24, 2011).

² Section 1002.331(1), F.S. A financial emergency condition includes failure to pay short-term loans, make bond debt service or pay long-term debt payments due to lack of funds; failure to pay uncontested creditor claims within 90 days; failure to pay withheld employee income taxes or make employer contributions to social security or pensions; or failure for one pay period to pay, wages, salaries, and retirement benefits owed. Section 218.503(1), F.S. A charter school in the workplace satisfies audit requirements if the auditor finds that sufficient monetary resources are available to cover any reported deficiency or if the deficiency does not result in a deteriorating financial condition. Section 1002.331(1)(c), F.S. A “deteriorating financial condition” is a circumstance that significantly impairs the ability of a charter school to generate enough revenues to meet its expenditures without causing the occurrence of a financial emergency condition described in s. 218.503(1), F.S. Section 1002.345(1)(a)3., F.S.

³ Section 1002.331(1), F.S.

⁴ Section 1002.331(5), F.S. Verification of eligibility is based upon the most recent available school grade and financial audit information. *Id.* Charter school audit reports may be filed with the auditor general as much as nine months after the end of the fiscal year. *See* s. 218.39, F.S.

⁵ Section 1002.332(1)(b), F.S.

if the charter school system does not meet the criteria, the commissioner must send a letter notifying it of its declassification as a high-performing charter school system.⁶

As part of the verification, the charter school system must identify all charter schools in the state that it has operated or provided services for the previous 3 years, regardless of whether or not it continues to operate or provide services to those schools. For schools that the system no longer operates or serves, the system must identify the reasons it discontinued such activities or the grounds stated by the charter school's governing board for discontinuing such activities.⁷

How many charter schools and charter school systems have earned the "high-performing" designation?

As of September 2014, 148 charter schools in 34 school districts and 1 state university are designated as "high-performing" and two systems are designated as high-performing systems – Doral, Inc. and McKeel Academy. Doral, Inc. is comprised of five charter schools, four of which are high-performing charter schools. McKeel Academy is comprised of three charter schools, each of which is a high-performing charter school.⁸

What benefits are available to high-performing charter schools and systems?

High-performing charter schools may take advantage of various benefits. A high-performing charter school may:

- Increase the school's enrollment once per year to more than the capacity identified in the charter, but not to exceed the current facility capacity;
- Expand grade levels within kindergarten through grade 12 to add grade levels not already served, provided that any resulting increase in enrollment does not exceed the current facility capacity;
- Submit quarterly, rather than monthly, financial statements to its sponsor;
- Consolidate under a single charter the charters of multiple high-performing charter schools operated in the same school district by the school's governing board, regardless of the charter renewal cycle;
- Receive a modification of its charter to a term of 15 years or a 15-year charter renewal. The charter may be modified or renewed for a lesser term at the option of the charter school. is subject to annual review by the sponsor, and may be terminated for grounds⁹ currently specified in statute; and
- Submit an application in any Florida school district to establish and operate a new charter school that substantially replicates its educational program.¹⁰

Additionally, high-performing charter schools may receive a reduction in the administrative fee for sponsor-provided services from five percent to two percent for enrollment up to and including 250 students per school.¹¹ High-performing charter school systems may also receive a reduction in these administrative fees if specified criteria are met.¹² Systems may also replicate their high-performing charter schools using the same process applicable to high-performing charter schools.¹³

⁶ Section 1002.332(2)(a), F.S.

⁷ Section 1002.332(a)1., F.S.

⁸ Email, Office of Independent Education and Parental Choice (Sept. 17, 2014).

⁹ A sponsor may terminate or not renew a charter school's charter if the school fails to participate in Florida's accountability system; fails to meet the student performance outcomes agreed upon in the charter; fails to meet generally accepted standards of fiscal management; violates the law; or other good cause shown. Section 1002.33(8)(a), F.S.

¹⁰ Section 1002.331(2) and (3), F.S.

¹¹ Section 1002.33(20)(a)3., F.S.

¹² Section 1002.33(20)(a)4. and 6., F.S. The fee is reduced from 5 percent to 2 percent for enrollments up to and including 500 students per system if the system includes both conversion charter schools and non-conversion charter schools; has all schools located in the same county; has a total enrollment exceeding the total enrollment of at least one school district in the state; has the same governing board; and does not contract with a for-profit service provider for management of school operations. *Id.*

¹³ Section 1002.332(2)(b), F.S.

What conditions govern enrollment increases, grade level expansion, long-term charters, and charter consolidation by high-performing charter schools?

Provisions for implementing “high-performing” benefits must be included in the charter.¹⁴ Enrollment increases or grade level expansion by a high-performing charter school may not exceed the current facility capacity.¹⁵ Sponsors may not cap enrollment increases or require a charter school to waive its rights to high-performing charter school benefits as a condition of charter approval or renewal. A high-performing charter school must notify its sponsor by March 1 regarding enrollment increases or grade level expansion planned for the following school year.¹⁶ If a charter school notifies the sponsor of its intent to expand, the sponsor must modify the charter within 90 days to include the new maximum and may not make any other changes to the charter. The sponsor may only deny a request to increase enrollment if the commissioner has declassified the charter school as “high-performing.”¹⁷ The charter school may not increase enrollment or expand grade levels following any school year in which it receives a school grade of “C” or below.¹⁸

A long-term charter is subject to annual review by the sponsor and may be terminated for grounds¹⁹ currently specified in statute. A high-performing charter school that receives a long-term charter may keep the charter even if it is declassified as “high-performing” for earning a school grade of “C” or below. However, the sponsor may modify the term of the long-term charter if the charter school earns a school grade of “C” or below in any two years during the term of the long-term charter.²⁰

If a high-performing charter school requests to consolidate multiple charters, the sponsor must provide an initial draft charter to the school within 40 days of the request. The sponsor and school then have 50 days thereafter to negotiate and notice the charter for final approval by the sponsor.²¹

What is the procedure for replicating a high-performing charter school?

A high-performing charter school may, in any school district in the state, submit an application to establish a new charter school that replicates its educational program. The application must indicate that the charter school is “high-performing” and include the commissioner’s eligibility letter.²² Such applications may only be denied if clear and convincing evidence²³ demonstrates:

- Material noncompliance²⁴ with application requirements related to curricula, student learning goals, reading instruction, and financial management;
- Material noncompliance with law requiring charter schools to be nonsectarian; comply with student enrollment requirements; be accountable to the sponsor; be tuition free; and meet state and local health, safety, and civil rights requirements;
- That the proposed charter school does not substantially replicate²⁵ one of the applicant’s high-performing charter schools;

¹⁴ Section 1002.33(7)(a)19., F.S.

¹⁵ Section 1002.331(2)(a)-(b), F.S.

¹⁶ Section 1002.33(10)(h)-(i), F.S.

¹⁷ Section 1002.331(2), F.S. (flush left provisions at the end of the subsection).

¹⁸ Section 1002.331(4), F.S.

¹⁹ A sponsor may terminate or not renew a charter school’s charter if the school fails to participate in Florida’s accountability system; fails to meet the student performance outcomes agreed upon in the charter; fails to meet generally accepted standards of fiscal management; violates the law; or other good cause shown. Section 1002.33(8)(a), F.S.

²⁰ Section 1002.331(2) and (4), F.S.

²¹ Section 1002.331(2), F.S. (flush left provisions at the end of the subsection).

²² Section 1002.331(3)(a), F.S.

²³ “Clear and convincing evidence” is evidence that is “positive, precise, and explicit” or “evidence indicating that the thing to be proved is highly probable or reasonably certain.” *Stomowitz v. E.O. Walker*, 429 So.2d 797 (Fla. 4th DCA 1983); Black’s Law Dictionary (5th Ed. 1996).

²⁴ “Material noncompliance” is a failure to follow requirements or a violation of prohibitions applicable to charter school applications which is quantitatively or qualitatively significant either individually or when aggregated with other noncompliance. Section 1002.33(6)(b), F.S. (flush-left provisions at end of paragraph).

²⁵ An applicant is considered to be replicating a high-performing charter school if the proposed school is substantially similar to at least one of the applicant’s high-performing charter schools and the organization or individuals involved in the establishment and

- That the applicant misrepresented important facts or concealed information during the application process; or
- The proposed charter school’s educational program and financial management practices do not materially comply with the charter school statute.²⁶

If an application submitted by a high-performing charter school is denied, the sponsor must provide the applicant and the Department of Education (DOE) with a letter of denial stating its reasoning with supporting documentation. If the applicant appeals, review by the Charter School Appeal Commission²⁷ is bypassed, and the appeal goes directly to the State Board of Education. The state board must independently review whether the sponsor based its decision upon the statutory denial criteria.²⁸

If the sponsor fails to act on an application submitted by a high-performing charter school within 60 days of submission, the application is deemed approved. The applicant and sponsor must then enter into charter negotiations.²⁹

A high-performing charter school may not be replicated more than once in any given year and may not replicate again until the new charter school achieves “high-performing” status.³⁰ As of September 2014, 21 new charter schools replicating high-performing charter schools have been established in six school districts.³¹

Are there any exceptions to the eligibility criteria for high-performing charter school system status?

Yes. The law allows high-performing charter school systems a period of time to improve academic performance at low-performing traditional public schools that are reconstituted as charter schools under Florida’s system of school improvement interventions.³² Florida’s system of school improvement interventions is known as “differentiated accountability.” Under differentiated accountability, traditional public schools that earn a school grade of “D” or “F” are identified for school improvement interventions.³³ Schools earning a grade of “F” receive the most comprehensive interventions. A traditional public school that earns two consecutive school grades of “F” must implement a school turnaround option. Among other school turnaround options, the school district may choose to reconstitute the school as a charter school and contract with a charter school operator to administer the school.³⁴ If a system assumes operation of a traditional public school in this manner, the school’s grade is not considered in determining high-performing charter school system status for the first three years after the system assumes operations. The school is considered in eligibility determinations in year four and thereafter.³⁵

Similar accommodation is made for charter schools opened for the purpose of providing educational options to students who reside in school zones served by a low-performing traditional public school. If a system establishes a new charter school in a school zone served by a public school that earns a grade of “F” or three consecutive “D’s,” that charter school is not considered in determining high-performing charter school system

operation of the proposed school are significantly involved in the operation of replicated schools. Section 1002.33(6)(b)3.b., F.S. (flush-left provisions at end of sub-subparagraph).

²⁶ Section 1002.33(6)(b)3.b., F.S.

²⁷ The Charter School Appeal Commission (CSAC) is a body comprised of school district and charter school representatives that reviews charter school application appeals filed with the state board. CSAC must review the appeal and make a written recommendation to the state board as to whether it should be upheld or denied. The state board must consider the CSAC’s recommendation, but is not bound by it when making its final decision. Section 1002.33(6)(e)1. and 2., F.S.

²⁸ Section 1002.33(6)(c)3.b., F.S.

²⁹ Section 1002.331(3)(a), F.S.; see s. 1002.33(6)(h), F.S.

³⁰ Section 1002.331(3)(b), F.S.

³¹ Email, Office of Independent Education and Parental Choice (Sept. 17, 2014).

³² Section 1002.332(1)(b)2.a.-b., F.S.

³³ Section 1008.33(3)(b), F.S.

³⁴ Section 1008.33(4)(a) and (b)3., F.S.

³⁵ Section 1002.332(1)(b)2.a., F.S.

eligibility if, within three years after establishment, it attains and maintains a higher school grade than the traditional public school serving the zone.³⁶

Where can I get additional information?

Florida Department of Education

Office of Independent Education and Parental Choice

(850) 245-0502

Toll-Free Information Hotline: (800) 447-1636

http://www.floridaschoolchoice.org/Information/Charter_Schools/

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

³⁶ Section 1002.332(1)(b)2.b., F.S.

Choice Options



What are school district virtual instruction programs?

A school district virtual instruction program is a program of instruction provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both.¹ The purpose of the program is to make instruction available to students using online and distance learning technology in the nontraditional classroom.² A school district that is eligible for the sparsity supplement must provide all enrolled public school students within its boundaries the option of participating in part-time and full-time virtual instruction programs. A school district that is ineligible for the sparsity supplement must provide at least three options for part-time and full-time virtual instruction.³

A school district virtual instruction program must consist of the following:

- Full-time and part-time virtual instruction program for students enrolled in kindergarten through grade 12;⁴
- Full-time or part-time virtual instruction program for students enrolled in dropout prevention and academic intervention programs, Department of Juvenile Justice education programs, core-curricula courses to meet class size requirements, or Florida College System institutions.⁵

Each school district must provide information to parents and students about students' right to participate in a virtual instruction program and in courses offered by the Florida Virtual School (FLVS)^{6,7}

Who is eligible to participate in school district virtual instruction programs?

Enrollment in a school district virtual instruction program is open to any student residing in the district who:⁸

- Attended a Florida public school during the prior year and was enrolled and reported for funding during the October and February Florida Education Finance Program (FEFP) surveys;⁹
- Is the dependent child of a member of the United States military who, within 12 months of the parent's permanent change of station order, transferred to Florida from another state or from a foreign country;¹⁰
- Was enrolled in a school district virtual instruction program or a full-time FLVS program during the prior school year;¹¹

¹ Section 1002.45(1)(a)2., F.S.

² Section 1002.45(1)(b), F.S. In 2008, the Florida Legislature required all school districts to provide a virtual instruction program beginning with the 2009-10 academic year. Section 4, ch. 2008-147, L.O.F.

³ Section 1002.45(2)(b), F.S.

⁴ Section 1002.45(1)(b)1., F.S.

⁵ Section 1002.45(1)(b)2., F.S.

⁶ The Florida Virtual School is established for the development and delivery of online and distance learning education full-time and part-time to students enrolled in kindergarten through grade 12. The Commissioner of Education is required to monitor the school's performance and report the school's performance to the State Board of Education and the Legislature. Section 1002.37(1)(a) and (8)(a), F.S.

⁷ Section 1002.45(10), F.S.

⁸ Sections 1002.45(5) and 1002.455(2), F.S.

⁹ Section 1002.455(2)(a), F.S.

¹⁰ Section 1002.455(2)(b), F.S.

¹¹ Section 1002.455(2)(c), F.S.

- Has a sibling who is currently enrolled in a school district virtual instruction program and the sibling was enrolled in such program at the end of the prior school year.¹²
- Is eligible to enter kindergarten or first grade;¹³ or
- Is eligible to enter grades 2 through 5 and is enrolled full-time in a school district virtual instruction program, virtual charter school, or the Florida Virtual School.¹⁴

Participating students must comply with the compulsory school attendance requirements and such compliance must be verified by the district. Students must also participate in the state assessment program.¹⁵

District Virtual Instruction Program Options

Delivery System	Student Grade Level													
	K	1	2	3	4	5	6	7	8	9	10	11	12	
District Virtual Instruction Program (VIP) ¹	Full													
	Part ²													


¹ School Districts must provide “all enrolled public school students within its boundaries the option of participating in part-time and full-time virtual instruction programs” (s. [1002.45\(1\)\(b\)](#), F.S.)


² Part-time courses limited to those courses measured by a standardized assessment. [1002.45\(1\)\(b\)2](#).


Authority to Deliver:

Enrollment: Full = Full-time enrollment

Part = Part-time enrollment

Legend:  = Authorized to deliver

 = Student must meet eligibility requirements of s. [1002.455\(2\)](#)

 **Black Border =** Limited to 1.0 FTE

What options do school districts have to provide virtual instruction programs?

In order to provide its students with the opportunity to participate in a school district virtual instruction program, a school district may:

- Contract with the FLVS or establish a franchise of the FLVS.¹⁶
- Contract with a provider approved by the Department of Education (DOE) for the provision of a full-time or part-time school district virtual instruction program.¹⁷
- Enter into an agreement with another school district to allow its students to participate in a virtual instruction program provided by the other school district.¹⁸
- Establish school district operated part-time or full-time kindergarten through grade 12 virtual instruction programs for students enrolled in the school district.¹⁹
- Enter into an agreement with a virtual charter school authorized by the school district.²⁰

Contracts with the FLVS or other providers may include multidistrict contractual arrangements that may be executed by a regional consortium on behalf of its member school districts.²¹ Additionally, a virtual charter

¹² Section 1002.455(2)(d), F.S.

¹³ Section 1002.455(2)(e), F.S.

¹⁴ Section 1002.455(2)(f), F.S.

¹⁵ Section 1002.45(6), F.S.

¹⁶ Section 1002.45(1)(c)1., F.S.

¹⁷ Section 1002.45(1)(c)2., F.S.

¹⁸ Section 1002.45(1)(c)3., F.S.

¹⁹ Section 1002.45(1)(c)4., F.S.

²⁰ Section 1002.45(1)(c)5., F.S.

²¹ Section 1002.45(1)(c).

school may enter into an agreement with a school district to allow participation of the virtual charter school's students in the school district's virtual instruction program.²²

What requirements must school district virtual instruction programs meet?

Each school district virtual instruction program operated or contracted by a school district must:

- Align virtual course curriculum and course content to the Next Generation Sunshine State Standards.²³
- Offer instruction that is designed to enable students to achieve proficiency in each virtually delivered course of study.²⁴
- Provide each student enrolled in the school district virtual instruction program with all necessary instructional materials.²⁵
- Provide each full-time student enrolled in the school district virtual instruction program who is eligible for free or reduced-price school lunch, or who is on the direct certification list, and who does not have a computer or Internet access at home with:²⁶
 - All necessary equipment, including, but not limited to, a computer, computer monitor, and printer.²⁷
 - Access to or reimbursement for all Internet services necessary for online delivery of instruction.²⁸
- Require no tuition or student registration fees.²⁹

What requirements must virtual instruction program providers meet for approval by the Department of Education?

To be approved by the DOE,³⁰ a provider must document that it:

- Is nonsectarian in its programs, admission policies, employment practices, and operations;³¹
- Complies with antidiscrimination provisions;³²
- Locates an administrative office or offices in Florida, requires its administrative staff to be state residents, requires all instructional staff to be Florida-certified teachers under Chapter 1012, and conducts background screenings for all employees or contracted personnel using state and national criminal history records;³³
- Provides parents and students with specific contact information for instructors, administrators, and technical support, that is posted and accessible online and the provider meets minimum student-teacher and parent-teacher contact requirements.³⁴ Possesses prior, successful experience offering online courses to students enrolled in kindergarten through grade 12 as demonstrated by learning gains in each subject area and grade level that the provider provided for consideration as a virtual instruction program option,³⁵

²² Section 1002.45(1)(d)3., F.S.

²³ Section 1002.45(3)(a), F.S.

²⁴ Section 1002.45(3)(b), F.S.

²⁵ Section 1002.45(3)(c), F.S.

²⁶ Section 1002.45(3)(d), F.S.

²⁷ Section 1002.45(3)(d)1., F.S.

²⁸ Section 1002.45(3)(d)2., F.S.

²⁹ Section 1002.45(3)(e), F.S.

³⁰ A full-time provider must use Form VSP-02, Virtual Instruction Program Application for Provider Approval, and a part-time provider must use Form VSP-02PT, Virtual Instruction Program Application for Part-Time Provider Approval, to apply for approved status from the DOE. Both forms are incorporated by reference in rule 6A-6.0981, F.A.C. and are available from September 1 of each year for the following school year. The deadline for filing the application for approved Virtual Instruction Program provider status is September 30. Rule 6A-6.0981(3), F.A.C.

³¹ Section 1002.45(2)(a)1., F.S.

³² Section 1002.45(2)(a)2., F.S.

³³ Section 1002.45(2)(a)3., F.S.

³⁴ Section 1002.45(2)(a)4., F.S.

³⁵ Section 1002.45(2)(a)5., F.S.

- Is accredited by a regional accrediting association;³⁶
- Ensures instructional and curricular quality through detailed curriculum and student performance accountability plan for every subject and grade level that the provider intends to provide through contract with a school district, including:
 - Courses and programs that meet the standards of the International Association for K-12 Online Learning and the Southern Regional Education Board.³⁷
 - Instructional content and services that align with, and measure student attainment of, student proficiency in the Next Generation Sunshine State Standards.³⁸
 - Mechanisms that determine and ensure that a student satisfies requirements for a grade level promotion and high school graduation with a standard diploma, as appropriate,³⁹
- Publishes for the general public:⁴⁰
 - Information and data about the curriculum of each full-time and part-time program.⁴¹
 - School policies and procedures.⁴²
 - Certification status and physical location of all administrative and instructional personnel.⁴³
 - Hours and times of availability of instructional personnel.⁴⁴
 - Student-teacher ratios.⁴⁵
 - Student completion and promotion rates.⁴⁶
 - Student, educator, and school performance accountability outcomes;⁴⁷
- Employs instructors who meet the certification requirements for instructional staff under Florida law⁴⁸ if the provider is a Florida College System institution;⁴⁹ and
- Performs an annual financial audit of its accounts and records conducted by an independent certified public accountant.⁵⁰

The DOE is required to annually provide school districts with a list of approved providers.⁵¹ Once a provider is approved, it retains its approved status for three years as long as the provider continues to comply with the virtual instruction program and accountability requirements.⁵² There are a total of six approved providers for the 2014-15 school year.⁵³

³⁶ Section 1002.45(2)(a)6., F.S. Providers must be accredited by at least one of the following K-12 regional accrediting agencies, their successors or assigns: AdvancEd, Middle States Association of Colleges and Schools Commission on Elementary Schools and Commission on Secondary Schools, the New England Association of Schools and Colleges, Northwest Accredited Commission, or Western Association of Schools and Colleges. Rule 6A-6.0981(3)(b), F.A.C.

³⁷ Section 1002.45(2)(a)7.a., F.S.

³⁸ Section 1002.45(2)(a)7.b., F.S.

³⁹ Section 1002.45(2)(a)7.c., F.S.

⁴⁰ A provider applying for approved Virtual Instruction Program provider status must disclose prominently on its Internet website the disclosure information pursuant to s.1002.45(2)(a)8., F.S. Rule 6A-6.0981(3)(d), F.S.

⁴¹ Section 1002.45(2)(a)8.a., F.S.

⁴² Section 1002.45(2)(a)8.b., F.S.

⁴³ Section 1002.45(2)(a)8.c., F.S.

⁴⁴ Section 1002.45(2)(a)8.d., F.S.

⁴⁵ Section 1002.45(2)(a)8.e., F.S.

⁴⁶ Section 1002.45(2)(a)8.f., F.S.

⁴⁷ Section 1002.45(2)(a)8.g., F.S.

⁴⁸ Chapter 1012, F.S.

⁴⁹ Section 1002.45(2)(a)9., F.S.

⁵⁰ Section 1002.45(2)(a)10., F.S.

⁵¹ Section 1002.45(2)(a), F.S.

⁵² Section 1002.45 (2)(b) & (8)(c), F.S.

⁵³ A list of all current providers is located on the following website: <http://www.fldoe.org/Schools/virtual-schools/DistrictVIP.asp>.

What provisions must be included in a contract between a school district and a virtual instruction program provider?

Each contract between a school district and a DOE-approved virtual instruction program provider must at a minimum include:

- A detailed curriculum plan that illustrates how services will be provided to students and how students will be measured for attainment of proficiency in the Next Generation Sunshine State Standards for each subject and grade level.⁵⁴
- A method for determining that a student satisfies the requirements for graduation, if the contract is for a full-time virtual instruction program to students enrolled in grades 9 through 12.⁵⁵
- A method for resolving conflicts among the parties.⁵⁶
- Authorized reasons for termination of the contract.⁵⁷
- A requirement that the provider be responsible for all debts of the virtual instruction program if the contract is not renewed or is terminated.⁵⁸
- A requirement that the provider comply with all virtual instruction program requirements.⁵⁹

What are the accountability requirements for school district virtual instruction programs?

Each approved provider contracted to provide a school district virtual instruction program must participate in the statewide assessment program and in the state's education performance accountability system.⁶⁰ Each provider receives a school grade or school improvement rating, which is based upon the aggregated assessment scores of all full-time students served by the provider statewide.⁶¹ School grades or school improvement ratings are published on the DOE Internet website.⁶²

If an approved provider receives a school grade of "D" or "F" or a school improvement rating of "Unsatisfactory", the provider must file a school improvement plan for correcting low performance with the DOE. The school improvement plan must identify the causes of the low performance and propose a plan for correction and improvement.⁶³

An approved provider's contract must be terminated if the provider receives a school grade of "D" or "F" or a school improvement rating of "Unsatisfactory" for two years during any consecutive four-year period, or violates the virtual instruction program provider requirements. The DOE must not approve such provider for a period of at least one year following the date of termination of the contract and until the DOE determines that the provider meets the virtual instruction program provider requirements and the provider corrects each cause of the provider's low performance.⁶⁴

How are school district virtual instruction programs funded?

School district virtual instruction programs are funded through the FEFP.⁶⁵ Full and part-time students enrolled in kindergarten through grade 12 are funded on a successful course or credit completion or the prescribed

⁵⁴ Section 1002.45(4)(a), F.S.

⁵⁵ Section 1002.45(4)(b), F.S.

⁵⁶ Section 1002.45(4)(c), F.S.

⁵⁷ Section 1002.45(4)(d), F.S.

⁵⁸ Section 1002.45(4)(e), F.S.

⁵⁹ Section 1002.45(4)(f), F.S.

⁶⁰ Section 1002.45(8)(a)1., F.S.

⁶¹ Section 1002.45(8)(a)2., F.S. The performance of part-time students is not included in the provider's school grade or school improvement rating. Performance of such students is included in the nonvirtual school that provides the student's primary instruction. Section 1002.45(8)(b), F.S.

⁶² Section 1002.45(8)(a)2., F.S.

⁶³ Section 1002.45(8)(c), F.S. While the law refers to "Declining" school improvement ratings were changed to "Commendable", "Maintaining, and "Unsatisfactory". Section 1008.341(2)(a)-(c), F.S.

⁶⁴ Section 1002.45(8)(d), F.S.

⁶⁵ Section 1002.45(7)(a), F.S.

level of content that counts toward promotion to the next grade. Funding is only received if the course is completed and passed. Six credits equal one full-time equivalent (FTE) student. Half credit completions are included in determining a FTE student.⁶⁶ Beginning in the 2016-2017 fiscal year, when all statewide end-of-course assessments will be administered online, the reported FTE students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment must be adjusted after the students complete the end-of-course assessment.⁶⁷

Full-time students enrolled in a school district virtual instruction program are reported for funding by the district program. Part-time students enrolled in grades K through 12 are reported under their school of record for courses taken there and under the district program for virtual courses that they successfully complete. Districts may only earn one FTE per student, per school year.⁶⁸ Florida College System institution providers may not report students who are served in a school district virtual instruction program for funding under the Community College Program Fund.⁶⁹

If a district contracts with a provider, funding flows to the district and the provider is paid by the district pursuant to the terms of the contract. Districts must use FEFP funds in excess of the contracted services for the district's implementation of its required digital classrooms plan.⁷⁰

Where can I get additional information?

Florida Department of Education

Division of Public Schools

(850) 245-0509

<http://www.fldoe.org/Schools/virtual-schools/DistrictVIP.asp>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov/>

⁶⁶ Section 1011.61(1)(c)1.b.(III) and (IV), F.S.

⁶⁷ Section 1011.62(1)(c)1.(III) and (IV) , F.S.

⁶⁸ Florida Department of Education, Office of Funding and Financial Reporting, *FTE General Instructions, Appendix D*, <http://www.fldoe.org/fefp/feinstr.asp>

⁶⁹ Section 1002.45(7)(g), F.S.

⁷⁰ Section 1002.45(1)(e)2., F.S. *See also*, Florida Digital Classrooms, Section 1011.62(12), F.S.



What is the Florida Virtual School?

The Florida Virtual School (FLVS) is established for the development and delivery of online and distance learning education.¹ The FLVS is a public school choice providing elementary, middle, and high school curriculum to Florida residents for free. All courses are fully online.² The FLVS may provide full-time and part-time instruction for students in kindergarten through grade twelve³; and offers more than 120 courses including core subjects, world languages, electives, honors, and Advanced Placement courses.⁴ FLVS Full Time (the district) is accredited as a system by Advance Education, Inc (AdvancEd), and the various FLVS schools are accredited by the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)⁵.

The FLVS offers individual course enrollments to all Florida students enrolled in grades K through 12⁶, including public school, private school, and home school students.⁷ FLVS also offers middle school courses for advanced elementary students and is authorized to offer elementary courses for grades K-5 students. In addition, the FLVS has partnered with Connections Academy to provide a full-time virtual education program to students statewide enrolled in kindergarten through grade 12. The Florida Virtual School Full Time (FLVS FT) program is open to any public, private or home education student in kindergarten through grade 12. School districts and virtual charter schools may also contract with FLVS to offer the FLVS FT program for their students⁸ if the student meets certain eligibility criteria.⁹

The number of semester course completions at the FLVS has grown steadily from 77 during 1997-98 to 410,962 during 2012-13. The following table shows the number of course completions during the last five academic years.

¹ Section 1002.37(1)(a), F.S. FLVS began as two independent programs in Alachua and Orange Counties. The two counties partnered to establish the FLVS as a grant-based pilot project in the 1996-97 academic year. In 2000, the Legislature removed the program's pilot status and statutorily codified the school. Chapter 2000-224, L.O.F

² Florida Virtual School, Quick Links, *FAQs*, at <http://www.flvs.net/areas/faqs/Pages/CourseFAQs.aspx> (last visited July 18, 2014).

³ Section 1002.37(8)(a), F.S.

⁴ Florida Virtual School, *What is FLVS?*, at <http://www.flvs.net/Pages/default> (last visited July 18, 2014).

⁵ *Id.*

⁶ Florida Department of Education, *Florida's K-12 Virtual Education Options Chart*, available at <http://www.fldoe.org/Schools/virtual-schools/pdf/veof.pdf> (last visited July 18, 2014).

⁷ Florida Virtual School, *What is FLVS?* at <http://www.flvs.net/Pages/default.aspx> (last visited July 18, 2014).

⁸ Section 1002.45, F.S.

⁹ Florida Virtual School, *Florida Virtual School Full Time*, <http://www.connectionsacademy.com/florida-virtual-school/home.aspx> (last visited July 17, 2014, 2012); see also Florida Virtual School, *Florida Virtual School Full Time Frequently Asked Questions*, <http://www.connectionsacademy.com/florida-virtual-school/faq.aspx> (last visited July 18, 2014).

Academic Year	Course Completions ¹⁰
2008-09	154,125
2009-10	213,926
2010-11	259,928
2011-12	314,593
2012-13	410,962

How is the Florida Virtual School governed?

The FLVS is governed by a board of trustees comprised of seven members appointed by the Governor to four-year staggered terms.¹¹

The board is responsible for generating revenue to support the FLVS operations and enter into agreements with distance learning providers. Although the ownership of patents, trademarks, and copyrights vests with the state, the board has the full right of use and full right to retain the revenues¹² derived from patents, copyrights, licenses, and rights or interests. The board is also responsible for:

- Administering and controlling all local school funds derived from all activities or sources.¹³
- Administering and maintaining personnel programs for all employees of the board of trustees and the FLVS.¹⁴
- Establishing priorities for admission of students.¹⁵
- Establishing and distributing to all school districts and high schools in the state procedures for enrolling students in FLVS courses.¹⁶
- Establishing criteria defining the elements of an approved franchise.¹⁷
- Submitting to the State Board of Education forecasted and actual enrollments and credit completions for the FLVS.¹⁸
- Providing for the content and custody of student and employee personnel records.¹⁹
- Maintaining the financial records and accounts of the FLVS.²⁰

Additionally, the FLVS board of trustees is authorized to acquire, enjoy, use, and dispose of patents, trademarks, copyrights, licenses, and rights or interests; adopt rules, policies, and procedures related to the appointment, employment, and removal of personnel; and enter into franchise agreements with Florida district school boards and establish the terms and conditions governing such agreements.²¹

¹⁰ Florida Virtual School, *2012-13 Florida Virtual School Legislative Report*, at 21, available at <http://www.flvs.net/areas/aboutus/Pages/LegislativeReport.aspx> (last visited July 18, 2014).

¹¹ Section 1002.37(2), F.S. The board of trustees must serve without compensation, but may be reimbursed for per diem and travel expense pursuant to s. 112.061.

¹² Such revenues must be used to support FLVS's marketing and research and development activities to improve courseware and services to students. Section 1002.37(2)(c), F.S.

¹³ Section 1002.37(2)(d), F.S.

¹⁴ Section 1002.37(2)(f), F.S.

¹⁵ Section 1002.37(2)(g), F.S.

¹⁶ Section 1002.37(2)(h), F.S.

¹⁷ Section 1002.37(2)(i), F.S.

¹⁸ FLVS board of trustees must submit enrollments and credit completions to the State Board of Education based on procedures established by the State Board of Education. Section 1002.37(2)(j), F.S.

¹⁹ Section 1002.37(2)(k), F.S.

²⁰ Section 1002.37(2)(l), F.S.

²¹ Section 1002.37(2)(c), (f), and (i), F.S.

The board of trustees must annually submit to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education, a detailed report, including:

- The operations and accomplishments of the FLVS within the state and those outside the state as Florida Virtual School (FLVS) Global;
- The marketing and operational plan for FLVS and FLVS Global;
- The assets and liabilities of FLVS and FLVS Global at the end of the fiscal year;
- A copy of the annual financial audits of accounts and records for FLVS and FLVS Global;
- Recommendations regarding the unit cost of providing services to students through FLVS and FLVS Global; and
- Recommendations regarding an accountability mechanism to assess the effectiveness of the services provided by FLVS and FLVS Global.²²

The Commissioner of Education is required to monitor the performance of the FLVS and report the performance findings to the State Board of Education and the Legislature.²³

The Auditor General must conduct an operational audit of FLVS and FLVS Global which shall include, but not be limited to, the administration of responsibilities relating to personnel; procurement and contracting; revenue production; school funds; student enrollment records; franchise agreements; information technology utilization, assets and security; performance measures and standards; and accountability. The final report must be submitted to the President of the Senate and the Speaker of the House of Representatives no later than January 31, 2014.²⁴

How are the courses and delivery system designed?

All FLVS courses are delivered via the Internet. A variety of Web-based, technology-based and traditional resources are used to promote student success through virtual learning.²⁵ Students must have access to a computer and the Internet.²⁶

Who is eligible to participate in the program?

FLVS courses are available tuition-free to all public, private, and home education students residing in Florida.²⁷ Students from outside of Florida may enroll in fee-based courses through FLVS Global.²⁸ In the 2012-2013 school year students from 49 states and 42 countries were active in FLVS Global.²⁹

Enrollment priority is given to students who need expanded access to courses in order to meet their educational goals, such as home education students, students in inner-city and rural high schools who do not have access to advanced courses, and students seeking accelerated access to a high school diploma at least one semester early.³⁰ School districts may not limit student access to courses offered through the FLVS.³¹

FLVS FT must meet the obligations of a school district for public school exceptional students who are enrolled in a full-time virtual instruction program. A student is authorized for enrollment in a full-time virtual instruction

²² Section 1002.37(6), F.S.

²³ Section 1002.37(1)(a), F.S.

²⁴ Section 1002.37(11), F.S.

²⁵ Florida Department of Education, *Florida Public Virtual Schools: FLVS FAQs*, <http://www.fldoe.org/schools/virtual-schools/faqs.asp> (last visited July 17, 2014).

²⁶ Florida Virtual School, *Hardware Requirements*, available at <http://www.flvs.net/areas/faqs/pages/hardwarerequirements.aspx> (last visited July 17, 2014).

²⁷ Florida Virtual School, *How is FLVS Free?*, available at <http://www.flvs.net/Pages/default.aspx> (last visited July 18, 2014).

²⁸ Florida Virtual School, *Global School*, available at <http://www.flvsglobal.net/students-families/how-global-school-works/> (last visited July 18, 2014).

²⁹ Florida Virtual School, *Florida Virtual School 2012-2013 Legislative Report*, at 36, available at <http://www.flvs.net/areas/aboutus/Pages/LegislativeReport.aspx> (last visited July 18, 2014).

³⁰ Section 1002.37(1)(b), F.S.

³¹ Section 1002.37(3)(c), F.S.

program if the student’s individual education plan indicates that full-time virtual instruction is appropriate for the student.³²

K-12 Florida Virtual School Education Options

Delivery System		Student Grade Level												
		K	1	2	3	4	5	6	7	8	9	10	11	12
Florida Virtual School (FLVS)	Full													
	Part													

Authority to Deliver:

Enrollment: **Full** = Full-time enrollment

Part = Part-time enrollment

Legend: = Authorized to deliver

= Student must meet eligibility requirements of s. [1002.455\(2\)](#)

How do students earn credit through Florida Virtual School courses?

High school students earn credit toward graduation for successful completion of high-school level FLVS courses. Middle school students do not earn credits, but they progress from grade to grade by successfully completing the courses required for middle school promotion.³³

Florida law does not place limits on the number of credits or course completions that a student may earn through the FLVS.³⁴ For transfer purposes, credit for courses completed through the FLVS must be treated the same as courses listed in the Course Code Directory or courses offered by regionally accredited Florida public schools.³⁵

What are the credentials and availability of teachers?

All teachers providing instruction for FLVS, including Florida college teachers, must hold valid Florida teaching certificates in the appropriate areas of instruction, including English for Speakers of Other Languages (ESOL), Exceptional Student Education (ESE) and Reading certifications/endorsements, if applicable. All employees and contracted personnel must be screened as required by section 1012.32, Florida Statutes (F.S.), using state and national criminal history records.³⁶

Teachers are available via telephone, text, email, and instant messenger from 8:00 a.m. for 12 hours, seven days a week. Teachers prepare monthly progress reports and at least once per month speak via telephone with students and parents.³⁷

How do school districts participate in the program?

The FLVS is available to students in all 67 Florida school districts.³⁸ At the beginning of each school year, district school boards must notify parents of high school students of the opportunity and benefits of acceleration mechanisms and FLVS courses and options for early or accelerated high school graduation.³⁹

³² Section 1003.57(5), F.S.

³³ Sections 1002.37(3)(a)1.-2. and 1001.42(23), F.S.

³⁴ Sections 1002.37(3)(c) and 1001.42(23), F.S.

³⁵ Florida Department of Education, *Memorandum: Florida Virtual School as a School Choice Option*, at 4 (Jan. 8, 2009), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-5250/dps-2009-007.pdf>.

³⁶ Florida Department of Education, *Florida Public Virtual Schools Questions and Answers 2014-15*, available at <http://www.fldoe.org/Schools/virtual-schools/pdf/DistrictVIP-FAQ.pdf> (last visited July 17, 2014).

³⁷ Florida Virtual School, *How does FLVS Work*, available at <http://www.flvs.net/Students/Pages/how-it-works.aspx> (last visited July 18, 2014).

³⁸ Florida Virtual School, *Florida Virtual School 2012-13 Legislative Report*, at 6, available at <http://www.flvs.net/areas/aboutus/Pages/LegislativeReport.aspx> (last visited July 18, 2014).

³⁹ Section 1003.02(1)(i), F.S.

School districts must provide students at all grade levels with access to FLVS courses during and after the normal school day and through summer school enrollment.⁴⁰

Additionally, the FLVS may enter into franchise agreements with Florida district school boards to provide FLVS courses in grades K-12 at the district level.⁴¹ The FLVS board of trustees establishes the criteria defining the elements of an approved franchise, the terms and conditions governing franchise agreements, and the performance and accountability measures for a school district franchise. The board also reports the performance of each school district franchise to the Commissioner of Education.⁴² School districts operating an approved FLVS franchise may count full-time equivalent (FTE) students for funding purposes in the Florida Education Finance Program (FEFP).⁴³ The FLVS currently has franchise agreements with 56 school districts and 2 university lab schools.⁴⁴

How is the Florida Virtual School funded?

Funding for the FLVS is based on successful completion of courses. A student in grades 9 through 12 counts as a FTE student if the student successfully completes six full-credit courses that count toward the minimum number of credits required for high school graduation. For a student in kindergarten through grade 8, one FTE student equals one student who successfully completes six courses or the prescribed level of content that counts toward promotion to the next grade.⁴⁵

A student who completes less than six credits is a fraction of a FTE student. Half-credit completions must be included in determining a FTE student.⁴⁶

Beginning in the 2016-2017 fiscal year, the reported FTE students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment must be adjusted after the students complete the end-of-course assessment. Funding must not be adjusted for home education program students who choose to not take an end-of-course assessment.⁴⁷

Public school students receiving full-time instruction in kindergarten through grade 12 by the FLVS must take all statewide assessments. Public school students receiving part-time instruction by the FLVS in courses requiring statewide end-of-course assessments must take all end-of-course statewide assessments. Unless an alternative testing site is mutually agreed to by FLVS and the school district or as contracted by the school district, all statewide assessments must be taken at the school to which the student is assigned according to district school board attendance areas. A school district must provide the student access to the school's testing facilities.⁴⁸

The combined total of all FTE reported by both the school district and the FLVS must not exceed 1.0 FTE for students receiving part-time instruction in kindergarten through grade 5 and students receiving full-time instruction in kindergarten through grade 12 from the FLVS.⁴⁹ If the sum is greater than 1.0 FTE, the full-time equivalent student membership value for each program or course shall be prorated so that the FTE value equals 1.0.⁵⁰

⁴⁰ Sections 1001.42(23) and 1003.498 F.S.

⁴¹ Florida Department of Education, *Florida's K-12 Virtual Education Options Chart*, available at <http://www.fldoe.org/Schools/virtual-schools/pdf/veof.pdf> (last visited July 18, 2014).

⁴² Section 1002.37(2)(i), F.S. Commissioner-approved franchises of the FLVS are subject to the requirements of s. 1002.37, F.S., relating to the Florida Virtual School, unless the franchise is established as part of a school district virtual instruction program. 1002.45(1)(c)1., F.S. Need DOE to verify highlighted text.

⁴³ Section 1002.37(3), F.S.

⁴⁴ Florida Department of Education, *Florida Public Virtual Schools: List of District Franchises*, <http://www.fldoe.org/schools/virtual-schools/district-franchises.asp> (last visited July 18, 2014).

⁴⁵ Section 1002.37(3)(a)1. and 2., F.S.

⁴⁶ Section 1002.37(3)(a)1. and 2., F.S.

⁴⁷ Sections 1002.37(3)(a)3., 1008.22(3)(g), and 1011.61(1)(c)1.b.(V), F.S.

⁴⁸ Section 1002.37(9), F.S.

⁴⁹ Section 1002.37(8)(b), F.S.

⁵⁰ Section 1011.61(4)(a), F.S.

Historical funding amounts for the FLVS in the FEFP are below:

FY	Number of Unweighted FTE	Amount/FTE	Total Funds (includes Categorical Funds)
2003-04 ⁵¹	1,764.23	\$4,859.02	\$8,572,428
2004-05 ⁵²	2,791.72	\$5,191.43	\$14,493,007
2005-06 ⁵³	4,684.43	\$5,307.03	\$24,860,407
2006-07 ⁵⁴	6,865.90	\$6,300.27	\$43,257,056
2007-08 ⁵⁵	9,686.52	\$6,467.92	\$62,651,654
2008-09 ⁵⁶	12,907.92	\$6,296.75	\$81,277,949
2009-10 ⁵⁷	18,551.07	\$5,627.13	\$104,389,203
2010-11 ^{54,58}	22,655.60	\$5,186.42	\$117,501,544
2011-12 ^{55,59}	27,983.01	\$4,818.80	\$134,844,645
2012-13 ⁶⁰	38,272.48	\$5,182.22	\$198,336,222

The FLVS is authorized to generate supplemental revenue from a variety of sources, including alumni associations, foundations, parent-teacher associations, and booster associations.⁶¹ In addition, FLVS may also receive funds from grants and donations.⁶²

Where can I get additional information?

The Florida Virtual School

2145 Metrocenter Blvd., Suite 200
Orlando, FL 32835
(407) 513-3587
<http://www.flvs.net>

Florida Department of Education

Division of Public Schools
(850) 245-0509
<http://www.fldoe.org/Schools/virtual-schools/>

⁵¹ Florida Department of Education - Office of Funding and Financial Reporting, *Florida Education Finance Program 2003-04 Final Calculation* (Dec. 9, 2004), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-2660/05-14a.pdf>.

⁵² Florida Department of Education - Office of Funding and Financial Reporting, *Florida Education Finance Program 2004-05 Final Calculation* (Dec. 8, 2005), available at <http://info.fldoe.org/docushare/dsweb/Get/Version-3597/200405FinalFEFPCalc.pdf>.

⁵³ Florida Department of Education - Office of Funding and Financial Reporting, *Florida Education Finance Program 2005-06 Final Calculation* (Nov. 7, 2006), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-4098/coefo07-10-1.pdf>.

⁵⁴ Florida Department of Education - Office of Funding and Financial Reporting, *Florida Education Finance Program 2006-07 Final Calculation* (Nov. 9, 2007), available at <http://www.fldoe.org/feffp/pdf/0607finalcalcparta.pdf>.

⁵⁵ Florida Department of Education - Office of Funding and Financial Reporting, *Florida Education Finance Program 2007-08 Final Calculation* (Dec. 12, 2008), available at <http://www.fldoe.org/feffp/pdf/07-08FEFP-FinalCalc-1.pdf>.

⁵⁶ Florida Department of Education - Office of Funding and Financial Reporting, *Florida Education Finance Program 2008-09 Final Calculation* (Dec. 4, 2009), available at <http://www.fldoe.org/feffp/pdf/0809finalcalc-1.pdf>.

⁵⁷ Florida Department of Education - Office of Funding and Financial Reporting, *Florida Education Finance Program 2009-10 Final Calculation* (Nov. 19, 2010), available at <http://www.fldoe.org/feffp/pdf/09-10-final.pdf>.

⁵⁸ Florida Department of Education - Office of Funding and Financial Reporting, *Florida Education Finance Program 2010-2011 Final Calculation* (Oct. 28, 2011), available at <http://www.fldoe.org/feffp/pdf/10-11-final-part1.pdf>.

⁵⁹ Florida Department of Education - Office of Funding and Financial Reporting, *Florida Education Finance Program 2011-2012 Fourth Quarter Calculation* (May 7, 2012) available at <http://www.fldoe.org/feffp/pdf/11-12-fourth-part1.pdf>.

⁶⁰ Florida Department of Education - Office of Funding and Financial Reporting, *Florida Education Finance Program 2012-2013 Final Calculation* (Oct. 31, 2013), available at <http://www.fldoe.org/feffp/pdf/12-13-Final.pdf>.

⁶¹ Section 1002.37(2)(e), F.S.

⁶² Section 1002.37(3)(h), F.S.

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov/>



What is the John M. McKay Scholarships for Students with Disabilities Program?

The John M. McKay Scholarships for Students with Disabilities Program (McKay Scholarship Program) provides scholarships for eligible students with disabilities to attend an eligible public or private school of their choice. Students with disabilities include K-12 students who are documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; an other health impairment; an emotional or behavioral disability; a specific learning disability, including but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder.¹

What options are available to a student with disabilities under the McKay Scholarship Program?

The parent of an eligible student with disabilities may choose from several options:

- Attendance at another public school within the school district;²
- Attendance at an eligible public school in an adjacent school district that has space and provides the services identified in the student's Individual Educational Plan (IEP)³ or 504 Accommodation Plan (504 Plan)⁴; or
- Attendance at an eligible private, sectarian or nonsectarian school.⁵

What are the student eligibility requirements for the McKay Scholarship Program?

A student with a disability may receive a McKay Scholarship to attend a public or private school if he or she has an IEP or a 504 plan⁶ and:

- Received specialized instructional services under the Voluntary Prekindergarten Education Program⁷ during the previous school year; or

¹ Section 1002.39(1), F.S.

² Section 1002.39(5)(a)1., F.S.; rule 6A-6.0970(2), F.A.C.

³ An IEP is developed for students with disabilities ages three through 21. The IEP team must include the parent; at least one Exceptional Student Education (ESE) teacher of the child; at least one general education teacher of the child; a representative of the school district, and when appropriate, the student with the disability. The IEP team develops annual goals, both academic and functional, for the student based on his or her strengths, needs, and the effect of the disability. Once the goals are determined, the team decides what type of special education services and supplementary aids the student needs and how often and where the services should be provided, e.g., in the general education class or in the ESE classroom. 34 C.F.R. s. 300.320 and .321; rule 6A-6.03028(3), F.A.C.

⁴ Section 1002.39(5)(e), F.S.; rule 6A-6.0970(2), F.A.C. A 504 Plan is formulated by a team of parents, teachers, and other staff members for a student identified as an individual with a disability under the Rehabilitation Act. The Rehabilitation Act does not list specific illnesses due to the difficulty of creating an all-inclusive list of impairments. The Act defines disability as any physical or mental impairment that "substantially limits one or more major life activities." The 504 Plan provides a description of the accommodations that the school will provide a student. Generally, a student with a 504 Plan does not have an IEP or a matrix of services. Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355; Florida Department of Education, *A Parent and Teacher Guide to Section 504: Frequently Asked Questions*, <http://www.fl DOE.org/ese/pubxhome.asp> (last visited July 17, 2014).

⁵ Section 1002.39(2) and (8), F.S.

⁶ A student's 504 plan must be at least 6 months in duration in order for the student to be eligible for a scholarship. Rule 6A-6.0970(1)(b)3., F.S.

⁷ In 2010, the Legislature established a specialized instructional services program for children with disabilities as an option under the Voluntary Prekindergarten Education (VPK) Program. Beginning with the 2012-13 academic year, a child who has a disability is eligible for specialized instructional services if the child is eligible for the VPK Program and has a current IEP developed by the district school board. Section 1002.66, F.S.; see also s. 1002.53, F.S.

- Spent the prior school year in attendance at a Florida public school or the Florida School for the Deaf and the Blind.⁸

For purposes of scholarship eligibility, the term “prior school year in attendance” means the student was enrolled and reported by:

- A school district for funding during the preceding October and February FEFP surveys in kindergarten through grade 12, which includes time spent in a Department of Juvenile Justice commitment program if funded under the FEFP;
- The Florida School for the Deaf and the Blind during the preceding October and February student membership surveys in kindergarten through grade 12; or
- A school district for funding during the preceding October and February FEFP surveys and the student was at least 4 years old when enrolled and reported and eligible for services under the school attendance requirements for prekindergarten aged children with disabilities.⁹

The student’s parent must file a notice of intent with the Department of Education (DOE) by completing an online application using DOE’s website. If the parent chooses the private school option, the notice of intent must be filed prior to withdrawing the student from public school. Once a completed notice of intent has been filed, the parent will receive immediate online confirmation, which includes a notice of potential eligibility or ineligibility. If a student is deemed ineligible to participate, the reason for the ineligibility and instructions for contacting the school district to address the ineligibility will be provided.¹⁰

A dependent child of a member of the United States Armed Forces who transfers to a Florida school from out of state or from a foreign country due to a parent’s permanent change of station orders is exempt from the prior school year in attendance requirements, but must meet all other eligibility requirements to participate in the McKay Scholarship Program, i.e., be diagnosed with an eligible disability and have an IEP or 504 plan.¹¹

Who is not eligible for a McKay Scholarship?

A student is not eligible¹² for a McKay Scholarship while he or she is:

- Enrolled in a Department of Juvenile Justice commitment program¹³ or enrolled in the Florida School for the Deaf and the Blind;¹⁴
- Receiving an Opportunity Scholarship;¹⁵
- Receiving a Florida Tax Credit Scholarship;¹⁶
- Receiving a Personal Learning Scholarship Account;¹⁷
- Participating in a home education program¹⁸ or private tutoring program;¹⁹
- Participating in a state-funded virtual school, correspondence school, or distance learning program unless the participation is limited to no more than two courses per school year;²⁰

⁸ Section 1002.39(2)(a), F.S.

⁹ Section 1002.39(2)(a)2., F.S. Although not required to attend a public school, children with disabilities who have attained the age of 3 years are eligible for admission to public special education programs and related services. Section 1003.21(1)(e), F.S.

¹⁰ Section 1002.39(1), F.S.; rule 6A-6.0970(1)(a), F.A.C.

¹¹ Section 1002.39(2)(a), F.S. (flush left provision at the end of the paragraph).

¹² A student receiving a McKay Scholarship may not also receive a Personal Learning Scholarship Account (PLSA). Section 1002.385(4)(a)3., F.S.

¹³ See s. 1003.52, F.S.

¹⁴ See s. 1002.36, F.S.

¹⁵ See s. 1002.38, F.S.

¹⁶ See s. 1002.395, F.S.

¹⁷ See s. 1002.385, F.S.

¹⁸ See s. 1002.41, F.S.

¹⁹ See s. 1002.43, F.S.

²⁰ See, e.g., s. 1002.455(3), F.S.

- Not receiving regular and direct contact with a classroom teacher at the private school's physical location; or
- Issued a temporary 504 plan, which is valid for 6 months or less.²¹

What are the parent and the student responsibilities for participation in the McKay Scholarship Program at a private school?

The parent of a scholarship student must:

- Select a private school and apply for admission.
- Request the scholarship at least 60 days before the date of the first scholarship payment.
- Transport the student to the assessment site if the student participates in statewide assessments.
- Restrictively endorse the scholarship warrant upon receipt to the private school and may not designate any entity or individual associated with the participating private school as the parent's attorney-in-fact to endorse the warrant.

The student must maintain attendance at the school throughout the school year, unless excused by the school for illness, or other good cause. Each parent and student must comply with the private school's published policies.²² If the student is accepted by the private school pending the availability of a space for the student, the parent must notify DOE 60 days prior to the first scholarship payment and before entering the private school in order to be eligible for the scholarship when a space becomes available.²³

What are the school district's responsibilities under the McKay Scholarship Program?

The school district must:

- Notify parents by April 1 of each year and within 10 days of the student's IEP meeting or issuance of a 504 Plan of all educational options under the McKay Scholarship Program and of the availability of DOE's telephone hotline and website for additional information on the program.²⁴
- Complete a matrix of services²⁵ if the student does not have one. If the student currently has a matrix of services, the district may only modify it to correct a technical, typographical, or calculation error.²⁶
- Provide notification to parents of the availability of a reevaluation for the student's disability at least every three years.²⁷
- Provide locations and times for all state assessments to parents who request that the student take statewide assessments.²⁸
- Report all students who are attending a private school under the program.²⁹

²¹ Section 1002.39(3), F.S.

²² Section 1002.39(9), F.S.

²³ Section 1002.39(5)(d), F.S.

²⁴ Section 1002.39(5)(a)1., F.S.

²⁵ The Matrix of Services is the document that is used to determine the cost factor for special education and related services provided to exceptional education students. The matrix is based on the student's IEP. Generally speaking, the cost factor is based upon the nature and intensity of the services necessary to educate the student. See s. 1011.62(1)(c) and (e), F.S.

²⁶ Section 1002.39(5)(b), F.S.; rule 6A-6.0970(4), F.A.C.

²⁷ Section 1002.39(5)(c), F.S.

²⁸ Section 1002.39(5)(f), F.S.

²⁹ Section 1002.39(10)(c)1., F.S. McKay Scholarship Program students must be reported separately from other students reported for purposes of the FEFP. *Id.*

What criteria must a private school meet to be eligible to participate in the McKay Scholarship Program?

Participation in the McKay Scholarship Program is open to sectarian and nonsectarian private schools that:

- Comply with all requirements for a private school participating in state school choice scholarship programs.³⁰
- Annually provide the parent with a written explanation of the student's progress.
- Cooperate with a scholarship student whose parent chooses to have the student participate in the statewide assessments.
- Submit all documentation to DOE for a student's participation at least 30 days prior to the first quarterly scholarship payment. A student is not eligible to receive a quarterly scholarship payment if the private school fails to meet this deadline.
- Maintain a physical location in Florida where a scholarship student regularly attends classes.

Failure to meet these requirements, as determined by DOE, constitutes a basis for a private school to become ineligible to participate in the McKay Scholarship Program.³¹

Are parents or school districts responsible for transporting McKay Scholarship students to and from school?

A parent choosing the private school option is responsible for their student's transportation.³² The school district is responsible for providing student transportation to the public school selected by the parent if the school selected is consistent with the school board's choice plan. The parent is responsible for providing transportation to a public school within the school district that is inconsistent with the school board's choice plan.³³ If a student attends a public school in an adjacent district, the parent is responsible for providing transportation.³⁴

What are the Department of Education's obligations for administering the McKay Scholarship Program?

The DOE must:

- Provide information to parents and private schools about participation in the McKay Scholarship Program via a toll-free hotline.³⁵
- Determine, in cooperation with the school district, student eligibility for a McKay Scholarship.³⁶
- Annually verify the eligibility of private schools.³⁷
- Notify the private school participating in the McKay Scholarship Program of the amount of a scholarship within 10 days after receiving the school district's notification of a student's matrix level.³⁸
- Establish a process that allows for individuals to notify DOE of violations of state law relating to program participation.³⁹
- Annually receive and retain from every participating private school a notarized, sworn compliance statement certifying compliance with state law.⁴⁰

³⁰ Accountability requirements for private schools participating in the state school choice scholarship programs are listed in s. 1002.421, F.S.

³¹ Section 1002.39(8), F.S.

³² See s. 1002.39(5), F.S.

³³ Section 1002.39(5)(a)3., F.S.

³⁴ Section 1002.39(5)(e), F.S.

³⁵ Section 1002.39(6)(a), F.S.

³⁶ Rule 6A-6.0970(1)(b), F.A.C.

³⁷ Section 1002.39(6)(b), F.S.

³⁸ Section 1002.39(5)(b)2.c., F.S.

³⁹ Section 1002.39(6)(c), F.S.; rule 6A-6.0970(8), F.A.C.

- Cross-check the list of participating scholarship students with public school enrollment lists prior to each scholarship payment to avoid duplication.⁴¹
- Conduct no more than three random site visits annually to private schools participating in the program and no more than one random site visit each year to the same private school.⁴²
- Annually, by December 15, report to the Governor, the President of the Senate, and the Speaker of the House of Representatives its actions in implementing accountability standards and any substantiated allegations or violations of law or rule by an eligible private school concerning the enrollment and attendance of students, the credentials of teachers, background screening of teachers, and teachers' fingerprinting results, and the corrective action taken by DOE.⁴³

What authority does the Commissioner of Education have to enforce private school compliance with the laws governing the McKay Scholarship Program?

The Commissioner of Education has the authority to:

- Deny, suspend, or revoke a private school's participation in the McKay Scholarship Program and to take other action as necessary to ensure compliance with the laws governing private schools participating in the program.⁴⁴
- Deny, suspend, or revoke a private school's participation in the McKay Scholarship Program if the commissioner determines that an owner or operator of the private school is operating or has operated an educational institution in Florida or in another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public.⁴⁵
- Immediately suspend payment of scholarship funds if there is probable cause to believe that there is an imminent threat to the health, safety, and welfare of the students or if there is fraudulent activity on the part of the private school.⁴⁶

How is a McKay Scholarship payment made to a private school?

Upon receiving proper documentation from DOE, the Chief Financial Officer must make the scholarship payments in four equal installments. Scholarship payments must be issued on or before September 1, November 1, February 1, and April 1. The DOE is responsible for verifying the student's admission to, and continued enrollment and attendance at, the private school.⁴⁷

Each payment must be made by individual warrant payable to the student's parent and mailed by DOE to the private school. The parent must restrictively endorse the warrant to the private school.⁴⁸ Subsequent to each payment, DOE must request a sample of endorsed warrants from the Department of Financial Services. The DOE must review the samples and confirm compliance with endorsement requirements.⁴⁹

⁴⁰ Section 1002.39(6)(d), F.S.; rule 6A-6.03315, F.A.C.

⁴¹ Section 1002.39(6)(e), F.S.

⁴² Section 1002.39(6)(f)1., F.S. The purpose of the site visit is solely to verify the information reported by the school concerning the enrollment and attendance of students, the credentials of teachers, background screening of teachers, and teachers' fingerprinting results. *Id.*

⁴³ Section 1002.39(6)(f)2., F.S.

⁴⁴ Section 1002.39(7)(a), F.S.; rule 6A-6.0970(7), F.A.C.

⁴⁵ Section 1002.39(7)(a), F.S.

⁴⁶ Section 1002.39(7)(c), F.S.

⁴⁷ Section 1002.39(10)(e), F.S.; rule 6A-6.0970(5), F.A.C.

⁴⁸ Section 1002.39(10)(e), F.S.

⁴⁹ Section 1002.39(10)(f), F.S.

What is the award amount for a McKay Scholarship to a private school?

The scholarship amount is the lesser of the FEFP funding amount the student would receive at his or her assigned public school or the amount of the private school's tuition and fees.⁵⁰

McKay Scholarship Annual Funding⁵¹			
Academic Year	Total Funding	Students	Scholarship Award
2002-03	\$ 53 million	9,130	\$6,769
2003-04	\$81.7 million	13,739	\$6,814
2004-05	\$97.2 million	15,910	\$6,835
2005-06	\$107.7 million	17,300	\$6,926
2006-07	\$119.1 million	18,273	\$7,206
2007-08	\$131.3 million	19,852	\$7,295
2008-09	\$133.8 million	20,530	\$7,240
2009-10	\$138.7 million	20,926	\$7,144
2010-11	\$148.5 million	22,198	\$7,209
2011-12	\$151.3 million	24,194	\$6,849
2012-13	\$168.8 million	26,611	\$7,019
2013-14	\$183.9 million	28,370	\$7,278

Where can I get additional information?

Florida Department of Education

Office of Independent Education & Parental Choice

(850) 245-0502

Toll-Free Information Hotline: (800) 447-1636

www.floridaschoolchoice.org

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

⁵⁰ Section 1002.39(10)(b), F.S.

⁵¹ The Florida Department of Education provides quarterly reports on the McKay Scholarship Program, which contains private school and student statistics. Florida Department of Education, *McKay Quarterly Reports*, http://www.floridaschoolchoice.org/Information/McKay/quarterly_reports.asp (last visited July 17, 2014).



What is the Opportunity Scholarship Program?

The Opportunity Scholarship Program (OSP) is a school choice program created by the Legislature in 1999 as part of the A+ Education Plan.¹ The OSP provides scholarships to students who are enrolled in or assigned to a public school that has earned a school grade of “F” or three consecutive school grades of “D” to attend a higher-performing public school² within the school district or in any other school district in the state that has space available.³ The OSP was created to provide enhanced opportunities for students to gain the knowledge and skills necessary for postsecondary education, a career education, or the world of work.⁴

Who is eligible for an Opportunity Scholarship?

A public school student is eligible for an Opportunity Scholarship if one of the following criteria is met:

- The student spent the prior school year in attendance at a public school that earned a school grade of “F” or three consecutive school grades of “D”.
- The student has been in attendance elsewhere in the public school system and has been assigned to a school for the next year that earned a school grade of “F” or three consecutive school grades of “D”.
- The student has been notified that he or she has been assigned to a school for the next school year that earned a school grade of “F” or three consecutive school grades of “D”.⁵

How do I know if my child is eligible for an Opportunity Scholarship?

The school district must timely notify the parent of each student enrolled in or assigned to an OSP eligible school of the opportunity to enroll the student in a higher-performing school within the district and of the opportunity to enroll the student in a higher-performing school in any other school district in the state that has space available.⁶

Elementary and middle schools receive their school grade at the end of the school year and before the start of the following school year. The school district must notify parents of each student enrolled in or assigned to an OSP eligible elementary or middle school of the opportunity to transfer to a higher-performing school no later than 15 calendar days after the district receives notification. High schools receive their school grade the following school year. After receiving notification of a high school’s grade, the school district must notify parents of each student enrolled in or assigned to an OSP eligible school of the opportunity to transfer to a higher-performing high school no later than 30 calendar days prior to the start of the next school year.⁷

Does the Opportunity Scholarship Program provide for transportation?

It depends upon the option selected by an eligible student’s parent. If the parent enrolls the student in a higher-performing public school within the school district, the district must provide transportation. However, if

¹ Sections 1-4, ch. 99-398, L.O.F.

² State Board of Education rule defines “higher-performing school” to mean a public school that has received a school grade of “C” or higher. Rule 6A-6.0950(1)(c), F.A.C.; see s. 1002.38(3)(a)2., F.S.

³ Section 1002.38(2) and (3), F.S.

⁴ Section 1002.38(1), F.S.

⁵ Section 1002.38(2)(a), F.S. Students who are enrolled in Department of Juvenile Justice education programs are not eligible for the OSP. Section 1002.38(2)(b), F.S.

⁶ Section 1002.38(3)(a)-(b), F.S.; rule 6A-6.0950(3), F.A.C.

⁷ Rule 6A-6.0950(3), F.A.C.

the parent enrolls the student in a higher-performing public school in another school district, the parent must provide transportation.⁸

How long does an Opportunity Scholarship last?

For purposes of continuity of educational choice, the Opportunity Scholarship must remain in force until the student graduates from high school.⁹

How many Opportunity Scholarships are being utilized in Florida?

The table below shows the number of Opportunity Scholarships provided to enrolled students during the 2006-07 through 2013-14 academic years.

Academic Year	Participating Districts	Schools Enrolling OSP Students	OSP Students Enrolled
2006-07	5	11	1,315
2007-08	8	21	1,305
2008-09	11	23	1,280
2009-10	9	19	1,431
2010-11	14	24	1,335
2011-12	33	161	4,424
2012-13	28	99	3,649
2013-14	27	93	3,588
Total	135	451	18,327

For the 2013-14 academic year, 93 public schools in 27 school districts earned a school grade of “F” or three consecutive school grades of “D.” Students who were enrolled in these schools during the 2013-14 academic year or who are assigned to these schools for the 2014-15 academic year are eligible to participate in the OSP for the 2014-15 academic year.¹⁰

What are the demographics of students who benefited from the Opportunity Scholarship Program during 2013-14 academic year?

A total of 3,588 students participated in the OSP for the 2013-14 school year. Of those students, African-American students were among the largest population to participate at 62%, followed by white students at 18%, Hispanic/Latino students at 15%, and others at 5%.¹¹

Of the students that enrolled in the OSP during the 2013-14 academic year, 71% of the students were eligible for free lunch and 7% were eligible for reduced price lunch.¹²

⁸ Section 1002.38(3)(b) and (e), F.S. School districts are authorized to use state categorical transportation funds or state-appropriated public school choice incentive funds to provide transportation to eligible students. Section 1002.38(3)(e), F.S.

⁹ Section 1002.38(2)(b), F.S.

¹⁰ Email, Florida Department of Education, Legislative Affairs Director (Oct. 13, 2014).

¹¹ *Id.*

¹² *Id.*

Where can I get additional information?

Florida Department of Education

Office of Independent Education & Parental Choice
(850) 245-0502

Toll-Free Information Hotline: (800) 447-1636

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Florida House of Representatives

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(850) 717-4830

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What is the Florida Tax Credit Scholarship Program?

The Florida Tax Credit Scholarship Program (FTC Program)¹ was established to encourage taxpayers to make private, voluntary contributions to non-profit scholarship-funding organizations (SFOs), expand educational opportunities for families that have limited financial resources, and enable Florida's children to achieve a greater level of excellence in their education.² The FTC Program is funded with contributions to private nonprofit scholarship-funding organizations (SFOs) from taxpayers who receive a tax credit for use against their liability for corporate income tax; insurance premium tax; severance taxes on oil and gas production; self-accrued sales tax liabilities of direct pay permit holders; or alcoholic beverage taxes on beer, wine, and spirits.³ The tax credit is equal to 100 percent of the eligible contributions made.⁴

SFOs use these contributions to award scholarships to eligible low-income students for private school tuition and fees or transportation expenses to a Florida public school located outside of the school district in which the student resides.⁵ During the 2013-14 school year, 59,822 students were awarded FTC Program scholarships. Of that number, 30,517 students were female students and 29,305 students were male.⁶

Who is eligible for an FTC Program scholarship?

Generally speaking, the FTC Program provides scholarships to children from low-income families. Prior to July 1, 2014, in order for a student to initially qualify for the program based upon family income, he or she must have attended public school in the previous school year and have a family income at or below 185 percent of the federal poverty level.⁷ Legislation enacted in 2014 removed the prior public school attendance requirement and, beginning with the 2016-17 school year, created eligibility for students with higher family incomes.⁸

For the 2014-15 and 2015-16 school years, contingent upon available funds, a student is eligible for a FTC Program scholarship if he or she meets one or more of the following criteria:

- Qualifies for free or reduced-price school lunches under the National School Lunch Act (NSLA)⁹ or is on the direct certification list.¹⁰

¹ Section 1002.395, F.S.

² Section 1002.395(1)(b), F.S.

³ Section 1002.395(1) and (5), F.S.

⁴ Sections 220.1875 and 1002.395(5), F.S.

⁵ Section 1002.3953 (6)(d), F.S. An eligible contribution is a monetary contribution from a taxpayer to an eligible nonprofit SFO. The taxpayer may not designate a specific child as the beneficiary of the contribution. Section 1002.395(2)(e), F.S.

⁶ Florida Department of Education, *Florida Tax Credit Scholarship Program: June Quarterly Report*, at 1, 4 (June 2014), available at http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_june2014.pdf [hereinafter *June Quarterly Report*].

⁷ Section 1002.395(3)(b)1.a., F.S. (2013). Children from families with incomes at or below 130 percent of the poverty level are eligible for free meals under the NSLA. Those with incomes between 130 percent and 185 percent of the poverty level are eligible for reduced-price meals, for which students can be charged no more than 40 cents. U.S. Department of Agriculture, *National School Lunch Program Fact Sheet*, at 2 (Sept. 2013), available at <http://www.fns.usda.gov/sites/default/files/NSLPFactSheet.pdf>.

⁸ Section 17, ch. 2014-184, L.O.F., codified as s. 1002.395(b)-(c), F.S. (2014).

⁹ The National School Lunch Program is a federally funded program administered by the United States Department of Agriculture that assists schools and other agencies in providing nutritious meals to children at reasonable prices. 42 U.S.C. s. 1758(b). In Florida, the Florida Department of Agriculture and Consumer Services, Division of Food, Nutrition, and Wellness administers the program. Chapter 595, F.S.; Florida Department of Agriculture and Consumer Services, *National School Lunch Program*,

- Is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care.¹¹
- The student received a scholarship in the previous school year and his or her household income level does not exceed 230 percent of the Federal Poverty Level.¹²

For the 2016-17 school year and thereafter, contingent upon available funds, a student is eligible for a FTC Program scholarship if he or she meets one or more of the following criteria:

- The student is on the direct certification list or the student's household income level does not exceed 185 percent of the federal poverty level.
- The student is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care.
- The student's household income level is greater than 185 percent of the federal poverty level but does not exceed 260 percent of the federal poverty level.¹³

A student who receives a scholarship based upon placement in foster care or out-of-home care remains eligible until he or she graduates from high school or turns 21, whichever occurs first, regardless of his or her household income level. A sibling of a participating student is eligible for a scholarship if he or she resides in the same household as the sibling.¹⁴

Priority is given to students who received a scholarship in the previous year. Beginning in the 2016-17 school year, a SFO must also give priority to new applicants whose household income levels do not exceed 185 percent of the federal poverty level or who are in foster care or out-of-home care.¹⁵

Is there a limit on the amount of tax credits that may be made to eligible SFOs and on the per-student scholarship amount?

Yes. The law caps the amount of tax credits that may be made for scholarships and places limits on the per-student scholarship amount.

Tax Credit Cap

The Legislature has incrementally increased the tax credit caps for the FTC Program. Tax credits were initially capped at \$50 million in tax credits per state fiscal year,¹⁶ but the cap was expanded to \$88 million in 2003.¹⁷ Beginning in FY 2008-09, the cap was increased by \$30 million to \$118 million.¹⁸ Until 2009, tax credits under the program were only available against the state's corporate income tax liability. In 2009, the Legislature expanded the revenue sources against which tax credits can be claimed to include the insurance premium tax.¹⁹ In 2010, the revenue sources against which tax credits can be claimed were further expanded to include

<http://www.freshfromflorida.com/Divisions-Offices/Food-Nutrition-and-Wellness/Nutrition-Programs/National-School-Lunch-Program> (last visited July 10, 2014).

¹⁰“Direct certification list” means the certified list of children who qualify for the food assistance program, the Temporary Assistance to Needy Families Program, or the Food Distribution Program on Indian Reservations provided to the Department of Education (DOE) by the Department of Children and Family Services. Section 1002.395(2)(c), F.S.

¹¹ Section 1002.395(3)(b)2., F.S.; *see also* s. 39.01(31), F.S. Out-of-home care more generally refers to any case in which a child is removed from the home of the parent, whether it is placement in foster care or with a relative or other care giver. Rule 65C-30.001(91), F.A.C. An out-of-home placement that is not foster care typically refers to a placement with a relative. Ch. 39, F.S.; *see e.g.*, chs. 65C-13, 65C-15, 65C-28, 65C-29, and 65C-30, F.A.C.

¹² Section 1002.395(3)(b)3., F.S.

¹³ Section 1002.395(3)(c)1-3., F.S.

¹⁴ Section 1002.395(3), F.S. (flush left provision at end of subsection).

¹⁵ Section 1002.395(6)(e), F.S.

¹⁶ Section 5, ch. 2001-225, L.O.F.

¹⁷ Section 9, ch. 2003-391, L.O.F.

¹⁸ Section 1, ch. 2008-241, L.O.F.

¹⁹ *See* s. 3, ch. 2009-108, L.O.F.

severance taxes on oil and gas production;²⁰ self-accrued sales tax liabilities of direct pay permit holders;²¹ and alcoholic beverage taxes on beer, wine, and spirits.²²

The Legislature also increased the tax credit cap to \$140 million, beginning in FY 2010-11, and authorized the cap to increase by 25 percent for the subsequent year whenever credits approved by Department of Revenue (DOR) in the prior fiscal year exceeded 90 percent of the tax credit cap for that year, beginning in FY 2011-12.²³ In 2012, the Legislature increased the cap for FY 2012-13 to \$229 million, an additional \$10.25 million increase over the 25 percent increase provided by statute.²⁴

In FY 2013-14 and each state fiscal year thereafter, the tax credit cap amount is the tax credit cap amount in the prior state fiscal year. However, in any state fiscal year when the annual tax credit amount for the prior state fiscal year is equal to or greater than 90 percent of the tax credit cap amount applicable to that state fiscal year, the tax credit cap amount shall increase by 25 percent.²⁵

Scholarship amount

The maximum scholarship award to each individual student is set at a percentage of the unweighted Florida Education Finance Program (FEFP) student funding in the General Appropriations Act. The percentage for FY 2013-14 was 72 percent, or \$4,880 per student. Thereafter, the scholarship amount increases by four percentage points each fiscal year the tax credit amounts meet or exceed 90 percent of the tax credit cap. The percentage will stop increasing upon reaching 80 percent of the unweighted FEFP funding amount. Beginning in FY 2016-17, the amount of a scholarship awarded to a student enrolled in an eligible private school is equal to 82 percent of the unweighted FTE funding amount for that state fiscal year and thereafter.²⁶

If a student's household income increases after he or she is initially determined eligible, the scholarship amount is reduced, unless the student is receiving a scholarship based upon placement in foster care or out-of-home care. The amount is reduced by:

- Twenty-five percent for a student with a household income that is equal to or more than 200 percent, but less than 215 percent of the federal poverty level; or
- Fifty percent if the student's household income is equal to or more than 215 percent, but equal to or less than 230 percent of the federal poverty level.²⁷

Beginning in FY 2016-17 and thereafter, the annual scholarship must be reduced by:

- Twelve percent if the student's household income level is greater than or equal to 200 percent, but less than 215 percent, of the federal poverty level.
- Twenty-six percent if the student's household income level is greater than or equal to 215 percent, but less than 230 percent, of the federal poverty level.
- Forty percent if the student's household income level is greater than or equal to 230 percent, but less than 245 percent, of the federal poverty level.
- Fifty percent if the student's household income level is greater than or equal to 245 percent, but less than or equal to 260 percent, of the federal poverty level.²⁸

²⁰ Section 211.0251, F.S.

²¹ Section 212.1831, F.S.

²² Sections 211.0251, 212.1831, and 561.1211, F.S., direct DOR and the Department of Business and Professional Regulation to disregard tax credits accordingly for purposes of the distributions of tax revenue under ss. 211.06, 212.20, 561.12(1)(a) and 564.06(10), F.S., so that only amounts distributed to the General Revenue Fund are reduced.

²³ Section 1, ch. 2010-24, L.O.F.

²⁴ Section 1, ch. 2012-22, L.O.F.

²⁵ Section 1002.395(5)(a)2., F.S.

²⁶ Section 1002.395(12)(a)1.a., F.S.

²⁷ Section 1002.395(12)(a)2., F.S.

²⁸ Section 1002.395(12)(a)3., F.S.

For a scholarship awarded to a student for enrollment in a Florida public school that is located outside the district in which the student resides, the limit is \$500.²⁹

The following table shows the history of the program and historical tax credit information.³⁰

	Award Per Student	Student Scholarships	Awarded Scholarships	Maximum Tax Credit Cap	Tax Credits Approved
FY 2001-02	\$3,500			\$50,000,000	
FY 2002-03	\$3,500	15,585	\$50,000,000	\$50,000,000	\$47,686,000
FY 2003-04	\$3,500	11,550	\$40,000,000	\$88,000,000	\$47,579,000
FY 2004-05	\$3,500	10,549	\$36,655,500	\$88,000,000	\$47,560,000
FY 2005-06	\$3,500	15,123	\$46,745,482	\$88,000,000	\$80,323,071
FY 2006-07	\$3,750	17,819	\$59,300,655	\$88,000,000	\$87,123,000
FY 2007-08	\$3,750	21,493	\$73,450,691	\$88,000,000	\$85,611,140
FY 2008-09	\$3,950	24,871	\$88,626,463	\$118,000,000	\$97,415,847
FY 2009-10	\$3,950	28,927	\$106,049,940	\$118,000,000	\$111,773,617
FY 2010-11	\$4,106	34,550	\$129,474,868	\$140,000,000	\$136,321,200
FY 2011-12	\$4,011	40,248	\$147,481,308	\$175,000,000	\$174,459,107
FY 2012-13	\$4,335	51,075	\$206,974,102	\$229,000,000	\$229,000,000
FY 2013-14	\$4,880	59,822	\$274,495,570	\$286,000,000	\$286,000,000

The tax credit cap for FY 2014-15 is \$357,812,500 and the estimated scholarship amount is \$5,272. As of August 31, 2014, two SFOs have raised a total of \$330,378,945 for scholarships -- Step Up For Students (\$329,778,945) and A.A.A. Scholarship Foundation – FL, L.L.C. (\$600,000).³¹

What are the revenue sources against which tax credits may be granted for contributions to the FTC Program and how much of a tax credit is a taxpayer authorized to receive for contributing to a SFO?

Corporate Tax Credit. A taxpayer may receive a credit of 100 percent of an eligible contribution to a SFO against any corporate income tax due for a taxable year after the application of all other allowable tax credits.³²

Insurance Premium Tax Credit. An insurance company may receive a credit of 100 percent of an eligible contribution to a SFO against any net tax due for a taxable year under the provisions of the state's insurance code.³³

Severance Taxes on Oil and Gas Production. A taxpayer may receive a credit of 100 percent of an eligible contribution to a SFO against tax due to the state from a person who severs oil or gas in Florida for sale, transfer, storage, profit, or commercial use. However, the credit may not exceed 50 percent of the tax due.³⁴

²⁹ Section 1002.395(12)(a)1.b., F.S.

³⁰ Florida Department of Education, *Fast Facts and Program Statistics*, available at, http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf. (last visited July 31, 2014); Staff of the Florida House of Representatives, *Legislative Bill Analysis for CS/HB 7099* (2014).

³¹ Email, Florida Department of Education, Office of Independent Education and Parental Choice (Sept. 18, 2014).

³² Sections 220.1875(1) and 1002.395(5)(b), F.S.

³³ Sections 624.51055 and 1002.395(5)(b), F.S. For purposes of determining the credit amount, the tax due is the amount of tax remaining after deductions for assessments related to the administration of workers compensation benefits; credits for excise taxes levied against property insurance premiums and casualty insurance premiums; credits for corporate income taxes; and credits for taxes on insurance premiums, premiums for title insurance, or assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements, and on annuity premiums or considerations. Section 624.51055, F.S.

³⁴ Sections 211.0251 and 1002.395(5), F.S. DOR must disregard tax credits for purposes of the distributions of tax revenue to ensure that any reduction in tax revenue received which is attributable to the tax credits results only in a reduction in distributions to the state's General Revenue Fund. Section 211.0251, F.S.; see also ss. 211.02, 211.025, and 211.06, F.S.

Sales Taxes Paid by Direct Pay Permit Holders. A taxpayer may receive a credit of 100 percent of an eligible contribution to a SFO against any tax imposed by the state and due from a direct pay permit holder as a result of the direct pay permit.³⁵

Alcoholic Beverage Taxes. A taxpayer may receive a credit of 100 percent of an eligible contribution to a SFO against any tax due, except excise taxes imposed on wine produced by manufacturers in Florida from products grown in Florida. However, the credit may not exceed 90 percent of the tax due.³⁶

Within any state fiscal year, a taxpayer may rescind all or part of a credit approved under the FTC Program if the rescindment is accepted by DOR. The amount of credit rescinded must be made available to eligible taxpayers on a first-come, first served basis. DOR must receive prior approval from the Division of Alcoholic Beverages and Tobacco (DABT) before rescindment of a tax credit against alcoholic beverage taxes.³⁷

A tax credit may be conveyed, transferred, or assigned between members of an affiliated group of corporations with DOR approval, if the type of tax credit remains the same.³⁸ Once earned, tax credits against corporate income tax and insurance premium tax may be taken against the next estimated payment.³⁹

What are eligible SFOs?

SFOs are charitable organizations that are exempt from the federal income tax, a state university, or an independent college or university that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program. All SFOs must be located within the state of Florida.⁴⁰ SFOs must:

- Comply with federal law⁴¹ prohibiting discrimination based on race, color, or national origin by any program receiving federal financial assistance.
- Require owners and operators to undergo Level 2 background screening⁴² upon employment or engagement of services and every five years thereafter. Owners and operators must also be screened against an additional list of financial crimes. Owners or operators that fail the Level 2 background screening are ineligible to provide scholarships.
- Not own or operate a private school that is participating in the FTC Program.
- Provide scholarships from eligible contributions to eligible students on a first-come, first-served basis unless the student qualifies for priority.
- Allow a student in foster or out-of-home care to apply for a scholarship at any time.
- Not restrict or reserve scholarships for use at a particular private school or provide a scholarship to the child of an owner or operator.
- Allow an eligible student to attend any eligible private school and allow a parent to transfer a scholarship during the academic year to another eligible private school.
- Maintain separate accounts for scholarship and operating funds.
- Expend for annual or partial-year scholarships an amount equal to or greater than 75 percent of the net eligible contributions remaining after administrative expenses during the state fiscal year in which such contributions are collected. No more than 25 percent of the net eligible contributions may be

³⁵ Sections 212.1831 and 1002.395(5), F.S. DOR must disregard tax credits for purposes of the distributions of tax revenue to ensure that any reduction in tax revenue received which is attributable to the tax credits results only in a reduction in distributions to the state's General Revenue Fund. Section 212.1831, F.S.; *see also* ss. 212.183 and 212.20, F.S.

³⁶ Section 561.1211, F.S.; *see s.* 1002.395(5), F.S. DOR must disregard tax credits for purposes of the distributions of tax revenue to ensure that any reduction in tax revenue received which is attributable to the tax credits results only in a reduction in distributions to the state's General Revenue Fund. Section 561.1211; *see also* ss. 563.05, 564.06, 565.12, 561.121, and 564.06(10), F.S.

³⁷ Section 1002.395(5)(e), F.S. DABT is located within the Florida Department of Business and Professional Regulation. Section 1002.395(2)(d), F.S.

³⁸ Section 1002.395(5)(d), F.S. DOR must obtain DABT approval before approving the conveyance, assignment, or transfer of a credit regarding alcoholic beverage taxes. *Id.*

³⁹ Section 1002.395(5)(f), F.S.

⁴⁰ Section 1002.395(2)(f), F.S.; *see* 26 U.S.C. s. 501(c)(3) and chs. 607, 608, and 617, F.S.

⁴¹ *See* 42 U.S.C. s. 2000d.

⁴² Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 53 offenses. *See s.* 435.04, F.S.

carried forward to the following state fiscal year. All amounts carried forward, for audit purposes, must be specifically identified for particular students by name and private school.

- Allow for the transfer of funds to another eligible SFO, limited to the greater of \$500,000 or 20 percent of the total contributions received by the SFO making the transfer, if additional funds are required to meet scholarship demands. Such a transfer must be approved by DOE beforehand.
- Maintain a surety bond or letter of credit equal to the amount of undispersed donations, which must be at least \$100,000, not to exceed \$25 million.
- Provide the Auditor General and DOE with an annual financial audit of its accounts and records conducted by an independent certified public accountant.
- Submit to an annual operational audit of its accounts and records by the Auditor General, including any contracts for services with related entities, to determine compliance with program requirements.
- Prepare and submit quarterly reports to DOE.⁴³

A SFO may use up to three percent of eligible contributions received during the state fiscal year for administrative expenses, if the SFO has participated in the FTC Program for at least three years and did not have any negative findings in its most recent audit. Administrative funds may not be used for lobbying or political activity.⁴⁴

Through the 2013-14 school year, Step Up For Students was the only SFO awarding FTC Program scholarships. However, two additional organizations have been approved as SFOs beginning with the 2014-15 school year – A.A.A. Scholarship Foundation, L.L.C. and Rotary Club of Spring Hill Scholarship Fund, Inc.⁴⁵

How does a nonprofit organization become a SFO?

To participate, a charitable organization must submit an application for approval and renewal to the Office of Independent Education and Parental Choice by September 1st prior to the start of the school year. Among other things, the application for initial approval must include:

- A copy of the organization's incorporation documents and registration with the Division of Corporations of the Department of State and IRS determination letter as a not-for-profit corporation.
- A description of the organization's financial plan and the geographic region it will serve.
- A description of the criteria and methodology it will use to evaluate scholarship eligibility and application process including deadlines and fees.
- A copy of a surety bond or letter of credit in an amount equal to 25 percent of the scholarship funds anticipated for each school year or \$100,000, whichever is greater.⁴⁶

An application for renewal must include all items listed above for initial approval as well as:

- A surety bond or letter of credit equal to the amount of undisbursed donations held by the organization, which must be at least \$100,000, not to exceed \$25 million.
- The organization's completed IRS Form 990.
- A copy of its audit reports.⁴⁷
- An annual report documenting the number of applications received, applications approved, funds received, scholarships funded, and expenditures of administrative funds.⁴⁸

⁴³ Section 1002.395(6)(a)-(i), (k)-(n), and (p)-(q), F.S.; s. 11.45(2)(k), F.S. (operational audit).

⁴⁴ Section 1002.395(6)(j)1., F.S.

⁴⁵ Florida Department of Education, *Scholarship Funding Organizations 2014-15*, <http://www.floridaschoolchoice.org/Information/ctc/SFO.asp> (last visited Aug. 4, 2014).

⁴⁶ Section 1002.395(16)(a), F.S.

⁴⁷ Section 1002.395(6)(m), F.S.

⁴⁸ Section 1002.395(16)(b), F.S.

Within 30 days of receipt of the finalized application the Commissioner of Education must recommend approval or disapproval of the application to the State Board of Education. The state board must then consider the application and recommendation at the next scheduled meeting.⁴⁹

Legislation enacted in 2014 authorized state universities and independent colleges and universities to seek approval to become a SFO. These entities are exempt from the SFO application process, including its surety bond requirements. Instead, they must register with DOE. The state board will be adopting rules prescribing a registration process and fiscal, programmatic, and performance accountability requirements for such entities, which may not exceed the requirements for charitable organizations serving as SFOs.⁵⁰

What criteria must a private school meet in order to participate in the FTC Program?

To participate in the FTC Program, a private school must:

- Comply with all of the requirements for private schools participating in state school choice scholarship programs.
- Provide the SFO, upon request, all documentation required for student participation, including its fee schedule.
- Annually provide the parent with a written explanation of the student's progress.
- Annually administer or make provisions for students in grades three through 10 to participate in one of the nationally norm-referenced tests identified by DOE or the statewide assessments⁵¹ and report the student's scores to the parent and to the Learning System Institute at Florida State University.
- Cooperate with a student whose parent chooses to have the student participate in statewide assessments.
- Require each student receiving a scholarship to have regular and direct contact with his or her teachers at the school's physical location.⁵²

In addition, a participating private school that receives more than \$250,000 in funds from FTC Program scholarships awarded in FY 2010-11, or any state fiscal year thereafter must annually contract with an independent certified public accountant to perform agreed-upon procedures⁵³ and produce a report of the results. The procedures must determine whether the private school has been verified as eligible by DOE; has an adequate accounting system, system of financial controls, and process for deposit and classification of scholarship funds; and has properly expended scholarship funds for education-related expenses. The private school must submit the report annually beginning September 15, 2011, to the SFO that awarded the majority of the private school's scholarships. SFOs must monitor a private school's compliance with agreed upon procedure requirements if the SFO provided the majority of the scholarship funding to the school. The SFO must notify the commissioner of a private school's failure to submit its annual report or of any material exceptions set forth in the report.⁵⁴

⁴⁹ Section 1002.395(16)(d), F.S.

⁵⁰ Section 17, ch. 2014-184, L.O.F., *codified as* s. 1002.395(16)(i), F.S. (2014).

⁵¹ The statewide assessment program for public schools includes statewide, standardized comprehensive assessments and end-of-course (EOC) assessments and the Florida Alternate Assessment for students with disabilities. The statewide, standardized comprehensive assessment tests reading (grades 3-10), mathematics (grades 3-8), science (once in elementary and middle school), and writing (once at the elementary, middle, and high school level). EOC assessments for high school students include Algebra I, Biology I, Geometry, and U.S. History. Middle school students must take an EOC assessment if they are enrolled in any of the above listed high school courses and in Civics. Section 1008.22(3), F.S.

⁵² Section 1002.395(8)(a)-(d), F.S.

⁵³ An agreed-upon procedure analysis is not a full financial statement audit. Instead, the certified public accountant is engaged by the client to examine specific financial or operational aspects of its company or organization. The client and the practitioner agree upon the procedures to be performed by the practitioner and the subject matter that they will cover. *See* American Institute of Certified Public Accountants, *Audit and Attest Standards, Statements on Standards for Attestation Agreements, Agreed-Upon Procedures Engagements*, at AT s. 201.02 (June 1, 2009), *available at* <http://www.aicpa.org/Research/Standards/AuditAttest/DownloadableDocuments/AT-00201.pdf>.

⁵⁴ Section 1002.395(6)(o) and (8)(e), F.S.

DOE may remove a private school's eligibility to participate in the FTC program if the school fails to meet any of these requirements.⁵⁵

How is an FTC Program scholarship payment made?

The scholarship payment is made by the SFO in the form of an individual warrant payable to the student's parent. If the parent chooses for his or her child to attend an eligible private school, the warrant must be delivered by the SFO to the private school of the parent's choice and the parent must restrictively endorse the warrant to the private school. A SFO must:

- Ensure that the parent to whom the warrant is made restrictively endorsed the warrant to the private school of the parent's choice for deposit into the account of the private school.
- Verify the student's attendance at the private school before each scholarship payment is made and make such payments at least quarterly.⁵⁶

What responsibilities must students and parents fulfill in order to participate in the FTC Program?

Parents and students must fulfill the following responsibilities:

- Parents must select an eligible private school, apply for admission, and notify the school district if the student is withdrawn from a public school.
- Students must attend school unless excused by the school for illness or good cause.
- Students and parents must comply with the private school's published policies.
- Parents must ensure student participation in the norm-referenced assessment offered by the private school, unless the private school chooses to administer statewide assessments, in which case, the student must participate in statewide assessments. If the private school the student attends does not administer statewide assessments, a parent may request that the student be administered a statewide assessment in addition to the norm-referenced assessment administered by the private school.
- Parents must restrictively endorse the scholarship warrant upon receipt to the private school and may not designate any entity or individual associated with the participating private school as the parent's attorney in fact to endorse the warrant.
- Parents must authorize the SFO to access information necessary to determine income eligibility, including information held by state and federal agencies.⁵⁷

What entities are responsible for administering the FTC Program?

DOE, DOR, and DABT cooperatively administer the FTC Program.⁵⁸ DOE must:

- Annually submit a list of eligible SFOs to DOR and the DABT.
- Annually verify the eligibility of SFOs, private schools, and scholarship expenditures.
- Establish a toll-free hotline to provide information to parents and private schools about program participation.
- Establish a process that allows for individuals to notify DOE of violations of state law relating to program participation.
- Annually receive and retain from every participating private school a notarized, sworn compliance statement certifying compliance with state laws.
- Cross-check the list of participating scholarship students with public school enrollment lists to avoid duplication.
- Maintain a list of norm-referenced tests that participating private schools may use to measure the performance of scholarship students.

⁵⁵ Section 1002.395(8), F.S. (flush-left provision at end of the subsection).

⁵⁶ Section 1002.395(12)(b)-(d), F.S.

⁵⁷ Section 1002.395(7)(a)-(f), F.S.

⁵⁸ Section 1002.395(13), F.S.

- Issue a project grant to the Learning System Institute at Florida State University to analyze and report annually to DOE performance data on participating students.
- Notify an SFO if one of its scholarship recipients is also receiving scholarship monies from other educational choice scholarship programs⁵⁹ or from another SFO.
- Require quarterly reports from each SFO.
- Conduct up to seven random site visits to private schools participating in the program.
- Annually report to the Governor and the Legislature on its implementation of accountability standards.
- Provide statewide assessments and materials to participating private schools upon request.⁶⁰

DOR has rulemaking authority to establish application forms, procedures governing the approval of tax credits and carryforward tax credits, and procedures to be followed by taxpayers when claiming approved tax credits on their return.⁶¹ DOE and DABT are authorized to adopt rules to carry out their respective responsibilities under the FTC Program.⁶²

What is the Commissioner of Education’s authority?

The Commissioner of Education has the authority to:

- Deny, suspend, or revoke a private school’s participation in the FTC Program and to take other action as necessary to ensure compliance with the laws governing private schools participating in the program.
- Deny, suspend, or revoke a private school’s participation in the FTC Program if the commissioner determines that an owner or operator of the private school:
 - Has exhibited a previous pattern of failure to comply with law governing the FTC program or private school participation in state scholarship programs.
 - Operates or has operated an educational institution in Florida or in another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public.
- Immediately suspend payment of scholarship funds if there is probable cause to believe that there is an imminent threat to the health, safety, and welfare of students; previous pattern of failure to comply with law governing the FTC program or private school participation in state scholarship programs; or there is fraudulent activity on the part of the private school.⁶³

How many students and private schools have participated in the FTC Program since the 2008-09 school year?⁶⁴

Number of Participating Private Schools and FTC Scholarship Students 2008-09 through 2013-14 School Years		
School Year	Students	Private Schools
2008-09	24,871	1,022
2009-10	28,927	1,033
2010-11	34,550	1,114
2011-12	40,248	1,216
2012-13	51,075	1,338
2013-14	59,822	1,429

⁵⁹ Such educational choice scholarship programs include the John M. McKay Scholarships for Students with Disabilities Program and the Florida Personal Learning Scholarship Accounts. Sections 1002.39 and 1002.385, F.S.

⁶⁰ Section 1002.395(9), F.S.

⁶¹ Section 1002.395(13)(b), F.S.; see rule 12-29.002, F.A.C. (Florida Tax Credit Scholarship Program; Participation; Allocation; Carryforward; Rescindment).

⁶² Section 1002.395(13)(c) and (d), F.S.

⁶³ Section 1002.395(11), F.S.

⁶⁴ June Quarterly Report, *supra* note 6, at 1; Florida Department of Education, *FTC Scholarship Program: Fact Facts and Program Statistics* (Sept. 2013), available at http://www.floridaschoolchoice.org/Information/CTC/files/Fast_Facts_FTC.pdf [hereinafter *Fact Facts*].

What was the race/ethnicity of students who were awarded FTC Program scholarships during the 2013-14 school year?⁶⁵

2013-14 FTC Student Racial/Ethnic Enrollment		
Race/Ethnicity	Students	Percentage
White	14,620	24.4%
Black	19,214	32.1%
Hispanic	21,904	36.6%
Other	2,986	5%
Not Reported	1,098	1.8%
Total	59,822	100%

What was the enrollment by grade level of students benefiting from an FTC Program scholarship during the 2013-14 school year?⁶⁶

2013-14 FTC Student Enrollment by Grade Level		
Grade	Students	Percentage
Kindergarten	9,767	16.3%
1st	8,426	14.1%
2nd	7,112	11.9%
3rd	6,332	10.6%
4th	5,731	9.6%
5th	5,123	8.6%
6th	4,593	7.7%
7th	3,584	6%
8th	2,866	4.8%
9th	2,216	3.7%
10th	1,704	2.8%
11th	1,377	2.3%
12th	991	1.7%
Total	59,822	100%

How is the academic performance of participating students measured?

Each participating private school must administer a nationally norm-referenced test approved by DOE to students in grades 3 through 10 who participate in the FTC Program.⁶⁷ DOE has authorized use of the following norm-referenced tests:

- Basic Achievement Skills Inventory-Comprehensive Version.
- Comprehensive Testing Program 4 (CTP 4).
- Educational Development Series (EDSERIES), Forms G and H.
- EXPLORE®.
- Iowa Tests of Basic Skills (ITBS)-Core Battery, Forms A and B.
- Iowa Tests of Basic Skills (ITBS)-Complete Battery, Form C.
- Iowa Tests of Basic Skills (ITBS)-Core Battery, Form C.
- Iowa Assessments-Core Battery, Form E.
- Iowa Tests of Educational Development® (ITED®), Forms A and B.
- Kaufman Test of Educational Achievement-Second Edition, Comprehensive Form (KTEA-II).
- Measures of Academic Progress (MAP)-Goals Survey Tests.
- Metropolitan Achievement Tests, Eighth Edition (METROPOLITAN8) -Short Form.
- PLAN®.

⁶⁵ June Quarterly Report, *supra* note 6, at 7.

⁶⁶ June Quarterly Report, *supra* note 6, at 4.

⁶⁷ Section 1002.395(8)(c) and (9)(i), F.S.

- PSAT/NMSQT®.
- ReadStep.
- Stanford Achievement Test, Ninth Edition (Stanford 9).
- Stanford Achievement Test, Tenth Edition (Stanford 10)- Basic Battery.
- Stanford Achievement Test, Tenth Edition (Stanford 10)-Abbreviated Battery.
- TerraNova (CTBS/5)- Basic Battery, Forms A and B.
- TerraNova, Second Edition (CAT/6)-Basic Battery, Forms C and D.
- TerraNova, Third Edition (TerraNova 3).
- Woodcock-Johnson III Tests of Achievement, Extended Battery.⁶⁸

Private schools may also choose to administer the statewide assessments. School districts must coordinate with DOE to provide the statewide assessments and related materials at no cost to the private school. Private schools must comply with applicable state laws, state board rules, and school district policies related to administration of statewide assessments.⁶⁹

If the student's private school does not choose to administer statewide assessments, a parent may request that their child take the statewide assessments, in which case, the parent is responsible for transporting the student to the testing site designated by the school district.⁷⁰

Has any research been conducted on the academic performance of students participating in the FTC Program?

Yes. Research on the academic performance of FTC students is conducted annually. Prior to July 1, 2014, the law required DOE to select an independent research organization to annually report on the year-to-year learning gains of participating students.⁷¹ The University of Florida was the independent research organization and Professor David N. Figlio was the project director. Figlio's most recent report, issued in 2013, examines student data from the 2011-12 school year. According to Figlio, the Stanford Achievement Test is the test most commonly administered to FTC program participants and is the test most directly comparable to the FCAT. The typical student in the FTC program scored at the 46th national percentile in reading and the 45th percentile in mathematics, about the same as in past years. The typical student participating in the FTC program gained a year's worth of learning in a year's worth of time; however, because the statewide assessments no longer contain a norm-referenced test, it is not advisable to make direct comparisons of FTC Program participants' test score gains to those of public school students.⁷²

Legislation enacted in 2014 required DOE to provide a grant to the Learning System Institute at Florida State University (LSI) to annually report on the student performance of participating students. The report must include, to the extent possible, a comparison of scholarship student performance to the statewide student performance of public school students with socioeconomic backgrounds similar to those of the participating program students. The report must also include student performance for each participating private school with a student population that was at least 51 percent comprised of FTC program students in the prior school year. The annual report must be published by DOE on its website. The 2014-15 school year will be the first year for which LSI conducts the annual report.⁷³

⁶⁸ Florida Department of Education, *FTC Annual Assessment Requirement*, http://www.floridaschoolchoice.org/information/CTC/norm_referenced_assessment.asp (last visited Aug. 4, 2014); rule 6A-6.0960(6)(a), F.A.C.

⁶⁹ Section 1002.395(7)(e), (8)(c), (9)(p), and (10)(b), F.S.

⁷⁰ Section 1002.395(7)(e) and (8)(c), F.S.

⁷¹ Section 1002.395(9)(j), F.S. (2013).

⁷² Figlio, David N., University of Florida, Northwestern University, and National Bureau of Economic Research *Evaluation of the Florida Tax Credit Scholarship Program Participation, Compliance, Test Scores in 2011-12*, at 2 (July 2013), available at http://www.floridaschoolchoice.org/pdf/FTC_Research_2011-12_report.pdf.

⁷³ Section 17, 2014-184, L.O.F., *codified as s. 1002.395(9)(j)*, F.S. (2014).

Has any research been conducted on the fiscal impact of the FTC program?

In 2008,⁷⁴ the Legislature directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report that reviews the advisability and fiscal impact of:

- Increasing the maximum annual amount of corporate tax credits permitted for the scholarship program; and
- Authorizing the use of credits for insurance premium taxes⁷⁵ as an additional source of funding for the scholarship program.⁷⁶

In December 2008, OPPAGA reported that:⁷⁷

- The corporate income tax credit scholarship program produces a net savings to the state. It was estimated that in FY 2007-08, taxpayers saved \$1.49 in state education funding for every dollar loss in corporate income tax revenue due to credits for scholarship contributions. Expanding the cap on tax credits would produce additional savings if there is sufficient demand for the scholarships. The Legislature may wish to consider expanding the program when the level of tax credits awarded approaches the cap and there is a sufficient waiting list of students who could use the scholarships.
- Including insurance premium tax credits in the scholarship program would broaden its funding base and increase the probability that the tax credit cap is reached. Currently, not all insurance companies in the state have an incentive to participate in the program.

The Legislature expanded the cap on tax credits in 2009, 2010, and 2012. In 2009 and 2010, the Legislature expanded the revenue sources in which tax credits could be claimed for scholarships to include the insurance premium tax; severance taxes on oil and gas production; self-accrued sales tax liabilities of direct pay permit holders; and alcoholic beverage taxes on beer, wine, and spirits.⁷⁸

In 2010, OPPAGA published a research memorandum regarding the FTC Program's FY 2008-09 fiscal impact. OPPAGA found that the FTC Program reduces the amount of tax revenues received by the state; however, it produces a net fiscal benefit. This occurs because education spending for students receiving scholarships is reduced by more than the amount of revenue lost.⁷⁹

OPPAGA estimated that the program saved \$36.2 million in FY 2008-09. The SFOs collected \$82.2 million in contributions. The combined total of FY 2008-09 contributions and contributions carried forward from the prior year was enough to fund 21,219 scholarships at the maximum amount of \$3,950 per student. OPPAGA estimated that 95 percent of these scholarships went to students who would have attended public school if not for the scholarship, avoiding \$118.4 million in education spending through the Florida Education Finance Program.⁸⁰

⁷⁴ Section 2, ch. 2008-241, L.O.F.

⁷⁵ See ch. 624, F.S.

⁷⁶ Section 2, ch. 2008-241, L.O.F. The report was also to identify strategies to encourage participating private schools to participate in the Florida Comprehensive Assessment Test (FCAT). OPPAGA reported that private school representatives indicated that incentives would not encourage their schools to have their scholarship students participate in the FCAT. *Id.*

⁷⁷ Office of Program Policy Analysis and Government Accountability, *The Corporate Income Tax Credit Scholarship Program Saves State Dollars*, at 1 (Dec. 2008), available at http://www.floridaschoolchoice.org/information/ctc/files/OPPAGA_December_2008_Report.pdf.

⁷⁸ Sections 2 and 3, ch. 2009-108, L.O.F.; s. 1, ch. 2010-24, L.O.F.; s. 1, ch. 2012-22, L.O.F.

⁷⁹ Office of Program Policy Analysis and Government Accountability, *Research Memorandum: Florida Tax Credit Scholarship Program Fiscal Year 2008-09 Fiscal Impact*, (March 1, 2010), available at http://www.floridaschoolchoice.org/information/ctc/files/OPPAGA_March_2010_Report.pdf.

⁸⁰ *Id.*

Where can I get additional information?

Florida Department of Education

Office of Independent Education & Parental Choice

(850) 245-0502

Toll-Free Information Hotline 1-800-447-1636

www.floridaschoolchoice.org

Florida Department of Revenue

(850) 922-4715

<http://dor.myflorida.com/dor/>

Florida Department of Business and Professional Regulation

Bureau of Alcoholic Beverages and Tobacco

Toll-Free 1-800-352-3671

<http://www.myfloridalicense.com/dbpr/abt/index.html>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

Services



What are instructional materials?

“Instructional materials” are:

items having intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software. A publisher or manufacturer providing instructional materials as a single bundle shall also make the instructional materials available as separate and unbundled items, each priced individually. A publisher may also offer sections of state-adopted instructional materials in digital or electronic versions at reduced rates to districts, schools, and teachers.¹

How much funding has the Legislature appropriated for school districts to purchase instructional materials?

Funding for instructional materials is provided annually by the Legislature in the General Appropriations Act (GAA). The following chart shows GAA funding for instructional materials since FY 2010-11:

Instructional Materials Funding History	
Fiscal Year	Amount
2010-11 ²	\$216,918,478
2011-12 ³	\$209,240,737
2012-13 ⁴	\$211,665,913
2013-14 ⁵	\$217,277,372
2014-15 ⁶	\$223,382,911

Whether a district adopts and purchases instructional materials through the state program or the district’s own instructional materials program, beginning with FY 2015-16, the district must use at least 50 percent of its instructional materials allocation to purchase digital or electronic instructional materials.⁷ Furthermore, if the district school board adopts a resolution that finds and declares that the funds received for instructional materials are urgently needed to maintain academic classroom instruction, then the board may approve an

¹ Section 1006.29(2), F.S.

² Specific Appropriations 6, s. 1 and 78, s. 2, ch. 2010-152, L.O.F.

³ Specific Appropriations 6, s. 1 and 68, s. 2, ch. 2011-69, L.O.F.

⁴ Specific Appropriations 6, s. 1 and 84, s. 2, ch. 2012-118, L.O.F.

⁵ Specific Appropriations 7, s. 1 and 87, s. 2, ch. 2013-40, L.O.F.

⁶ Specific Appropriations 9, s. 1 and 96, s. 2, ch. 2014-51, L.O.F.

⁷ Section 1006.40(3)(a), F.S. “Electronic format” means text-based or image-based content in a form that is produced on, published by, and readable on computers or other digital devices and is an electronic version of a printed book, whether or not any printed equivalent exists. Section 1006.29(3)(a), F.S. “Digital format” means text-based or image-based content in a form that provides the student with various interactive functions; that can be searched, tagged, distributed, and used for individualized and group learning; that includes multimedia content such as video clips, animations, and virtual reality; and that has the ability to be accessed at anytime and anywhere. Section 1006.29(3)(b), F.S. Instructional materials in electronic format and digital format do not include electronic or computer hardware even if such hardware is bundled with software or other electronic media, equipment, or supplies. Section 1006.29(3), F.S. (flush left at the end of subsection).

amendment to the school district operating budget transferring an identified amount of its instructional materials allocation to the appropriate account for expenditure.⁸

What are the duties of a district school board regarding instructional materials?

Each district school board has the constitutional duty and responsibility to select and provide adequate instructional materials to each student for core courses in mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12.⁹ “Each district school board is responsible for the content of all instructional materials used in the classroom whether adopted and purchased from the state-adopted instructional materials list, adopted and purchased through a district instructional materials program under s. 1006.283, or otherwise purchased or made available in the classroom.”¹⁰

Prior to the purchase of any instructional material, the board must:

- Establish a process to allow student editions of recommended instructional materials to be accessed and viewed online by the public at least 20 calendar days before the required school board hearing and public meeting. This process must include reasonable safeguards against the unauthorized use, reproduction, and distribution of instructional materials considered for adoption.
- Conduct an open, noticed school board hearing to receive public comment on the recommended instructional materials.
- Conduct an open, noticed public meeting to approve an annual instructional materials plan to identify any instructional materials that will be purchased. This public meeting must be held on a different date than the school board hearing.
- Provide notice for the school board hearing and the public meeting that specifically states the instructional materials being reviewed and how the instructional materials can be accessed for public review.
- Establish a process by which the school board receives public comment on, and review, the recommended instructional materials.¹¹

In addition, the school board must establish a process by which the district notifies parents of their ability to access their children’s instructional materials. The notification must be displayed prominently on the school district’s website and provided annually in written format to all parents of enrolled students.¹²

Once instructional material are adopted and purchased by the district school board pursuant to the state instructional materials program or its own instructional materials program, each district school board must establish a process enabling parents to contest the adoption of a specific instructional material. A parent seeking to challenge an adopted instructional material must file a petition, on a form provided by the school board, within 30 days after the adoption of the material by the school board. The form must be signed by the parent, include the required contact information, and state the objection to the instructional material.¹³

Within 30 days after the 30-day challenge period has expired, the district school board must conduct at least one open public hearing on all timely filed petitions. The school board must provide the petitioner written notification of the date and time of the hearing at least 7 days before the hearing. In addition, the school board

⁸ *Id.*

⁹ Section 1006.40(2), F.S. “Adequate instructional materials” means a “sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as the basis for instruction for each student in the core courses of mathematics, language arts, social studies, science, reading, and literature.” Section 1006.28(1), F.S. Digital and instructional materials, including software applications, must be provided by each school board, in consultation with the district school superintendent, to students with disabilities in prekindergarten through grade 12. Section 1003.4203(2), F.S.

¹⁰ Section 1006.28(1)(a)1., F.S.

¹¹ Sections 1006.40(5) and 1006.283(2)(b)8., 9., and 11., F.S.

¹² Section 1006.283(2)(b)11., F.S.

¹³ Section 1006.28(1)(a)3., F.S.

must make all contested instructional materials accessible to the public online. The school board's decision after convening a hearing is final and not subject to further petition or review.¹⁴

Each district school board must also adopt a policy regarding a parent's objection to his or her child's use of a specific instructional material. The policy must clearly describe a process to handle all objections and provide for resolution.¹⁵

What requirements apply to the state instructional materials program?

The state instructional materials program provides that up to 50 percent of the annual allocation provided in the General Appropriations Act for instructional materials may be used by the school districts to purchase materials not on the state-adopted list. The remainder of the allocation must be used to purchase materials from the state-adopted instructional materials list.¹⁶ Instructional materials funds available after March 1 may be used to purchase hardware for student instruction.¹⁷ In any year in which the total instructional materials allocation for a school district has not been expended or obligated prior to June 30, the district school board must carry forward the unobligated amount and must add that amount to the next year's allocation.¹⁸

❖ What is the state's adoption process for instructional materials?

Before adopting instructional materials in a certain subject area, the Department of Education (DOE) publishes specifications for the materials. These specifications detail the courses for which materials are sought and the standards the materials must meet.¹⁹ Beginning on or before May 15 of the adoption year, DOE advertises a request for sealed bids or proposals from publishers of instructional materials. The advertisement must require each bidder to furnish electronic sample copies of all instructional materials submitted.²⁰

Once all bids have been considered, the commissioner selects and adopts, from the list reported by the state instructional materials reviewers as "suitable, usable, and desirable," instructional materials for each grade and subject as advertised. The commissioner must always reserve the right to reject any and all bids.²¹ State-adopted instructional materials are available for purchase beginning April 1 of the year following adoption and must be requisitioned from the depository of the publisher.²²

❖ What is the state's adoption schedule for instructional materials?

The Commissioner of Education adopts instructional materials according to a 5-year rotating schedule. The commissioner may approve a shorter schedule if the content area requires more frequent revision.²³ DOE annually publishes an official schedule of subject areas calling for adoption for each of the succeeding two years and a tentative schedule for years three through five. Under extenuating circumstances, the commissioner may direct DOE to add one or more subject areas to the official schedule.²⁴

¹⁴ *Id.*

¹⁵ Section 1006.28(1)(a)2., F.S.

¹⁶ Sections 1006.28(1)(a)1. and 1006.40(3), F.S. Materials not on the state adopted list include library books, reference books, and nonprint materials. Section 1006.40(3)(b), F.S.

¹⁷ Section 1011.62(6)(b)5., F.S.

¹⁸ Section 1006.40(7), F.S.

¹⁹ Florida Department of Education, *2014 Policies and Procedures for the Florida Instructional Materials Adoption*, at 1, available at http://www.fldoe.org/bii/instruct_mat/. (The link to the document is titled differently from the document. The link reads: 2014-2015 Policies and Procedures for the Florida Instructional Materials Adoption.)

²⁰ Section 1006.33(1)(a) and (b), F.S. A school district may not request samples in addition to the electronic sample copies. Section 1006.33(1)(b), F.S.

²¹ Section 1006.34(2)(a), F.S.

²² Sections 1006.36(1) and 1006.37(1), F.S.; *see also* s. 1006.28(2)(b), F.S.

²³ Section 1006.36(1), F.S.

²⁴ Section 1006.36(2), F.S.

The following chart shows the adoption schedule for instructional materials through FY 2016-17:

Instructional Materials Adoption Schedule ²⁵	
Year	Subject
2013-14	Comprehensive Core Reading, Writing, Speaking, Listening, and Language Program (6-12) Literature (6-12) Mathematics (6-12)
2014-15	World Languages – Spanish Only (K-12) Career and Technical Education/Agriculture (9-12) Health Opportunities through Physical Education (9-12) Personal Fitness (HOPE) (9-12) English for Speakers of Other Languages (ESOL) (K-12)
2015-16	Science (K-12)
2016-17	Social Studies (K-12)

If a district school board adopts instructional materials from the state-adopted list, then within the first three years of the state adoption of that instructional material the school district superintendent must purchase the instructional material.²⁶ The superintendent must keep adequate records and accounts for all financial transactions related to instructional materials.²⁷ The superintendent must notify DOE by April 1 of each year of the state-adopted instructional materials that will be requisitioned for use in his or her school district. The notification must include a district school board plan for instructional materials use to assist in determining if adequate instructional materials have been requisitioned.²⁸

❖ **Who are state instructional materials reviewers and what are their responsibilities?**

State instructional materials reviewers are state or national content experts appointed by the Commissioner of Education. The reviewers must be appointed by April 15 of each school year to review the instructional materials up for adoption and evaluate the content for alignment with applicable state standards.²⁹

State instructional material reviewers receive training in competencies related to the evaluation and selection of instructional materials.³⁰ After receiving training, the reviewers must review the materials for the level of instructional support and the accuracy and appropriateness of progression of introduced content. Instructional materials must be made electronically available to the reviewers.³¹

The initial review of the materials is made by only two of the three reviewers. If the two reviewers reach different results, the third reviewer must break the tie. The reviewers must independently make recommendations to the commissioner regarding materials that should be placed on the state-adopted list through an electronic feedback review system.³²

²⁵ Florida Department of Education, *Florida Instructional Materials Adoption Schedule for Adoption Years 2011-12 through 2016-17* (May 22, 2012), available at http://www.fldoe.org/bii/instruct_mat/pdf/cycle.pdf.

²⁶ Section 1006.37(1), F.S.

²⁷ Section 1006.28(2)(a), F.S.

²⁸ Section 1006.28(2)(b), F.S.

²⁹ Section 1006.29(1)(b), F.S.

³⁰ Section 1006.29(5), F.S.

³¹ Section 1006.29(1)(b), F.S.

³² *Id.*

Each state instructional materials reviewer must sign an affidavit stating that he or she:

- Will faithfully discharge the duties imposed as a state instructional materials reviewer.
- Has no interest in any publishing or manufacturing organization that produces or sells instructional materials.
- Is in no way connected with the distribution of the instructional materials.
- Does not have any direct or indirect pecuniary interest in the business or profits of any person engaged in manufacturing, publishing, or selling instructional materials designed for use in public schools.
- Will not accept any emolument or promise of future reward from anyone intending to bias his or her judgment in the selection of materials to be adopted.
- Understands that it is unlawful to discuss matters relating to instructional materials submitted for adoption with any publisher or manufacturer of instructional materials, except during the period when the publisher or manufacturer is providing a presentation for the reviewer.³³

The law specifies standards that reviewers must use when reviewing instructional materials. Reviewers must:

- Only recommend instructional materials that are accurate, objective, balanced, noninflammatory, current, and suited to student needs and their ability to comprehend the material.
- Include only instructional materials that accurately portray the ethnic, socioeconomic, cultural, religious, physical, and racial diversity of our society.
- Include only materials that accurately portray, whenever appropriate, humankind's place in ecological systems.
- Include materials that encourage thrift, fire prevention, and humane treatment of people and animals.
- Require, when appropriate to the comprehension of students, that materials for social science, history, or civics classes contain the Declaration of Independence and the Constitution of the United States.
- Only recommend instructional materials that do not reflect unfairly upon persons because of their race, color, creed, national origin, ancestry, gender, religion, disability, socioeconomic status, or occupation.³⁴

❖ **Do school district personnel review instructional materials that are being considered for state adoption?**

Yes. Each district school superintendent, at the request of the commissioner, must nominate one classroom teacher or district-level content supervisor to review two or three of the submissions recommended by the state instructional materials reviewers. School districts must ensure that these district reviewers are provided with the support and time necessary to accomplish a thorough review of the instructional materials. District reviewers must independently rate the recommended submissions on the instructional usability of the resources.³⁵ Persons selected as school district reviewers must complete training, developed by DOE, related to the evaluation and selection of instructional materials.³⁶

What are the requirements for a district school board that chooses to implement its own instructional materials program?

A district school board, or consortium of school districts, choosing to implement its own instructional materials program is not required to purchase instructional materials from the state-adopted list,³⁷ requisition

³³ Section 1006.30, F.S.

³⁴ Section 1006.31(2), F.S.

³⁵ Section 1006.29(1)(c), F.S.

³⁶ Section 1006.29(5), F.S.

³⁷ Section 1006.40(8), F.S.

instructional materials from the publisher's depository,³⁸ or follow the same review cycle used for state instructional materials adoption.³⁹

If a district school board chooses to implement its own instructional materials program, the school board must adopt rules implementing the program. The rules must include its processes, criteria, and requirements for:

- Selecting instructional materials reviewers, one or more of who must be a parent with children in public schools.
- Reviewing and selecting instructional materials, including a thorough review of curriculum content.
- Providing for reviewer recommendations.
- Adopting instructional materials by the district school board.
- Purchasing instructional materials.⁴⁰

The rules must also:⁴¹

- Identify, by subject area, a review cycle for instructional materials.
- Specify the qualifications for, selection process for, and the duties of instructional materials reviewers, including compliance with statutorily prescribed conflict of interest affidavits and state instructional materials reviewer duties.
- Require that all instructional materials recommended by a reviewer be accompanied by the reviewer's statement that the materials align with the applicable state standards.
- Establish a process for certifying the accuracy of instructional materials.
- Require reviewer and publisher compliance with the law prohibiting the acceptance or solicitation of money or inducements to influence approval or purchase of instructional materials.⁴²
- Incorporate the requirements of state law regarding publisher duties, responsibilities, and requirements.⁴³

In addition, the rules must provide for:

- Conducting an open, noticed school board hearing to receive public comment on the instructional materials recommended for adoption by the district school board;
- Conducting an open, noticed meeting, held on a different date, to approve an annual plan for adopting instructional materials; and
- Posting student editions of instructional materials recommended for adoption by the district school board on the school district website at least 20 days in advance of public hearings and public meetings.⁴⁴

Notices for public meetings and hearings must specifically identify the materials up for review and adoption and the manner in which the materials can be accessed by the public.⁴⁵

³⁸ Section 1006.37(3), F.S.

³⁹ See s. 1006.283(2)(b), F.S. However, the district school superintendent must certify to the Department of Education by March 31 of each year that all instructional materials for core courses used by the district are aligned with applicable state standards. A list of the core instructional materials that will be used or purchased for use by the school district must be included in the certification. Section 1006.283(1), F.S.

⁴⁰ Section 1006.283(2)(a), F.S.

⁴¹ Section 1006.283(2)(b), F.S.

⁴² Like state instructional materials reviewers, district reviewers must sign an affidavit required under s. 1006.30, F.S., stating, in part, that they will faithfully discharge their duties and not accept payment or benefit from anyone for their recommendations. Section 1006.283(2)(b)3., F.S.

⁴³ See *infra* text accompanying notes 51 and 52 for an explanation of the duties, responsibilities, and requirements of publishers and manufacturers with regard to instructional materials; see also s. 1006.38, F.S.

⁴⁴ Section 1006.283(2)(b)8., F.S.

⁴⁵ Sections 1006.283(2)(b)8. and 1006.40(5)(b), F.S. Reasonable safeguards must be established against the unauthorized use, reproduction, and distribution of instructional materials posted online for public review and comment. Section 1006.283(2)(b)8.a., F.S.

The district must establish a process that enables the public to submit comments regarding the recommended instructional materials to the school board for the board members to review. The rules must also specify a process for notifying parents of their ability to access their child's instructional materials. This notification must be displayed on the school district's website and provided annually, in writing, to all parents of enrolled students.⁴⁶

What are the duties of principals regarding instructional materials?

A school principal is responsible for:

- Assuring that instructional materials are used to provide instruction to students enrolled at the grade level for which the materials are designed, pursuant to adopted district school board rule.
- Communicating to parents how instructional materials are used to implement curricular objectives of the school.
- Selling instructional materials to parents upon request.
- Accounting for instructional materials and collecting payment from a student or parent for any lost, destroyed, or unnecessarily damaged instructional materials.
- Transmitting all money collected from the sale, exchange, loss, or damage of instructional materials to the school district superintendent for deposit into the district school board fund and added to the district appropriation for instructional materials.⁴⁷

What are the duties, responsibilities, and requirements for publishers and manufacturers regarding instructional materials?

Whether operating pursuant to the state's instructional materials program or a district instructional materials program, publishers and manufacturers of instructional materials must, among other things:

- Submit electronic sample copies of the instructional material.
- Submit evidence that the provided materials address the required state standards and are accessible through the district's digital classrooms plan and a variety of electronic, digital, and mobile devices.
- Furnish instructional materials at a price not to exceed the lowest price offered in other states.
- Automatically reduce the price of instructional materials or provide materials free of charge if provided to other states at a reduced rate or free of charge.
- Disclose the authors of the instructional materials.
- Keep the materials revised, free from all errors, and up-to-date.⁴⁸

Additionally, publishers and manufacturers of instructional materials are prohibited from offering any emolument, money, or other valuable thing or any inducement, to any district school board official or instructional materials reviewer to directly or indirectly introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional materials. Violating this prohibition is a second degree misdemeanor and will result in a ban from practicing business in the state for one calendar year.⁴⁹

Is a school district required to provide training in the use of instructional materials?

Yes. By July 1 of each year and before state instructional materials funds are released, a school district's superintendent must certify to the Commissioner of Education that the district school board has approved a comprehensive staff development plan that supports implementation of instructional materials programs. The

⁴⁶ Sections 1006.283(2)(b)9. and 11. and 1006.40(5)(b), F.S.

⁴⁷ Section 1006.28(3), F.S.

⁴⁸ Sections 1006.38 and 1006.283(2)(b)7., F.S. With regard to the state's instructional materials program, publishers and manufacturers must maintain a depository in Florida for the in-state distribution of instructional materials to school districts from the depository or contract with a depository in the state. Section 1006.38 (11), (12), and (13), F.S.

⁴⁹ Section 1006.32(1) and (4), F.S. A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine not exceeding \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

school district must verify that training was provided and that the materials are being implemented as designed.⁵⁰

May the Department of Education and school districts charge fees to publishers who submit instructional materials for review?

Yes. DOE may assess and collect fees from publishers who submit instructional materials for consideration by DOE pursuant to the state's instructional materials program. DOE must post the amount of fees assessed and collected on its website. Fees may not exceed the actual cost of the review process and may not exceed \$1,000 per submission. Fees collected must be deposited into DOE's Operating Trust Fund and used to provide each reviewer a stipend.⁵¹

School districts implementing their own instructional materials program may collect fees from publishers who submit instructional materials for review. Such fees may not exceed the actual cost to review a publisher submission up to a maximum of \$3,500. The amount of fees assessed and collected must be posted on the district website, reported to DOE, and maintained in a separate line item for auditing purposes.⁵²

Fees collected by school districts must be used to cover the actual cost of substitute teachers for each workday that an employee is absent due to service as an instructional materials reviewer. In addition, each reviewer may be paid a stipend and is entitled to reimbursement for travel expenses and per diem.⁵³

How may a school district dispose of instructional materials that are no longer used by the district?

Instructional materials that are unserviceable, surplus, or no longer on state contract may be given by a school district to other education programs; teachers; students, including home education students; or any charitable organization, governmental agency, private school, or state. To dispose of instructional materials, a school district may also sell the materials to used-book dealers; recycling plants; pulp mills; or other persons, firms, or corporations. All money received for the sale, exchange, or other disposition of instructional materials must be deposited in the school district's fund for instructional materials.⁵⁴

Where can I get additional information?

Florida Department of Education
Bureau of Curriculum and Instruction
Office of Instructional Materials
(850) 245-0808
http://www.fldoe.org/BII/instruct_mat/

Florida House of Representatives
Education Committee
(850) 717-4830
<http://www.myfloridahouse.gov>

⁵⁰ Section 1011.67(2), F.S.

⁵¹ Section 1006.29(1)(d), F.S.

⁵² Section 1006.283(3)(a), F.S.

⁵³ Section 1006.283(3)(b), F.S.

⁵⁴ Section 1006.29(1)(d), F.S.

⁵⁴ Section 1006.41(1) and (3), F.S.



What services are provided by the Department of Juvenile Justice (DJJ)?

DJJ oversees at-risk and adjudicated youth in four service areas: prevention and victim services, probation and community intervention services, residential services, and detention services.¹

- **Prevention and Victim Services** - Prevention and Victim Services offers voluntary youth crime prevention programs throughout the state. The mission of the service is to increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen families and turn around the lives of troubled youth.²
- **Probation and Community Intervention Services (Non-residential)** - Non-residential services provide intervention and case management services to youth on diversion, probation, and post commitment supervision. These youth remain at home and participate in a day treatment program while they are being supervised.³
- **Residential Services** - Residential services ensure graduated sanctions for serious, violent, and chronic offenders; address special mental health and substance abuse needs of offenders; and enhance the education of offenders in residential commitment programs. Juveniles who are adjudicated by the court can be committed to residential programs classified as low, moderate, high, or maximum risk.⁴
- **Detention Services** - Detention is the custody status for youth who are held pursuant to a court order; or following arrest for a violation of the law. A youth may be detained only when specific statutory criteria, outlined in s. 985.215, F.S. are met. Criteria for detention include current offenses, prior history, legal status, and any aggravating or mitigating factors.⁵

Who is responsible for providing educational services in juvenile justice programs?

District school boards are responsible for providing educational services to youth in juvenile justice programs.⁶ Educational services must provide instruction based on each student's individualized transition plan, assessed educational needs, and the education programs available in the school district in which the student will return. Depending on the student's needs, educational programming may consist of remedial courses, academic courses required for grade advancement, career and professional education courses, high school equivalency examination preparation, or exceptional student education curricula and related services which support transition goals and reentry into school, and that may lead to the completion of a high school diploma or its

¹ Section 20.316(2), F.S.; See Florida Department of Juvenile Justice, *Services*, <http://www.djj.state.fl.us/Services> (last visited June 17, 2014).

² Florida Department of Juvenile Justice, *Prevention & Victim Services*, <http://www.djj.state.fl.us/services/prevention> (last visited July 11, 2014). see also s. 20.316(2), F.S.

³ Florida Department of Juvenile Justice, <http://www.djj.state.fl.us/services/probation>, (last visited July 9, 2014); see also s. 20.316(2), F.S.

⁴ Office of Program Policy Analysis and Government Accountability, *Government Program Summaries – Department of Juvenile Justice Residential Services*, <http://www.oppaga.state.fl.us/profiles/1012> (last visited July 9, 2014); Section 985.03,(46), F.S.; see also s. 20.316(2), F.S.

⁵ Florida Department of Juvenile Justice, available at, <http://www.djj.state.fl.us/services/detention> (last visited July 9, 2014).

⁶ Section 1003.52(1), (3), and (4), F.S.

equivalent.⁷ In addition, students in juvenile justice education programs must have access to courses offered through Florida Virtual School, virtual instruction programs, and school district virtual courses.⁸

These services can be provided by the district school board or by a private provider through a contract with the district school board.⁹

Can high school credits be earned in juvenile justice programs?

Yes. Each district school board must make provisions for high school level students to earn credits toward high school graduation while in residential and nonresidential juvenile justice education programs. Also, provisions must be made for the transfer of credits and partial credits earned.¹⁰

Can high school equivalency examination preparation programs be offered in juvenile justice programs?

Yes. Students in juvenile justice programs must have access to the appropriate courses and instruction to prepare them for the high school equivalency examination.¹¹ In the state of Florida candidates for the high school equivalency examination must be at least 18 years of age or older unless they have been granted a high school equivalency examination age waiver by the local school board.¹²

Are learning gains and progression measured while students are in juvenile justice programs?

Yes. DOE, with the assistance of school districts and juvenile justice education providers, is required to select a common student assessment instrument and protocol for measuring student learning gains and student progression while a student is in a juvenile justice education program. DOE and DJJ must jointly review the effectiveness of this assessment and implement changes as necessary.¹³ On August 13, 2012, DOE implemented a new common student assessment instrument provided by Worldwide Interactive Network (WIN) Learning in partnership with Florida Ready to Work to assess the learning gains of juvenile justice students in reading and mathematics.¹⁴

The assessment test for prevention, day treatment, and residential programs is administered at program entry and exit. The assessments must be completed within the first 10 school days of a student's entry into the program.¹⁵ Each student in a detention facility must be assessed to determine the areas of academic need and strategies for appropriate intervention and instruction within 5 school days of entry into the program. Also, each student must be administered a researched based assessment that will assist the student in determining his or her educational and career options and goals within 22 school days after entry into the detention facility.¹⁶

⁷ Section 1003.52(5), F.S.

⁸ Section 1003.52(4), F.S.

⁹ Section 1003.52(12), F.S.

¹⁰ Section 1003.52(9), F.S.

¹¹ Section 1003.52(3)(a), F.S.; rule 6A-6.05281(1)(b), F.A.C.

¹² Florida Department of Education, *Frequently Asked Questions General Information*, <http://www.fldoe.org/faq/default.asp?Dept=203&ID=698#Q698> (last visited July 10, 2014).

¹³ Section 1003.52(3)(b), F.S.; rule 6A-6.05281(3)(e), F.A.C.

¹⁴ Florida Department of Education, Bureau of Exceptional Education and Services, Juvenile Justice Education, *Juvenile Justice Education Webinar: Common Assessment* (2012), available at <http://www.fldoe.org/ese/pdf/JJED-WIN.pdf>. Florida Department of Education, Bureau of Exceptional Education and Student Services, Juvenile Justice Education, *Frequently Asked Questions on Common Assessment*, available at <http://www.fldoe.org/ese/pdf/faqca.pdf>.

¹⁵ Section 1003.51(2)(g)1., F.S.

¹⁶ Section 1003.51(2)(g)2., F.S.

Who is responsible for providing educational assessments in juvenile justice programs?

The district school board of the county in which the juvenile justice education prevention, day treatment, residential, or detention programs is located must provide or contract for appropriate educational assessments and an appropriate program of instruction and special education services.¹⁷

What records are maintained for youth in juvenile justice programs?

An individual transition plan is developed for each student entering or exiting a juvenile justice education program.¹⁸ The transition plan is based on the student's post-placement goals that are developed cooperatively with the student, his or her parents, school district and or contracted provider personnel, and DJJ program staff. Re-entry counselors, probation officers, and personnel from the student's "home" school district must be involved in the transition planning to the extent practicable. The transition plan also includes a student's academic re-entry goals, career and employment goals, and recommended educational placement.¹⁹

An individual transition plan for educational progress must be developed within 22 school days of a student entering a DJJ detention program and within 15 school days of entry to DJJ commitment or day treatment program. The individual transition plan must be based upon the student's entry assessment and past education history and must address the areas of academic, literacy, and life skills.²⁰

An individualized progress monitoring plan must be developed for all students not classified as exceptional education students upon entry in a juvenile justice education program and upon reentry in the school district. These plans must address academic, literacy, and career and technical skills and must include provisions for intensive remedial instruction in the areas of weakness.²¹

Each district school board must maintain an academic record for each student enrolled in a juvenile justice program. Such records delineate each course completed by the student according to procedures in the State Course Code Directory. The district school board must include a copy of a student's academic record in the discharge packet when the student exits the program.²²

How are youth exiting juvenile justice programs assisted?

DOE provides a web-based transition contact list that identifies one person in each school district who will support returning students with re-entry into school, transferring and receiving educational records, and providing information to other districts on local school options for returning DJJ students.²³

A discharge packet is created for each student prior to exit from a juvenile justice program.²⁴ A copy of the student's academic records; assessment data; individual academic plan, 504 plan, or individual educational plan for exceptional students; work and project samples, and transition plan is included in the discharge packet when the student exits a DJJ facility.²⁵ District school boards must provide these students' educational records no later than five working days after a request has been made for the records.²⁶

¹⁷ Section 1003.52(3), F.S.

¹⁸ Section 1003.52(13)(i), F.S.; rule 6A-6.05281(5), F.A.C.

¹⁹ Rule 6A-6.05281(5), F.A.C.

²⁰ Rule 6A-6.05281(4), F.A.C.

²¹ Sections 1003.52(7) and 1008.25(4)(b), F.S.

²² Section 1003.52(8), F.S.; rule 6A-6.05281(5)(d), F.A.C.

²³ Florida Department of Education, Exceptional Education & Student Services, *School District Transition Contact and Process*, <http://www.fldoe.org/eae/sdtc.asp>, (last visited July 10, 2014).

²⁴ Section 1003.51, F.S. (flush-left provisions at end of subsection).

²⁵ Rule 6A-6.05281(5)(d), F.A.C.

²⁶ Section 1003.51(4)(b), F.S.; rule 6A-6.05281(2)(b), F.A.C.

Are juvenile justice educational programs evaluated?

Yes. DOE in consultation with DJJ, district school boards, and providers must adopt rules establishing objective and measurable student performance measures to evaluate a student's educational progress while participating in a prevention, day treatment, or residential program. The student performance measures must be based on appropriate outcomes for all students in juvenile justice education programs, taking into consideration the student's length of stay in the program. Performance measures must include outcomes that relate to student achievement of career education goals, acquisition of employability skills, receipt of a high school diploma or its equivalent, grade advancement, and the number of industry certifications earned.²⁷

DOE, in partnership with DJJ, must:

- develop a comprehensive accountability and program improvement process. The accountability and program improvement process must be based on student performance measures by type of program and must rate education program performance. The accountability system must identify and recognize high-performing education programs.²⁸
- identify low-performing programs. Low-performing education programs must receive an onsite program evaluation from DJJ. Identification of education programs needing school improvement, technical assistance, or reassignment of the program must be based, in part on the results of the program evaluation. Through a corrective action process, low-performing programs must demonstrate improvement or the program must be reassigned to the district or another provider.²⁹

Does the Department of Education collect data on students leaving juvenile justice programs?

Yes. DOE in collaboration with DJJ must collect and report on commitment, day treatment, prevention, and detention programs. The report must be annually submitted to the Legislature and the Governor no later than February 1.³⁰

The report must include, at a minimum, the number and percentage of students:

- Returning to an alternative school, middle school, or high school upon release and the attendance rate of such students before and after participation in juvenile justice education programs.
- Receiving a standard high school diploma or high school equivalency diploma.
- Receiving industry certification.
- Enrolling in a postsecondary educational institution.
- Completing a juvenile justice education program without reoffending
- Reoffending within 1 year after completing a day treatment or residential commitment program.
- Remaining employed 1 year after completion of a day treatment or residential commitment program.
- Demonstrating learning gains.³¹

The report must include the following cost data for each juvenile justice education program:

- The amount of funding provided by district school boards to juvenile justice programs and the amount retained for administration, including documenting the purposes of such expenses.
- The status of the development of cooperative agreements.
- Recommendations for system improvement.
- Information on the identification of, and services provided to, exceptional students, to determine whether these students are properly reported for funding and are appropriately served.

²⁷ Section 1003.52(16)(a), F.S.

²⁸ Section 1003.52(16)(d), F.S.

²⁹ *Id.*

³⁰ Section 1003.52(17), F.S.

³¹ Section 1003.52(17)(a), F.S.

Where can I get additional information?

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

Florida Department of Education

Bureau of Exceptional Education and Student Services

(850) 245-0475

<http://www.fldoe.org/ese>

Florida Department of Juvenile Justice

Education Development

(850) 717-2708

<http://www.djj.state.fl.us/contact-us/education-development>

Personnel



What is educator certification?

In order for a person to serve as an educator in a traditional public school, charter school, virtual school, or other publicly operated school, the person must hold a certificate issued by the Florida Department of Education (DOE).¹ Persons seeking employment at a public school as a school supervisor, school principal, teacher, library media specialist, school counselor, athletic coach, or in another instructional capacity must be certified.² The purpose of certification is to require school-based personnel to “possess the credentials, knowledge, and skills necessary to allow the opportunity for a high-quality education in the public schools.”³

The DOE issues three types of educator certificates:

- **Professional Certificate.** The professional certificate is Florida’s highest type of full-time educator certification.⁴ The professional certificate is valid for five years and is renewable.⁵
- **Temporary Certificate.** The temporary certificate covers employment in full-time positions for which educator certification is required.⁶ The temporary certificate is valid for three years and is nonrenewable.⁷
- **Athletic Coaching Certificate.** The athletic coaching certificate covers full-time and part-time employment as a public school’s athletic coach.⁸ DOE issues two types of athletic coaching certificates – one is valid for five years and is renewable and the other is valid for three years and is nonrenewable.⁹ The five-year certificate requires satisfaction of certain specialization requirements established in rule.¹⁰

In addition, school districts are authorized to issue adjunct teaching certificates to part-time teachers who have expertise in the subject area to be taught. An adjunct teaching certificate is valid through the term of the annual contract between the educator and the school district.¹¹

¹ Sections 1012.55(1) and 1002.33(12)(f), F.S.

² Sections 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S. District school boards and charter school governing boards are authorized to hire non-certificated individuals who possess expertise in a given field to serve in an instructional capacity. Rule 6A-1.0502, F.A.C.; ss. 1002.33(12)(f) and 1012.55(1)(c), F.S. Occupational therapists, physical therapists, audiologists, and speech therapists are not required to be certified educators. Rule 6A-1.0502(10) and (11), F.A.C.

³ Section 1012.54, F.S.; *see* rule 6A-4.001(1), F.A.C.

⁴ Rule 6A-4.004(2), F.A.C.

⁵ Section 1012.56(7)(a), F.S.; *see* rule 6A-4.0051(3)(c), F.A.C. (validity period is expressed as 5 years from July 1 of the school fiscal year). DOE also issues a nonrenewable 2-year temporary certificate and a nonrenewable 5-year professional certificate that allows an applicant with a bachelor’s degree in the area of speech-language impairment to complete a master’s degree in speech-language impairment. Section 1012.56(7)(c), F.S.; rule 6A-4.004(3), F.A.C.

⁶ Rule 6A-4.004(1)(a)2., F.A.C.

⁷ Section 1012.56(7), F.S. (flush-left provisions at end of subsection; validity period is expressed in school fiscal years); rule 6A-4.004(1)(a), F.A.C. DOE also issues a nonrenewable temporary certificate, which is valid for 2 years, in the area of speech-language impairment. Sections 1012.56(7)(c) and 1012.54, F.S.; rule 6A-4.001(1), F.A.C.

⁸ Section 1012.55(2), F.S.

⁹ Rule 6A-4.004(4), F.A.C. (validity periods expressed in school fiscal years).

¹⁰ *See* rule 6A-4.0282, F.A.C.

¹¹ Section 1012.57(1) and (4), F.S. An additional annual certification and an additional annual contract may be awarded by the district at its discretion only if the adjunct teacher is rated effective or highly effective during each year of teaching under the adjunct certification. Section 1012.57(4), F.S.

What are the basic eligibility requirements for an educator certificate?

To be eligible for an educator certificate, a person must:¹²

- Be at least 18 years of age;
- Sign an affidavit attesting that the applicant will uphold the U.S. and State Constitutions;
- Earn a bachelor's or higher degree from an accredited institution of higher learning¹³ or from a nonaccredited institution identified by the DOE as having a quality program resulting in a bachelor's or higher degree;¹⁴
- Submit to fingerprinting and background screening and not have a criminal history that requires the applicant's disqualification from certification or employment;
- Be of good moral character; and
- Be competent and capable of performing the duties, functions, and responsibilities of a teacher.

In addition, each applicant must submit an application and the required fee to the DOE.¹⁵

What are the specific eligibility requirements for a temporary certificate?

To receive a temporary certificate, an applicant must:

- Meet the basic eligibility requirements for certification;¹⁶
- Obtain full-time employment in a position that requires a Florida educator certificate by a school district or private school that has a DOE-approved professional education competence demonstration program;¹⁷ and
- Do one of the following:
 - Demonstrate mastery of subject area knowledge (e.g., passage of the appropriate subject area test);¹⁸ or
 - Complete the required degree or content courses specified in state board rule for subject area specialization¹⁹ and attain at least a 2.5 grade point average on a 4.0 scale in the subject area courses.²⁰

An educator who is employed under a temporary certificate must demonstrate mastery of general knowledge within one calendar year after employment in order to remain employed in a position that requires a certificate.²¹ If the educator is employed under contract, the calendar year deadline for demonstrating mastery of general knowledge may be extended through the end of the school year.²² A temporary certificate is valid for 3 years and is nonrenewable.²³

¹² Section 1012.56(2)(a)-(f), F.S.

¹³ Section 1012.56(2)(c), F.S.; rule 6A-4.003(1), F.A.C. (approved accrediting agencies); *see also* 34 C.F.R. ss. 602.1-602.50; U.S. Department of Education, *Regional and National Institutional Accrediting Agencies*, http://www2.ed.gov/admins/finaid/accred/accreditation_pg6.html#NationallyRecognized (last visited June 25, 2014) (list of accrediting agencies approved by the U.S. Department of Education).

¹⁴ Section 1012.56(2)(c), F.S.; rule 6A-4.003(2), F.A.C. (criteria for approval of nonaccredited institutions of higher learning). For initial certification, an applicant must attain at least a 2.5 overall grade point average on a 4.0 scale in the applicant's major field of study. Section 1012.56(2)(c), F.S.

¹⁵ Section 1012.56(1), F.S.; *see s.* 1012.59, F.S. The fee for initial certification is \$75 per subject area. Rule 6A-4.0012(1)(a)1. and 2., F.A.C.

¹⁶ Section 1012.56(2)(a)-(f) and (7)(b), F.S.

¹⁷ Section 1012.56(1)(b), F.S.; rule 6A-4.004(1)(a)2., F.A.C.

¹⁸ Section 1012.56(7)(b), F.S.; Florida Department of Education, *Subject Area Knowledge*, http://www.fldoe.org/edcert/mast_sub.asp (last visited June 25, 2014).

¹⁹ Section 1012.56(7)(b), F.S. The degree and content requirements are specified in ch. 6A-4, F.A.C.

²⁰ Section 1012.56(2)(c), F.S.; *see* Florida Department of Education, *Certificate Types and Requirements*, http://www.fldoe.org/edcert/cert_types.asp (last visited June 25, 2014).

²¹ Section 1012.56(7), F.S. (flush-left provisions at end of subsection); *see also infra* text accompanying notes 29-34 (acceptable means of demonstrating mastery of general knowledge).

²² *Id.*

²³ *Id.*

What are the specific eligibility requirements for a professional certificate?

An applicant seeking a professional certificate must:

- Meet the basic eligibility requirements for certification;²⁴
- Demonstrate mastery of general knowledge;²⁵
- Demonstrate mastery of subject area knowledge,²⁶ and
- Demonstrate mastery of professional preparation and education competence.²⁷

A professional certificate is valid for five years and is renewable.²⁸

How can an applicant demonstrate mastery of general knowledge?

Mastery of general knowledge may be demonstrated through any of the following methods:

- Achieving a passing score on the General Knowledge Test;²⁹
- Effective July 1, 2015, achieving passing scores established in state board rule on national or international examinations that test comparable content and relevant standards in verbal, analytical writing, and quantitative reasoning skills (e.g., the verbal, analytical writing, and quantitative reasoning portions of the Graduate Record Examination (GRE));³⁰
- Providing documentation of a valid professional standard teaching certificate issued by another U.S. state or territory,³¹ by the National Board for Professional Teaching Standards (NBPTS),³² or by the American Board for Certification of Teacher Excellence (ABCTE);³³
- Completing two semesters of part-time or full-time college teaching experience at an accredited community college, state university, or private college or university that awards associate's or higher degrees or at a nonaccredited institution of higher education identified by the DOE as having a quality program.³⁴

²⁴ Section 1012.56(2)(a)-(f), F.S.; *see supra* text accompanying notes 12-15.

²⁵ Section 1012.56(2)(g) and (3), F.S.; Florida Department of Education, *General Knowledge*, http://www.fldoe.org/edcert/mast_gen.asp (last visited June 25, 2014) [hereinafter *General Knowledge*].

²⁶ Section 1012.56(2)(h) and (5), F.S.

²⁷ Section 1012.56(2)(i) and (6), F.S.; Florida Department of Education, *Professional Preparation and Education Competence*, http://www.fldoe.org/edcert/mast_prof.asp (last visited June 26, 2014) [hereinafter *Professional Preparation and Education Competence*].

²⁸ Sections 1012.56(7)(a) and 1012.585, F.S.; rule 6A-4.0051(1), F.A.C. *See supra* text accompanying note 5.

²⁹ Section 1012.56(3)(a), F.S. The General Knowledge Test is part of the Florida Teacher Certification Examinations and is administered as four subtests: Reading, English Skills, English Essay, and Mathematics. Rule 6A-4.0021(7), F.A.C.; *see also* Florida Department of Education, *Competencies and Skills Required for Teacher Certification in Florida*, s. 82 (19th ed., April 2013), available at <http://www.fldoe.org/asp/ftce/pdf/ftce19edition.pdf> (competencies and skills measured by General Knowledge Test).

³⁰ Section 1012.56(3)(e), F.S., *as amended by* s. 3, ch. 2014-32, L.O.F. The passing scores to be identified in state board rule must be at approximately the same level of rigor as is required to pass the General Knowledge Test. *Id.*

³¹ Section 1012.56(3)(b), F.S.; *see* rules 6A-4.002(1)(i)1.-2. and 6A-4.003, F.A.C. (flush-left provisions following rule 6A-4.003(2)(e), F.A.C.). Section 1012.56(3)(b), F.S., specifies that a valid professional standard teaching certificate issued by *another state* is an acceptable means of demonstrating mastery of general knowledge. The DOE also recognizes certificates issued by U.S. territories. *See supra* text accompanying note 25 (*General Knowledge*).

³² Section 1012.56(3)(d), F.S.; *see* rule 6A-4.002(1)(j), F.A.C.; *see also* National Board for Professional Teaching Standards, <http://www.nbpts.org> (last visited June 26, 2014).

³³ Section 1012.56(3)(c), F.S.; *see* rule 6A-4.002(1)(j), F.A.C. On June 15, 2004, the State Board of Education authorized certificates issued by ABCTE to satisfy all requirements for a professional certificate, except the professional education competence demonstration requirement. Memorandum from Chief of the Bureau of Educator Certification, Florida Department of Education, to School District Superintendents, *et al.*, at 7 (June 25, 2004), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-2182/01.pdf>; *see* Florida Department of Education, *Minutes of State Board of Education*, at 5 (June 15, 2004), available at http://www.fldoe.org/board/meetings/2004_08_16/Minutes_2004_06_15.pdf; *see also* American Board for Certification of Teacher Excellence, <http://www.abcte.org> (last visited June 25, 2014).

³⁴ Section 1012.56(3)(d), F.S.; *see also supra* text accompanying notes 13 and 14 (approval of accredited and nonaccredited institutions of higher learning).

How can an applicant demonstrate mastery of subject area knowledge?

Mastery of subject area knowledge may be demonstrated through any of the following methods:

- **Bachelor's Degree Level** (for certification in a subject area for which state board rule requires a bachelor's or higher degree):
 - If a Florida subject area examination has been developed, achieving a passing score on the Florida-developed subject area examination specified in state board rule;³⁵
 - If a Florida subject area examination has not been developed, achieving a passing score on a standardized examination specified in state board rule, including passing scores on both the oral proficiency and written proficiency examinations administered by the American Council on the Teacher of Foreign Languages;³⁶ or
 - For certification in any other subject area for which there is no Florida subject area test or standardized examination specified in state board rule (e.g., Dance), completing the required bachelor's or higher degree and content courses specified in state board rule³⁷ and verification of subject area competence by the district school superintendent or, for a state-supported or private school, the school's chief administrative officer.³⁸
- **Master's Degree Level** (for certification in a subject area for which state board rule requires a master's or higher degree): Completing the required master's or higher degree and content courses specified in state board rule and achieving a passing score on the corresponding Florida-developed subject area test or standardized examination specified in state board rule.³⁹
- **Out-of-State Certification:** Providing documentation of a valid professional standard teaching certificate issued for a subject area by another U.S. state or territory, by NBPTS, or by ABCTE, if the certificate is comparable to the Florida certificate issued for the same subject area.⁴⁰

How can an applicant demonstrate mastery of professional preparation and education competence?

Mastery of professional preparation and education competence may be demonstrated through any of the following methods:

- Successfully completing an approved teacher preparation program at a postsecondary educational institution in Florida, or a teacher preparation program from an out-of-state accredited or DOE-approved institution, and achieving a passing score on the Professional Education Test required by state board rule;⁴¹

³⁵ Section 1012.56(5)(a), F.S. The Florida Teacher Certification Examinations include 44 subject area tests. Florida Department of Education, *Florida Teacher Certification Examinations*, <https://app1.fldoe.org/fice/Portal/FtceTests.aspx> (last visited Jan. 15, 2014); see also Florida Department of Education, *Competencies and Skills Required for Teacher Certification in Florida*, *supra* note 29, ss. 1-63; see also rule 6A-4.0021(9), F.A.C. (scoring of subject area tests).

³⁶ Section 1012.56(5)(b), F.S.; rule 6A-4.0243(1)(e), F.A.C.; see American Council on the Teaching of Foreign Languages (ACTFL), *Certified Proficiency Testing Program*, <http://www.actfl.org/professional-development/certified-proficiency-testing-program> (last visited June 25, 2014); Language Testing International (ACTFL Language Testing Office), *ACTFL Certified Proficiency Testing Program: Oral And Writing Proficiency Testing for State of Florida Prospective Teachers*, http://dev5.lti-inc.net/acad_fl2n.cfm (last visited June 25, 2014).

³⁷ See, e.g., rule 6A-4.0123, F.A.C. (specialization requirements for certification in dance); see also Florida Department of Education, *Florida Certification Coverages*, <http://www.fldoe.org/edcert/subjlist.asp> (last visited June 25, 2014).

³⁸ Section 1012.56(5)(c), F.S.; rule 6A-4.004(2), F.A.C.

³⁹ Section 1012.56(5)(d), F.S.; see Florida Department of Education, *Florida Certification Coverages*, <http://www.fldoe.org/edcert/subjlist.asp>.

⁴⁰ Section 1012.56(5)(e) and (f), F.S.; rule 6A-4.002(1)(i)-(j), F.A.C.; Florida Department of Education, *NBPTS Certificate Subjects and Corresponding Subjects in Florida*, <http://www.fldoe.org/edcert/nbpts-chart.asp> (last visited June 25, 2014) [hereinafter *NBPTS Certificate Subjects*].

⁴¹ Section 1012.56(6)(a) and (b), F.S.; see s. 1004.04, F.S.; rule 6A-4.003(1) and (4), F.A.C. (accreditation of teacher education programs). The Professional Education Test is part of the Florida Teacher Certification Examinations. Rule 6A-4.0021(8), F.S.; *Competencies and Skills*, *supra* note 29, at s. 00.

- Successfully completing a competency-based professional development certification program offered by a school district or educator preparation institute and achieving a passing score on the Professional Education Test;⁴²
- Completing 15 semester hours in professional preparation courses specified in state board rule⁴³ or completing the Professional Training Option for Content Majors;⁴⁴ completing requirements for practical experience in teaching;⁴⁵ completing an approved professional education competence demonstration program;⁴⁶ and achieving a passing score on the Professional Education Test;⁴⁷
- Providing documentation of a valid professional standard teaching certificate issued by another U.S. state or by the NBPTS;⁴⁸
- Providing documentation of a valid professional standard teaching certificate issued by ABCTE and completing an approved professional education competence demonstration program;⁴⁹ or
- Completing two semesters of part-time or full-time college teaching experience at an accredited community college, state university, or private college or university that awards associate's or higher degrees or at a nonaccredited institution of higher education identified by the DOE as having a quality program.⁵⁰

The state board, by December 31, 2014, must adopt rules to approve specific teacher preparation programs that are not identified in statute that may be used to meet requirements for mastery of professional preparation and education competence.⁵¹

Does Florida grant reciprocity to educators certified by another state?

Yes. Full reciprocity is granted to educators who hold a valid professional standard teaching certificate for a subject area issued by another state or the NBPTS.⁵² These individuals are deemed to have met the requirements for Florida professional certification, including mastery of general knowledge, subject area knowledge, and professional preparation and education competence.⁵³ Partial reciprocity is granted to educators who hold ABCTE certification. ABCTE certification satisfies all requirements for a professional

⁴² Section 1012.56(6)(g)-(h), F.S.; see ss. 1004.85 and 1012.56(8), F.S.; rule 6A-5.066(2)(b)1.d. and (c)1.d., F.A.C.

⁴³ Section 1012.56(6)(f), F.S.; rule 6A-4.006(2)(a), F.A.C. Separate professional preparation course requirements are established for certification in Agriculture (grades 6-12). Rule 6A-4.006(3)(a), F.A.C.

⁴⁴ The Professional Training Option for Content Majors authorizes an approved teacher preparation program at a postsecondary institution in Florida to allow students who do not major in education but do major or minor in a content area (e.g., English major) to satisfy professional preparation course requirements. Rule 6A-5.066(3), F.A.C.

⁴⁵ *Professional Preparation and Education Competence*, supra note 27; see rules 6A-4.002(5) and 6A-4.006(2)(b), F.A.C.

⁴⁶ Section 1012.56(6)(f), F.S. Each school district must, and a state-supported public or private school may, establish a professional education competence demonstration program that allows the district's or school's instructional staff to demonstrate mastery of professional preparation and education competence through a performance evaluation plan, which documents the staff's classroom application and instructional performance. See s. 1012.56(8)(b), F.S.

⁴⁷ Section 1012.56(6)(f), F.S.

⁴⁸ Section 1012.56(6)(c)-(d), F.S.; see rule 6A-4.002(1)(i)-(j), F.A.C.

⁴⁹ Section 1012.56(6)(d), F.S.; rule 6A-4.002(1)(j), F.A.C.; *Professional Preparation and Education Competence*, supra note 27; see supra notes 33 (American Board for Certification of Teacher Excellence certificate satisfies all requirements for a professional certificate, except the professional education competence demonstration requirement) and 46 (description of professional education competence demonstration program).

⁵⁰ Section 1012.56(6)(e), F.S. A non-accredited institution of higher learning is approved as having a quality program if the institution meets one of the following criteria: is accepted for certification purposes by the state department of education where the institution is located; holds a certificate of exemption pursuant to s. 1005.06, F.S.; is a newly created Florida public college or university that offers a bachelor's or higher degree program; is located outside the U.S. and awards a degree that is the equivalent to a bachelor's or higher degree awarded by an accredited or approved institution in the U.S.; or the degree from the institution was accepted by an accredited or approved institution either in transfer or as a basis for admission into the graduate program which resulted in the conferral of a higher degree. Rule 6A-4.003(2), F.A.C.

⁵¹ Section 1012.56(6), F.S. (flush-left provisions following paragraph (6)(h)), as amended by s. 3, ch. 2014-32, L.O.F.

⁵² Section 1012.56(5)(e)-(f), F.S.; see rules 6A-4.002(1)(i)-(j) and 6A-4.003(2), F.A.C. (flush-left provisions following paragraph (2)(e)); Florida Department of Education, *Reciprocity for Out-of-State Teachers and Administrators*, <http://www.fldoe.org/edcert/level1.asp> (last visited June 26, 2014). According to the DOE, 31 NBPTS certification subject area coverages currently align with Florida coverages. See *NBPTS Certificate Subjects*, supra note 40.

⁵³ Section 1012.56(3)(c)-(d), (5)(e)-(f), and (6)(c)-(d), F.S.; rule 6A-4.002(1)(i)1. and (j), F.A.C.

certificate, except the professional education competence demonstration requirement. Individuals who hold this certification must complete a professional education competence demonstration program.⁵⁴ Individuals who hold an out-of-state, NBPTS, or ABCTE certificate must apply for a Florida professional certificate. In each case, the certificate must be comparable to, and require the same or higher level of training as, the Florida subject area certification.⁵⁵

How is subject area coverage or an endorsement added to an educator certificate?

Subject area “coverage” is a designation on an educator certificate that indicates the field in which the educator has content knowledge (e.g., Mathematics, grades 6-12⁵⁶).⁵⁷ An “endorsement” is a “rider” shown on an educator certificate that signifies the educator has knowledge of instructional strategies that target particular levels, stages of development, or circumstances (e.g., Gifted Endorsement or Endorsement in English for Speakers of Other Languages⁵⁸).⁵⁹

To add subject area coverage or an endorsement to a professional certificate or temporary certificate, an educator must submit an application⁶⁰ and the required fee⁶¹ and complete the following requirements:

- **Add Subject Area Coverage to a Professional Certificate.** To add subject area coverage to a professional certificate, an educator must demonstrate mastery of subject area knowledge (e.g., passage of the appropriate subject area test) for each subject to be added to the certificate.⁶²
- **Add Subject Area Coverage to a Temporary Certificate.** To add subject area coverage to a temporary certificate, an educator must do one of the following:
 - Demonstrate mastery of subject area knowledge,⁶³ or
 - Complete the required degree or content courses specified in state board rule for specialization in the subject area.⁶⁴
- **Add an Endorsement to a Certificate.** To add an endorsement to a professional certificate or temporary certificate, an educator must do one of the following:
 - Complete the required degree and content courses specified in state board rule for the endorsement;⁶⁵ or

⁵⁴ Section 1012.56(5)(f), F.S.; *Professional Preparation and Education Competence*, *supra* note 27.

⁵⁵ See Rule 6A-4.002(1)(i) and (j), F.A.C.

⁵⁶ See, e.g., rule 6A-4.0262, F.A.C.

⁵⁷ Rule 6A-4.002(1)(d), F.A.C.

⁵⁸ See, e.g., rules 6A-4.01791 and 6A-4.0244, F.A.C.

⁵⁹ Rule 6A-4.002(1)(e), F.A.C.

⁶⁰ Rule 6A-4.004(6) and (7), F.A.C. Initial certification applications are generally submitted to DOE. Section 1012.56(1), F.S. District school boards issue certificates for school district employees for the addition of a bachelor’s degree level subject area specialization to a valid professional certificate based on passage of the subject area test or addition of an endorsement to a valid certificate based on completion of approved inservice core components or a district add-on endorsement program. Rule 6A-4.0012(5)(b) and (c), F.A.C.

⁶¹ The fee to add a subject area or endorsement to a professional certificate is \$75. Rule 6A-4.0012(1)(a)3.

⁶² Rule 6A-4.004(5)(b), F.S.; see Florida Department of Education, *Adding a Subject Coverage to a Professional Certificate*, http://www.fldoe.org/edcert/add_subject_pro.asp (last visited June 26, 2014); see also *supra* text accompanying notes 35-40 (acceptable means of demonstrating subject area knowledge). For subject areas that require college credit for the required content courses specified in state board rule, a certificated educator may, in lieu of college credit, complete the content course requirements through an add-on alternative teacher preparation program designed by a district school board and approved by DOE. Section 1012.575, F.S.; see Florida Department of Education, *Manual for Development of District Add-On Certification Programs* (2003), available at <http://www.fldoe.org/profdev/pdf/add-on-manual.pdf>.

⁶³ See *supra* text accompanying notes 35-40 (acceptable means of demonstrating subject area knowledge).

⁶⁴ See Florida Department of Education, *Adding a Subject Coverage to a Temporary Certificate*, http://www.fldoe.org/edcert/add_subject_temp.asp (last visited June 26, 2014).

⁶⁵ The degree and content requirements are established in ch. 6A-4, F.A.C.

- Complete the content course requirements through an add-on alternative teacher preparation program designed by a district school board and approved by DOE.⁶⁶

What are the requirements for renewing or reinstating a professional certificate?

A professional certificate must be renewed every five years.⁶⁷ An educator must submit an application,⁶⁸ pay a fee,⁶⁹ and earn at least six college credits or 120 inservice points to renew professional certification.⁷⁰ At least three college credits or 60 inservice points must be earned in each subject area for which renewal is sought.⁷¹ The renewal period may be extended to include two successive renewal periods up to 10 years to enable educators who are certified in three or more subject areas to earn the required credits or inservice points in each subject area.⁷² In addition to credits or inservice points required in the subject area, credits or inservice points may be earned in courses in clinical educator training, literacy and computational skills acquisition, exceptional student education, child development, drug abuse, child abuse, limited English proficiency, dropout prevention, and other topics.⁷³

The state board, as required by law, has adopted rules that expand the use of training for educators who must complete training in teaching reading or limited English proficiency in order to renew their certificates.⁷⁴ Effective July 1, 2014, the state board must also adopt in rule expanded use of training for educators who are required to complete training in teaching students with disabilities.⁷⁵ The law allows a professional certificate holder to use college credits or inservice points earned through training in teaching students of limited English proficiency or students with disabilities and training in teaching reading in excess of six semester hours during one certificate-validity period toward renewal of the professional certificate during the subsequent validity periods.⁷⁶ Temporary certificate holders may use college credits or inservice points earned through training in teaching students of limited English proficiency or students with disabilities and training in teaching reading toward renewal of the teacher's first professional certificate; however, the training must not have been included within the degree program, and the temporary and professional certificates must be issued for consecutive school years.⁷⁷

Beginning July 1, 2014, applicants for renewal of a professional certificate must earn at least one college credit or the equivalent amount of inservice points in the area of instruction for teaching students with disabilities.⁷⁸

⁶⁶ Rules 6A-4.004(7)(b) and 6A-4.003(4)(b), F.A.C.; see Florida Department of Education, *Adding an Endorsement to a Professional Certificate*, http://www.fldoe.org/edcert/add_endorse_pro.asp (last visited June 26, 2014); Florida Department of Education, *Adding an Endorsement to a Temporary Certificate*, http://www.fldoe.org/edcert/add_endorse_temp.asp (last visited June 26, 2014). Unlike certification in a subject area, an endorsement does not require renewal. An endorsement is a “rider” to a subject area certification, so if the subject area certification is not renewed, then the endorsement does not remain. Telephone interview with Bureau Chief, Educator Recruitment, Development, and Retention, Florida Department of Education (June 27, 2014).

⁶⁷ Section 1012.585(2)(a), F.S.

⁶⁸ Rule 6A-4.0051(3)(b), F.A.C. The DOE processes certification renewals for individuals who are not employed by district school boards. Section 1012.585(1)(b), F.S. District school boards are responsible for processing certificate renewals for school district employees. Section 1012.585(1)(a), F.S.

⁶⁹ The fee for a certification renewal is \$75. Rules 6A-4.0051(3)(b), F.A.C. and 6A-4.0012(1)(a)1.

⁷⁰ Section 1012.585(3)(a), F.S. Applicants may combine college credits and inservice points to meet this requirement. One semester hour of college credit is equivalent to 20 inservice points. Rule 6A-4.0051(1)(a)2., F.A.C. College credits must be earned at an accredited or state board-approved institution. Inservice points must be earned through participation in state board-approved school district inservice activities. Rule 6A-4.0051(1)(a), F.A.C.; see rule 6A-4.003(1) and (2), F.A.C. (list of approved accrediting agencies and guidelines for nonaccredited approved institutions).

⁷¹ Section 1012.585(3)(a), F.S.

⁷² Section 1012.585(3)(c), F.S.; rule 6A-4.0051(2)(c), F.A.C.

⁷³ Section 1012.585(3)(a), F.S.

⁷⁴ Rule 6A-4.0051(5), F.S.

⁷⁵ Section 1012.585(3)(d), F.S., *as amended by* s. 5, ch. 2014-32, L.O.F.

⁷⁶ Section 1012.585(3)(d)1., F.S.

⁷⁷ Section 1012.585(3)(d)2., F.S.

⁷⁸ Section 1012.585(4), F.S. This required training may not add to the total hours required by the DOE for continuing education or inservice training. *Id.*

Certification in subject areas may also be renewed by earning a passing score on the corresponding Florida-developed subject area test or standardized examination specified in state board rule.⁷⁹ Certification by NBPTS is deemed to meet certification renewal requirements for the life of the certificate, in the corresponding certification subject area.⁸⁰

An expired professional certificate may be reinstated if the applicant:

- Submits an application for reinstatement;
- Submits to fingerprinting and background screening; and
- In the five years immediately preceding the application for reinstatement, completes the college credit and inservice point requirements for renewal, including the required training in teaching students with disabilities,⁸¹ and passes the subject area test for each certification area to be reinstated.⁸²

If the applicant cannot meet the requirements for reinstatement of an expired professional certificate, he or she may be issued, if qualified, a three-year nonrenewable temporary certificate.⁸³ The requirements for reinstating an expired professional certificate are not satisfied by subject area tests or college credits completed for issuance of the expired certificate.⁸⁴

What are teacher preparation programs?

Teacher preparation programs are state-approved programs offered by postsecondary institutions and public school districts through which candidates for educator certification can, depending on the type of program, demonstrate mastery of general knowledge, professional preparation and education competence, and/or subject area knowledge for purposes of attaining an educator certificate.⁸⁵

What types of teacher preparation programs are offered?

There are various teacher preparation programs that individuals may use to receive the training needed to attain teaching credentials, including:⁸⁶

- Initial Teacher Preparation programs: “Traditional” teacher preparation programs that require candidates to demonstrate mastery of subject area knowledge in one or more specific subject areas(s), mastery of general knowledge, and mastery of professional preparation and education competence. Such programs result in qualification for a professional educator certificate.⁸⁷
- Educator Preparation Institutes: Alternative certification programs offered by postsecondary institutions for baccalaureate degree holders. These programs provide professional preparation for career-changers and recent college graduates who do not already possess a Professional Educator Certificate.
- District Professional Development Certification and Education Competency Programs: Cohesive competency-based professional preparation certification programs offered by Florida public school districts by which a school district’s instructional staff can satisfy the mastery of professional preparation and education competence requirements.

What are the requirements for admission into an initial teacher preparation program?

⁷⁹ Section 1012.585(3)(b), F.S., *as amended by* s. 5, ch. 2014-32, L.O.F. For the purposes of renewing a professional certificate, passage of a subject area examination is equivalent to three semester hours of college credit. Rule 6A-4.0051(1)(b), F.A.C.

⁸⁰ Section 1012.585(2)(b), F.S.; rule 6A-4.0051(1)(c), F.A.C.

⁸¹ Section 1012.585(4), F.S.

⁸² Section 1012.585(5), F.S.; rule 6A-4.0051(3) and (6), F.A.C.

⁸³ Rule 6A-4.004(7), F.A.C.

⁸⁴ Section 1012.585(5), F.S.

⁸⁵ See Florida Department of Education, *Educator Preparation*, <http://www.fldoe.org/profdev/approval.asp> (last visited June 27, 2014). See also rule 6A-5.066, F.A.C.; ss. 1004.04(3)(a) and 1004.85(1), F.S.

⁸⁶ Florida Department of Education, *Educator Preparation*, <http://www.fldoe.org/profdev/approval.asp> (last visited June 27, 2014); rule 6A-5.066, F.A.C.

⁸⁷ Rule 6A-5.066, F.A.C.

Candidates applying for admission into an initial teacher preparation program must:

- Have a grade point average of 2.5 or higher in the general education component of undergraduate studies or have completed a bachelor's degree from an accredited college or university with a minimum 2.5 GPA.⁸⁸
- Pass the General Knowledge Test of the Florida Teacher Certification Examination or, for a graduate level program, obtain a baccalaureate degree from an institution that is accredited or approved pursuant to the rules of the state board.⁸⁹

Admission requirements for each program can be waived for up to 10 percent of the students admitted.⁹⁰

What are the curricula requirements for initial teacher preparation programs?

Each candidate enrolled in a teacher preparation program must receive instruction and be assessed on the uniform core curricula in his or her area of program concentration during course work and field experiences.⁹¹

The state board must establish, in rule, uniform core curricula for each state-approved teacher preparation program including, but not limited to:

- Florida Educator Accomplished Practices;
- State-adopted content standards;⁹²
- Scientifically researched reading instruction;
- Content literary and mathematical practices;
- Strategies appropriate for instruction of English language learners;
- Strategies appropriate for instruction of students with disabilities; and
- School safety.⁹³

Each candidate enrolled in a teacher preparation program must receive instruction and be assessed on the uniform core curricula in his or her area of program concentration during course work and field experiences.⁹⁴

In addition, before program completion, each candidate must demonstrate his or her ability to positively impact student learning growth in the candidate's area or areas of program concentration during a prekindergarten through a grade 12 field experience and must pass each portion of the Florida Teacher Certification Examination required for a professional certificate in the area or areas of program concentration.⁹⁵

What are the requirements for instructional personnel who supervise or direct teacher preparation students during field experience courses or internships?

All school district personnel and instructional personnel who supervise or direct teacher preparation students during field experience courses or internships taking place in Florida, in which a candidate demonstrates his or her impact on student learning growth, must:

⁸⁸ Section 1004.04(3)(b)1., F.S.

⁸⁹ Section 1004.04(3)(b)2., F.S.

⁹⁰ Section 1004.04(3)(b), F.S. (flush-left provisions at end of subsection).

⁹¹ Section 1004.04(2)(c), F.S.

⁹² The State Board of Education has adopted the Next Generation Sunshine State Standards, which establish the core content of the curricula taught in the state and specify the core content knowledge and skills that K-12 public school students are expected to acquire. Rule 6A-1.09401(1), F.A.C.; s. 1003.41(1), F.S.

⁹³ Section 1004.04(2), F.S.

⁹⁴ *Id.*

⁹⁵ Section 1004.04(2)(d), F.S.

- Have evidence of clinical educator training;
- Hold a valid professional certificate issued pursuant to law;
- Have at least three years of teaching experience in prekindergarten through grade 12; and
- Have earned an effective or highly effective evaluation or be a peer evaluator under the district's approved evaluation system.⁹⁶

If the field experience course or internship, in which the candidate demonstrates his or her impact on student learning growth, is offered in another state through a Florida online or distance program, the supervising instructional personnel must:⁹⁷

- Have received clinical educator training or its equivalent in that state;
- Hold a valid professional certificate issued by the state in which the field experience takes place; and
- Have at least 3 years of teaching experience in prekindergarten through grade 12.

What are the criteria for initial teacher preparation program approval?

The state board is charged with maintaining a system for development and approval of teacher preparation programs.⁹⁸ The system allows postsecondary educator preparation institutions to employ varied and innovative educator preparation techniques while being held accountable for producing graduates with the competencies and skills necessary to achieve the state's education goals; helps the state's diverse student population meet high standards for academic achievement; maintains safe, secure classroom learning environments; and sustains the state system of school improvement and education accountability.⁹⁹

The DOE is responsible for approving teacher preparation programs based on evidence of a program's capacity to meet the requirements for continued program approval established in law and state board rule.¹⁰⁰ The requirements for continued program approval are:

- Documentation that each candidate has met the admission requirements;¹⁰¹
- Documentation that the program and each program completer have met the curriculum requirements;¹⁰² and
- Evidence of performance in each of the following areas:
 - Placement rate of program completers into instructional positions in Florida public schools and private schools, if available;
 - Rate of retention for employed program completers in instructional positions in Florida public schools;
 - Performance of students in prekindergarten through grade 12 who are assigned to in-field program completers on statewide assessments using the results of the student learning growth formula adopted by the DOE pursuant to law;
 - Performance of students in prekindergarten through grade 12 who are assigned to in-field program completers aggregated by student subgroup, as defined in the federal Elementary and Secondary Education Act (ESEA)¹⁰³ as a measure of how well the program prepares teachers to work with a diverse population of students in a variety of settings in Florida public schools;

⁹⁶ Section 1004.04(5)(b), F.S.

⁹⁷ Section 1004.04(5)(b)2., F.S. If the field experience or internship, in which the candidate demonstrates his or her impact on student learning growth, offered through a Florida online or distance program takes place on a U.S. military base in another country, the supervising personnel must have received clinical educator training or its equivalent, hold a valid professional certificate issued by the U.S. Department of Defense or a state or territory of the U.S., and have at least three years teaching experience in prekindergarten through grade 12. Section 1004.04(5)(b)3., F.S.

⁹⁸ Section 1004.04(1), F.S.

⁹⁹ *Id.* See Florida Department of Education, *Educator Preparation*, <http://www.fldoe.org/profdev/approval.asp> (last visited June 27, 2014).

¹⁰⁰ See s. 1004.04(3)(a), F.S.; 6A-5.066, F.A.C.

¹⁰¹ Section. 1004.04(4)(a)1., F.S.

¹⁰² Section. 1004.04(4)(a)2., F.S.

¹⁰³ 20 U.S.C. s. 6311(b)(2)(C)(v)(II).

- Results of program completers' annual evaluations under the teacher evaluation systems;¹⁰⁴ and
- Production of program completers in statewide critical teacher shortage areas as identified in law.¹⁰⁵

The state board must adopt rules for continued approval of teacher preparation programs which include the program review process, timelines for continued approval, and the performance level targets for each of the continued approval criteria.¹⁰⁶ Each teacher preparation program must prepare and submit an institutional program evaluation plan that includes data related to the criteria established for continued approval of the teacher preparation program. The plan must provide information on how the institution addresses continuous program improvement.¹⁰⁷

What institutions may offer educator preparation institutes?

Postsecondary institutions that are accredited or approved by the DOE to award degrees and credits for educator certification may seek approval from the DOE to create educator preparation institutes for the purpose of providing all or any of the following:

- Professional development instruction to assist teachers in improving classroom instruction and in meeting certification or recertification requirements;
- Instruction to assist potential and existing substitute teachers in performing their duties;
- Instruction to assist paraprofessionals in meeting education and training requirements; and
- Competency-based program instruction for noneducation baccalaureate degree holders to become certified teachers in order to increase routes to the classroom for mid-career professionals.¹⁰⁸

A private provider that has a proven history of delivering high-quality educator preparation may also seek approval to offer a competency-based certification program. DOE approval must be based upon evidence provided from other state recipients of the provider's services and data showing the successful performance of completers based upon student achievement.¹⁰⁹

What are the criteria for initial educator preparation institute approval?

The DOE must approve an educator preparation institute certification program if the institute provides evidence of the institute's capacity to implement a competency-based program that includes each of the following:

- The areas addressed by the uniform core curricula for initial teacher preparation programs;¹¹⁰
- An educational plan for each participant to meet certification requirements and demonstrate his or her ability to teach the subject area for which the participant is seeking certification, which is based on an assessment of his or her competency in the areas addressed by the uniform core curricula;
- Field experiences appropriate to the certification subject area specified in the educational plan with a diverse population of students in a variety of settings under the supervision of qualified educators; and
- A certification ombudsman to facilitate the process and procedures required for participants who complete the program to meet any requirements related to the background screening requirements.¹¹¹

¹⁰⁴ The law requires each program to guarantee the high quality of its completers during the first two years immediately following completion of the program or following initial certification, whichever occurs first. Any program completer employed in a Florida public school during the two-year period who earns an evaluation result of developing or unsatisfactory through the evaluation system established in s. 1012.34, F.S., must be provided additional training by the program at no expense to the teacher or the employer if requested by the district or charter school. Section 1004.04(d), F.S.

¹⁰⁵ Section 1004.04(4)(a)3., F.S.

¹⁰⁶ Section 1004.04(4)(b), F.S.

¹⁰⁷ Section 1004.04(4)(c), F.S.; rule 6A-5.066(1)(c)5., F.A.C.

¹⁰⁸ Section 1004.85(2)(a), F.S.

¹⁰⁹ Section 1004.85(2)(b), F.S.

¹¹⁰ See ss. 1004.85(3)(a)1. and 1004.04(2)(b), F.S.

¹¹¹ Section 1004.85(3)(a)4., F.S.

What are the requirements for educator preparation institute program participants?

Each program participant must:

- Meet certification application and eligibility requirements established in law;¹¹²
- Participate in coursework and field experiences that are appropriate to the participant's educational plan; and
- Before completion of the program, fully demonstrate his or her ability to teach the subject area for which he or she is seeking certification by documenting a positive impact on student learning growth in a prekindergarten through grade 12 setting and achieving a passing score on the professional education competency examination, the basic skills examination, and the subject area examination for the subject area certification which is required by state board rule.¹¹³

What are the criteria for continued approval of educator preparation institutes?

Continued approval of educator preparation institutes is determined by the Commissioner of Education based on a periodic review of these areas:

- Documentation from the program that each program completer has met the requirements established in law;
- Evidence of performance in each of the following:
 - Placement rate of program completers into instructional positions in Florida public schools and private schools, if available;
 - Rate of retention for employed program completers in instructional positions in Florida public schools;
 - Performance of students in prekindergarten through grade 12 who are assigned to in-field program completers on statewide assessments using the results of the student learning growth formula adopted by the DOE pursuant to law;
 - Performance of students in prekindergarten through grade 12 who are assigned to in-field program completers aggregated by student subgroup, as defined in the ESEA¹¹⁴ as a measure of how well the program prepares teachers to work with a diverse population of students in a variety of settings in Florida public schools;
 - Results of program completers' annual evaluations under the teacher evaluation systems; and
 - Production of program completers in statewide critical teacher shortage areas as identified in law.¹¹⁵

¹¹² See ss. 1004.85(3)(b)1. and 1012.56(1) and (2)(a)-(f), F.S.

¹¹³ Section 1004.85(3)(b), F.S.

¹¹⁴ 20 U.S.C. s. 6311(b)(2)(C)(v)(II).

¹¹⁵ Section 1004.85(4)(b), F.S.

Where can I get additional information?

Florida Department of Education

Division of Educator Quality

(850) 245-0509

<http://www.fldoe.org/dpe>

Florida Department of Education

Bureau of Educator Recruitment, Development, and Retention

(850) 245-0435

<http://www.fldoe.org/profdev/>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>



Which school district employees are classified as instructional personnel and school administrators?

Instructional personnel provide direct instructional services or direct instructional support to students in grades kindergarten through grade 12. Instructional personnel include classroom teachers;¹ staff who provide student personnel services, e.g., guidance counselors, social workers, career specialists, and school psychologists; librarians and media specialists; other instructional staff, e.g., learning resource specialists; and education paraprofessionals under the direct supervision of instructional personnel.²

School administrators include school principals, school or career center directors, and assistant principals. School principals and school or career center directors serve as the administrative head of a school. Assistant principals assist the administrative head of a school and include assistant principals for curriculum and instruction.³

What types of contracts are used to employ instructional personnel?

Three types of contracts are used to employ instructional personnel in Florida—continuing contracts, professional service contracts, and annual contracts. Holding a continuing contract or professional service contract is often referred to as having tenured status.⁴

Annual Contracts

An annual contract is an employment contract for a period of no longer than one school year that a district school board may choose to award or not award without cause.⁵ As of July 1, 2011, instructional personnel under an annual contract and personnel hired thereafter may only be employed on an annual contract basis. The first annual contract for newly hired instructional personnel is a one-year probationary contract, which may be terminated without cause or from which the employee may resign without breach of contract. “Newly hired instructional personnel” include employees new to the profession or employees with experience who are new to the school district.⁶ Thus, a continuing or professional service contract teacher who changes school districts is employed by the new school district on a one-year probationary basis, followed by employment thereafter on an annual contract basis, provided the new school district chooses to continue the teacher’s employment.⁷

¹ Classroom teachers include substitute teachers. Section 1012.01(2)(a), F.S.

² Section 1012.01(2), F.S.

³ Section 1012.01(3)(c), F.S.

⁴ See s. 1012.33(3)(d), F.S. (2010). Tenure is an employment policy which limits a public school district’s ability to terminate the employment of instructional personnel. See 67B Am. Jur. 2d Schools s. 195; see also s. 1012.33(3), F.S. Tenure usually takes the form of a continuous or automatically renewing employment contract. Tenured instructional personnel may only be dismissed for specified reasons after statutorily required hearings. See *Board of Regents v. Roth*, 408 U.S. 564 (1972); 67B Am. Jur. 2d Schools s. 211.

⁵ Section 1012.335(1)(a), F.S.

⁶ Section 1012.335(1)-(2), F.S. For the purpose of awarding annual contracts, the term “instructional personnel” does not include substitute teachers. Section 1012.335(1)(b), F.S.

⁷ Section 1012.335(1)(c), F.S.

Upon successful completion of the one-year probationary contract, district school boards may award subsequent annual contracts if the employee:

- Is certified;
- Has been recommended by the superintendent based upon his or her performance evaluation, and approved by the district school board; and
- Has not received two consecutive unsatisfactory evaluations, two unsatisfactory evaluations within a three-year period, or three consecutive evaluations of needs improvement or any combination of needs improvement and unsatisfactory.⁸

Continuing Contracts

Instructional personnel hired before July 1, 1984, entered into continuing contracts upon meeting eligibility requirements.⁹ After completing three years of probationary service on annual contracts, an employee was eligible for a continuing contract if he or she was fully certified, recommended for a continuing contract by the superintendent, and reappointed by the school board.¹⁰ Unlike a professional service contract, a continuing contract entitles the employee to continued employment without the necessity of annual renewal until discontinuation of the position, resignation, dismissal, or removal from continuing contract status.¹¹

Professional Service Contracts

Instructional personnel hired on or after July 1, 1984, and up to July 1, 2011, were awarded professional service contracts after three years of probationary service on annual contracts¹² if certified, recommended for a professional service contract by the superintendent, and reappointed by the school board.¹³

Professional service contracts automatically renew each year, unless the employee is charged with unsatisfactory performance based upon his or her annual performance evaluation or the employee's performance evaluations indicate chronically ineffective performance.¹⁴ In such cases, the school district must follow statutorily required due process procedures before dismissing the employee.¹⁵

School administrators¹⁶ must receive a written contract. The contract may be for an initial period not to exceed three years and is subject to annual review and renewal. The first 97 days of an initial contract is a probationary period during which the employee may be dismissed without cause or may resign without breach

⁸ Section 1012.335(2)(c), F.S.

⁹ Section 15, ch. 82-242, L.O.F. Legislation enacted in 1982 discontinued the award of new continuing contracts effective July 1, 1984. *Id.*

¹⁰ Section 231.36(1) and (3)(a)1.-4., F.S. (1981).

¹¹ Section 231.36(3)(e), F.S. (1981). A continuing contract employee may be dismissed or returned to annual contract status for a period of three years based upon the recommendation of the district school superintendent, school principal, or a majority of the school board. Section 1012.33(4)(b), F.S.; *see also* s. 231.36(4), F.S. (1981).

¹² An employee's first annual contract included a 97-day period during which the employee's contract may be terminated without cause or the employee may resign without breach of contract. Section 1012.33(3)(a)4., F.S. (2012). This 97-day period applied to instructional personnel employed after June 30, 1997. *Id.*

¹³ Section 1012.33(3)(a)1.-3., F.S. (2010). Probationary employment must be completed in the same school district during a period not to exceed five successive years, except for leave duly authorized and granted. *Id.* Probationary employment may be extended to four years if agreed upon in writing by the district school board and the employee. Section 1012.33(3)(c), F.S. (2010).

¹⁴ Sections 1012.33(3) and 1012.34(4), F.S. A professional service contract is not required to be renewed if the employee has two consecutive annual performance evaluation ratings of unsatisfactory, two annual ratings of unsatisfactory within a three-year period, or three consecutive annual ratings of needs improvement or a combination of needs improvement and unsatisfactory. Section 1012.33(3)(b), F.S.

¹⁵ Section 1012.34(4)(b), F.S.

¹⁶ School administrators are school level managers, such as school principals, school directors, career center directors, and assistant principals. Section 1012.01(3)(a), F.S.

of contract. After the first three years, the contract may be renewed for a period not to exceed three years and must provide for dismissal during its term for just cause.¹⁷

What is included in collective bargaining agreements for instructional personnel?

District school boards negotiate with the certified bargaining agent (i.e., union) that represents the district's instructional personnel to determine the provisions of the collective bargaining agreement, including wages, hours, and terms and conditions of employment.¹⁸ However, The Legislature is constitutionally empowered to provide the standards and guidelines for implementing the collective bargaining rights of public employees, including public school teachers.¹⁹ This includes the authority to determine which public employees and matters are subject to collective bargaining and which issues must be bargained.²⁰ The following areas affecting employment have been collectively bargained:

- Salary schedules;²¹
- Performance evaluation instruments and procedures;
- Policies for conduct or performance-related suspension and dismissal;
- Teacher assignment;
- Teacher transfer;
- Reduction-in-force and employee recall policies;
- Health, life, and disability insurance and workers compensation and retirement benefits;
- The school district calendar, including the work year, workday hours, and school holidays observed by the school district;
- Sick, vacation, maternity, medical, military, and other leave policies;
- Grievance procedures and sexual harassment policies;
- Instructional personnel responsibilities for maintaining student safety and discipline and interacting with parents; and
- Resignation and retirement.²²

Pursuant to the Legislature's constitutional authority, the Florida Statutes contain requirements relating to each collectively bargained area of employment listed above.

¹⁷ Section 1012.33(1)(b), F.S. The just cause grounds for dismissal of school administrators are immorality; misconduct in office; incompetency; gross insubordination; willful neglect of duty; drunkenness; or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude. Section 1012.33(6)(b), F.S.; rule 6A-5.056(1)-(6) and (8), F.A.C.

¹⁸ Sections 447.203(2) and 447.309(1), F.S. "The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged." Art. I, s. 6, Fla. Const. The only school district whose instructional personnel are not represented by a union is Calhoun County. Section 447.305, F.S., requires that every employee organization seeking to become a certified bargaining agent for public employees register with the Public Employees Relations Commission (PERC). No such registration exists for Calhoun County. See Public Employees Relations Commission, Search Registration Orders, <http://perc.myflorida.com/co/regfilter.aspx> (last visited June 17, 2014).

¹⁹ *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030, 1032 (Fla. 1999).

²⁰ *State Employees Attorneys Guild*, 734 So. 2d at 1032; *School District of Martin County v. Public Employee Relations Commission*, 15 So. 3d 42, 45-46 (4th DCA 2009).

²¹ Hillsborough County Public Schools, *Salary Schedules 2013-2014*, at 7 (2014), available at http://www.sdhc.k12.fl.us/humanresources/PDFs/SALARY/HCPSS_SalarySchedule_Entire.PDF; Desoto County Teacher's Association and the Desoto County School Board, *Employee Compensation Plan* (2012), available at [http://images.pcmac.org/Uploads/SDDeSoto/SDDeSoto/SubDepartments/DocumentsCategories/Documents/DCTA%20Agreement%202012-2015%20\(Board%20Submission\).pdf](http://images.pcmac.org/Uploads/SDDeSoto/SDDeSoto/SubDepartments/DocumentsCategories/Documents/DCTA%20Agreement%202012-2015%20(Board%20Submission).pdf) (located in the appendix to *Agreement between the Desoto County Teachers' Association and the Desoto County School Board*).

²² See, e.g., Hillsborough County School District and Hillsborough Classroom Teachers Association, Inc., *Teacher Contract 2013-2016*, (2014), available at <http://www.sdhc.k12.fl.us/humanresources/PDFs/CONTRACT/1316HCTATeacherContract.pdf> (see table of contents) [hereinafter *Hillsborough County Agreement*]; see, e.g., Brevard County School District and Brevard Federation of Teachers, *Agreement between the School Board of Brevard County and the Brevard Federation of Teachers*, (2013), available at <http://eagendatoc.brevardschools.org/01-22-2013%20Regular%20School%20Board%20Meeting%20on%20Tuesday,%20January%202022,%202013/90C2AF0C-D28E-4FC0-95AF-21E562489C7C-6370CBD3-CBA8-45CA-8C3A-80A578B6D999.HTM> (see table of contents).

How do school districts determine which instructional personnel to retain when making workforce reductions?

Reductions to instructional positions caused by declining enrollment or budgetary conditions are known as “reductions-in-force.”²³ Florida law establishes the priorities by which instructional personnel and school administrators are retained during a reduction-in-force process. Instead of the “last hired, first fired” practice, in which employees with the most seniority are retained over less senior employees regardless of their performance,²⁴ district school boards must prioritize retention based on educational program needs and performance evaluation results.

Specifically, employees with the lowest performance evaluation ratings must be released before higher-rated employees, and school boards may not prioritize retention of employees based upon seniority.²⁵ Collective bargaining agreements newly entered into, extended, or readopted on or after July 1, 2011, and all such agreements entered into on or after July 1, 2014, must base reduction in force on educational program needs and performance evaluation results.²⁶

On what basis may instructional personnel be dismissed during the term of their employment contract?

Instructional personnel may be dismissed during the term of their employment contract for unsatisfactory performance and just cause.²⁷

Dismissal for Unsatisfactory Performance

Dismissal for unsatisfactory performance during the term of an employment contract only applies to instructional personnel on professional service contracts.²⁸ School districts must follow the following due process procedures in order to terminate such personnel:

- The evaluator must notify the employee of unsatisfactory performance in writing and meet with the employee to discuss the performance evaluation.²⁹ Thereafter, the employee must be placed on performance probation for a period of 90 days. While on performance probation, the employee must be periodically evaluated, given performance feedback, and provided assistance and inservice opportunities targeted to correcting performance deficiencies.³⁰
- Within 14 days after the close of the 90-day period, the evaluator must determine whether the performance deficiencies have been corrected and make a recommendation to the district school superintendent regarding retention or termination of the employee. Within 14 days after receipt of this recommendation, the superintendent must notify the employee in writing regarding continuation or termination of his or her employment contract.³¹
- Within 15 days after receiving notice of the superintendent’s recommendation that his or her employment contract be terminated, the employee may request a hearing to contest the

²³ National Council on Teacher Quality, *Teacher Layoffs: Rethinking “Last Hired, First Fired” Policies*, at 3 (Feb. 2010), available at http://www.nctq.org/p/docs/nctq_dc_layoffs.pdf [hereinafter *Rethinking “Last Hired, First Fired”*]; see, e.g., Collier County School District and Collier County Education Association, *Instructional Personnel Collective Bargaining Agreement*, at 9.01, (2009), available at http://www.ccea-ocap.org/index.php?option=com_content&view=article&id=17&Itemid=70 [hereinafter *Collier County Agreement*]. Reductions-in-force do not typically include reductions in instructional personnel due to routine attrition, decisions not to renew annual contract employees, and dismissal based upon conduct or performance. *Id.* Typically, teachers who lose their jobs may be recalled based on collectively bargained priorities. *Rethinking “Last Hired, First Fired,”* at 5.

²⁴ *Hillsborough County Agreement*, *supra* note 20, at 68 (priority of reductions is based upon seniority).

²⁵ Section 1012.33(5), F.S.

²⁶ Section 19, ch. 2011-1, L.O.F.; but see *Hillsborough County Agreement*, *supra* note 20, at 68 (priority of reductions is based upon seniority).

²⁷ See ss. 1012.33(1)(a), (4)(c), and (6)(a), 1012.34(4), and 1012.335(4)-(5), F.S.

²⁸ Section 1012.34(4), F.S.

²⁹ Section 1012.34(4)(a), F.S.

³⁰ Section 1012.34(4)(b)1., F.S.

³¹ Section 1012.34(4)(b)2., F.S.

recommendation. The hearing must be conducted within 60 days after receipt of the employee's request. The school board may choose to conduct its own hearing or provide for a hearing before an administrative law judge. If the matter is heard by an administrative law judge, the judge hears the case and makes a recommendation on retention or termination to the school board. A majority vote of the membership of the district school board is required to sustain or change the administrative law judge's recommendation. In either case, the school board's determination is final as to the sufficiency or insufficiency of the grounds for termination of employment.³²

- The employee may appeal an adverse hearing result in state appellate court. The employee must file a request for appeal within 30 days after the school board's final order.³³

Just Cause Dismissal

With respect to instructional personnel holding a professional service or an annual contract, Florida law expressly provides for dismissal based on "just cause" and defines "just cause" to include a list of offenses. Similarly, personnel holding continuing contracts may be dismissed based on the same offenses, as well as for drunkenness.³⁴

For professional service contract employees, just cause includes incompetency; immorality; misconduct in office; gross insubordination; willful neglect of duty; and being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.³⁵ State board rule defines these causes as follows:

- Immorality is "conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community."
- Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession,³⁶ the Principles of Professional Conduct for the Education Profession in Florida,³⁷ or school board rules; or behavior that disrupts the student's learning environment or reduces the educator's ability or his or her colleagues' ability to effectively perform duties.
- Incompetency is unfitness for, or inability to perform, one's duty resulting from inefficiency³⁸ or incapacity.³⁹
- Gross insubordination is defined as intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties.
- Willful neglect of duties is defined as intentional or reckless failure to carry out required duties.
- Crimes of moral turpitude based upon a list of offenses which bear upon the individual's fitness to work with children or in a position of public trust, e.g., sex crimes involving children or others, murder, robbery, kidnapping or luring or enticing a child, assault, and battery.⁴⁰

Just cause for professional service contract employees also includes the receipt of two consecutive annual performance evaluation ratings of unsatisfactory, two annual ratings of unsatisfactory within a three-year period, or three consecutive annual ratings of needs improvement or a combination of needs improvement and unsatisfactory.⁴¹

³² *Id.*

³³ Section 120.68(1) and (2)(a), F.S.

³⁴ See s. 1012.33(1)(a), (4)(c), and (6)(a), and 1012.335(4)-(5), F.S.

³⁵ Section 1012.33(1)(a), F.S.; rule 6A-5.056, F.A.C.

³⁶ Rule 6B-1.001, F.A.C.

³⁷ Rule 6B-1.006, F.A.C.

³⁸ Inefficiency includes failure to perform duties or effectively communicate or relate with students, colleagues, administrators, subordinates, or parents; disorganization in the classroom that threatens student health, safety, or welfare; and excessive absences or tardiness. Rule 6A-5.056(3)(a), F.A.C.

³⁹ Incapacity includes lack of emotional stability, adequate physical ability, or general education or subject area knowledge. Rule 6A-5.056(3)(b), F.A.C.

⁴⁰ Rule 6A-5.056(1)-(8), F.A.C.

⁴¹ Section 1012.33(1), F.S.; see also rule 6A-5.056(7), F.S.

Just cause for annual contract employees includes all of the grounds applicable to professional service contract employees except for dismissal for multiple performance evaluations of needs improvement or unsatisfactory.⁴²

A school district must provide employees charged on just cause grounds with written notice stating the charges and may suspend the employee without pay.⁴³ If the employee wishes to contest the charges, he or she may request a hearing.⁴⁴ The school board may choose to conduct its own hearing or provide for a hearing before an administrative law judge.⁴⁵ The employee may appeal an adverse hearing result in state appellate court.⁴⁶

What types of contracts are used to employ school administrators?

School administrators⁴⁷ hired before July 1, 1984, entered into continuing contracts upon meeting eligibility requirements.⁴⁸ After completing three years of probationary service on annual contracts, an administrator was eligible for a continuing contract if he or she was fully certified, recommended for a continuing contract by the superintendent, and reappointed by the school board.⁴⁹ A continuing contract school administrator may be suspended or dismissed during the term of the contract based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.⁵⁰

School administrators hired on or after July 1, 1984 must receive a written contract. Such contract may be for an initial period not to exceed three years and is subject to annual review and renewal.⁵¹ The first 97 days of an initial contract is a probationary period during which the employee may be dismissed without cause or may resign without breach of contract. After the first three years, the contract may be renewed for a period not to exceed three years and must provide for dismissal during its term for the same offenses as continuing contract school administrators.⁵²

How are classroom teacher school assignments and transfers determined?

Performance evaluation results, student performance, and teacher qualifications are the primary bases for assigning classroom teachers to schools and determining transfers.⁵³ Each school principal must submit classroom teacher nominations to the district school superintendent who, in turn, submits recommendations for filling school-level instructional positions to the school board for approval.⁵⁴

When transferring a classroom teacher from one school to another, the superintendent must consult with the school principal and allow him or her to review the teacher's record and interview the teacher. If the school

⁴² See ss. 1012.33(4)(c) and 1012.335(4)-(5), F.S.

⁴³ Section 1012.33(6)(a), F.S. If the charges are not sustained, the employee must be reinstated with back pay.

⁴⁴ *Id.* The request for a hearing must be made within 15 days of receiving notice of the charges.

⁴⁵ Section 1012.33(6)(a)1. and 2., F.S. In either case, the hearing must be conducted within 60 days of receiving the request for hearing. *Id.*

⁴⁶ Section 1012.33(6), F.S. (flush-left provisions at end of subsection). The request for appeal must be made within 30 days after the school board's or administrative law judge's final order. Section 120.68(1) and (2)(a), F.S.

⁴⁷ School administrators are school level managers, such as school principals, school directors, career center directors, and assistant principals. Section 1012.01(3)(a), F.S.

⁴⁸ Section 15, ch. 82-242, L.O.F. Legislation enacted in 1982 discontinued the award of new continuing contracts effective July 1, 1984. *Id.*

⁴⁹ Section 231.36(1) and (3)(a)1.-4., F.S. (1981).

⁵⁰ Section 1012.33(4)(c), F.S.

⁵¹ Section 1012.34(1)(b), F.S.

⁵² Section 1012.33(1)(b), F.S. The just cause grounds for dismissal of school administrators are immorality; misconduct in office; incompetency; gross insubordination; willful neglect of duty; drunkenness; or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude. Section 1012.33(6)(b), F.S.; rule 6A-5.056(1)-(6) and (8), F.A.C.

⁵³ See s. 1012.2315, F.S.

⁵⁴ Section 1012.27(1), F.S. (flush left provision at end of subsection).

principal determines that the placement is not in the best interests of students, he or she may request an alternative placement. The law authorizes a school principal to refuse the placement or transfer of a classroom teacher who is not rated effective or highly effective.⁵⁵

The law prohibits school districts from assigning to a “D” or “F” school a higher percentage than the school district average of temporarily certified teachers, teachers “in need of improvement,” or out-of-field teachers.⁵⁶ Each district must annually certify to the commissioner its compliance with this requirement.⁵⁷ Legislation passed in 2014 reiterates the flexibility school districts have to assign a newly hired teacher to a school that has earned an “F” in the previous year or has earned a “D” or “F” in each of the previous three school years.⁵⁸ The legislation provides three situations appropriate for assignment of a newly hired teacher:

- The teacher has received an effective rating or highly effective rating in the prior year’s performance evaluation;
- The teacher has successfully completed or is enrolled in a teacher preparation program established pursuant to statute or pursuant to state board rule, is provided with “high quality” mentoring during the first two years of employment, holds a Florida educator certificate, and holds a probationary contract; or
- The teacher holds a probationary contract, holds a Florida educator certificate, has successful teaching experience, and if, in the school principal’s judgment, students would benefit from the placement of the teacher.⁵⁹

In addition, districts may not assign a student in consecutive school years to a classroom teacher who is evaluated as unsatisfactory or needs improvement.⁶⁰ For an elementary school student, the prohibition applies to consecutive assignments to classroom teachers in successive grade levels. For middle grades and high school students, the prohibition applies to consecutive assignments to classroom teachers of the same subject area. For students enrolling in an extracurricular course,⁶¹ a parent may choose to have the student taught by a teacher who received a performance evaluation of needs improvement or unsatisfactory in the preceding school year if the student and the student’s parent receives an explanation of the impact of teacher effectiveness on student learning and the principal receives written consent from the parent.⁶²

What measures are taken to protect public school children from educators with histories of criminal or employment-related misconduct?

Florida law requires individuals who work in, or provide services to, school districts, charter schools, and private schools that participate in state school choice scholarship programs to undergo a fingerprint-based background screening before being permitted access to school grounds.⁶³ The individuals who must undergo background screening fall under three personnel classifications: instructional and noninstructional personnel,⁶⁴

⁵⁵ *Id.*; s. 1012.28(6), F.S.

⁵⁶ Section 1012.2315(2), F.S.

⁵⁷ Section 1012.2315(2), F.S.

⁵⁸ Section 2, ch. 2014-32, L.O.F., *codified at* s. 1012.2315(2), F.S.

⁵⁹ *Id.*

⁶⁰ Section 1012.2315(6), F.S.

⁶¹ Section 1003.01(15), F.S., defines “extracurricular courses” as all courses that are not defined as “core-curricula courses,” which may include, but are not limited to, physical education, fine arts, performing fine arts, career education, and courses that may result in college credit.

⁶² Section 5, ch. 2013-250, L.O.F., *codified at* s. 1012.2315(6), F.S.

⁶³ *See* Sections 1002.241(2), 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

⁶⁴ Instructional and noninstructional personnel are individuals who are hired or contracted to fill positions that require direct contact with students in any public school. Section 1012.32(2), F.S.

noninstructional school district employees and contracted personnel;⁶⁵ and noninstructional contractors.⁶⁶ Candidates for educator certification must also undergo background screening.⁶⁷

The background screening requirements for each personnel classification vary depending upon the individual's duties, whether or not the individual is a school district employee, and the degree of contact the individual has with students.⁶⁸ Because they are more likely to have direct contact with students, candidates for educator certification, instructional and noninstructional personnel, and noninstructional school district employees and contracted personnel must undergo Level 2 background screening. Level 2 background screening requires individuals to be screened against a statutorily prescribed list of over 50 offenses.⁶⁹ In contrast, noninstructional contractors, individuals who are not school district employees and have no direct contact with students, are screened against a statutory list of nine disqualifying offenses.⁷⁰

Before employing instructional personnel or school administrators in any position that requires direct contact with students, school districts, charter schools, and private schools participating in a state school choice scholarship program must:

- Conduct an employment history check of the individual's previous employer. If unable to contact a previous employer, efforts to contact the employer must be documented;
- Screen the individual through use of the Department of Education's Professional Practices' Database of Disciplinary Actions Against Educators and Teacher Certification Database;⁷¹ and
- Document the findings.⁷²

Personnel and contractors may be disqualified from employment after attaining employment or a contract with a school district, and rendered ineligible for educator certification, as applicable, if they are convicted of any of the disqualifying offenses.⁷³ Fingerprints taken for a background screening are 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 national criminal records checks.⁷⁴

The FDLE enters and retains the fingerprints in the Automated Fingerprint Identification System (AFIS), and retains them in the Applicant Fingerprint Retention and Notification Program (AFRNP) database.⁷⁵ Any arrest fingerprints the FDLE receives through the Criminal Justice Information Program⁷⁶ must then be searched against the fingerprints retained in the AFRNP. Any arrest record that is identified with the retained fingerprints of a person subject to the background screening must be reported to the employing or contracting school district.⁷⁷

⁶⁵ Noninstructional school district employees and contracted personnel are individuals who are permitted access to school grounds when students are present; who have direct contact with students; or who have access to, or control of, school funds. Section 1012.465(1), F.S.

⁶⁶ Noninstructional contractors are vendors or contractors who are not school district employees but are permitted access to school grounds when students are present. Section 1012.467(1)(a), F.S.

⁶⁷ Sections 1012.32(2)(d) and 1012.56(10)(a), F.S.

⁶⁸ Sections 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

⁶⁹ See ss. 435.04, 1012.32(2), 1012.465(1), and 1012.56(10), F.S. See also Section 1012.315, F.S. (establishing list of disqualifying criminal offenses).

⁷⁰ See s. 1012.467(2)(g), F.S.

⁷¹ See s. 1001.10(5), F.S.; see also Florida Department of Education, *Employment Screening Tools*, <http://www.fldoe.org/edstandards/est.asp> (last visited June 18, 2014) (includes links to the Professional Practices' Database of Disciplinary Actions Against Educators and the Teacher Certification Database). The Teacher Certification Database is also known as the Bureau of Educator Certification's Partnership Access and Services System (BEC-PASS). Florida Department of Education, *Technical Assistance Paper, Senate Bill 1712, No. K12: 2008-129*, at 4 (July 31, 2008), available at <http://www.fldoe.org/edstandards/pdfs/SB1712TAP.pdf>.

⁷² Sections 1002.33(12)(g)4. (charter schools), 1002.421(4)(c) (private schools), and 1012.27(6), F.S.

⁷³ See s. 1012.315, F.S. and s. 1012.467(3), F.S.

⁷⁴ Section 1012.32(2), F.S.

⁷⁵ Section 1012.32(3)(a), F.S.; s. 943.05(2), F.S.; rule 11C-6.010(1), F.A.C.

⁷⁶ Section 943.051, F.S.

⁷⁷ Section 1012.32(3)(b), F.S.

Anyone who is found ineligible for employment or otherwise found through background screening to have been convicted of any crime involving moral turpitude⁷⁸ may not be employed, engaged to provide services, or serve in any position that requires direct contact with students.⁷⁹ Law enforcement agencies are required to notify the district school superintendent within 48 hours after a district employee has been charged with a felony or with a misdemeanor involving the abuse of a minor child or the sale or possession of a controlled substance.⁸⁰

The law prohibits school districts, charter schools, and private schools that participate in state school choice scholarship programs from entering into agreements for the purpose of concealing misconduct related to student health, safety, and welfare by employees who are dismissed, terminated, or resign in lieu of termination for violations. School officials may not provide employment references or discuss the employee's performance without disclosing the misconduct.⁸¹

Where can I get additional information?

Florida Department of Education

Bureau of Educator Recruitment, Development, and Retention

(850) 245-0435

<http://www.fldoe.org/profdev/>

Florida Department of Education

Office of Professional Practices Services

(850) 245-0438

<http://www.fldoe.org/edstandards/>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

⁷⁸ Rule 6A-5.056(7), F.A.C., provides a list of offenses that are considered crimes involving moral turpitude, including the offenses listed in s. 1012.315, F.S.

⁷⁹ Section 1012.32(2), F.S. (flush-left provisions at end of subsection).

⁸⁰ Section 1012.797(1), F.S. Notification requirements apply to employees of other education providers, such as the Florida School for the Deaf and Blind, lab schools, and private elementary and secondary schools. *Id.*

⁸¹ Sections 1001.42(6) (school districts), 1002.33(12)(g)3. (charter schools), 1002.421(4)(b) (private schools), F.S.



How is the job performance of instructional personnel and school administrators evaluated?

Florida law requires each district school superintendent to establish procedures to evaluate the job performance of district instructional,¹ administrative, and supervisory personnel.^{2,3} The Department of Education (DOE) must approve each school district's performance evaluation system,⁴ which must be based upon sound educational principles and contemporary research in effective educational practices; be designed to support effective instruction; provide appropriate instruments, procedures, and criteria for improving the quality of instruction; and include opportunities for parental input.⁵

Instructional personnel and school administrators must be evaluated annually, except that newly hired classroom teachers must be evaluated at least twice in their first year of teaching in the school district.⁶ "Newly hired classroom teachers" include first-time teachers new to the profession as well as veteran teachers new to the school district.⁷

¹ "Instructional personnel" is defined as any K-12 staff member who provides direct instructional services or direct instructional support to students in grades kindergarten through 12. Instructional personnel include classroom teachers; staff who provide student personnel services, e.g., guidance counselors, social workers, career specialists, and school psychologists; librarians and media specialists; other instructional staff, e.g., learning resource specialists; and education paraprofessionals under the direct supervision of instructional personnel. Section 1012.01(2), F.S. Whether a performance evaluation under s. 1012.34, F.S., is required for instructional personnel who teach at a school district career technical center authorized under s. 1001.44, F.S., depends upon whether courses taught by the personnel lead to high school credit for students taking the course and whether the personnel is a school district employee. See ss. 1001.44, 1012.01(2), and 1012.34, F.S. Telephone interview with Deputy Chancellor for Educator Quality, Florida Department of Education (June 25, 2014). Although substitute teachers are classified as classroom teachers, the law specifically excludes them from performance evaluation requirements. See Section 1012.34(3)(a), F.S.

² Section 1012.34(1)(a), F.S. Administrative personnel are K-12 personnel who perform management activities such as developing and executing broad policies for the school district. Administrative personnel include district-based instructional and non-instructional administrators, as well as school administrators who perform administrative duties at the school-level. School administrators include school principals, school directors, career center directors, and assistant principals. The term "supervisory personnel" is not defined. See Section 1012.01(3), F.S. Career center directors must be evaluated under s. 1012.34, F.S., to the extent that K-12 students are enrolled in courses leading to high school credit offered by the center. See ss. 1001.44, 1012.01(3), and 1012.34, F.S. Telephone interview with Deputy Chancellor for Educator Quality, Florida Department of Education (June 25, 2014).

³ The law regarding instructional personnel and school administrator performance evaluations is the result of Florida's participation in the Race to the Top grant program and the Legislature's passage of the Student Success Act in 2011. In August 2010, Florida was one of 11 states and the District of Columbia awarded federal Race to the Top grant funds. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009); Press Release, U.S. Department of Education, *Nine States and the District of Columbia Win Second Round Race to the Top Grants* (Aug. 24, 2010), <http://www.ed.gov/news/press-releases/nine-states-and-district-columbia-win-second-round-race-top-grants> (last visited June 24, 2014). Delaware and Tennessee were selected to receive Race to the Top grant funds in Phase 1 of the competition. The District of Columbia, Florida, Georgia, Hawaii, Maryland, Massachusetts, New York, North Carolina, Ohio, and Rhode Island were selected in Phase 2. The winners were selected from a field of 46 states. *Id.* Florida received \$700 million to implement various education reforms, including reforms to instructional personnel and school administrator performance evaluations. U.S. Department of Education, *Race to the Top Funding Status*, <http://www2.ed.gov/programs/racetothetop/funding.html> (last visited June 24, 2014); Florida Department of Education, *Florida's Race to the Top: hearing before the House Education Comm.* (Jan. 13, 2011).

⁴ Section 1012.34(1)(b), F.S. A district school board must annually review its evaluation system for compliance with state law. Any changes to the system must be approved by the board. DOE must monitor each school district's implementation of its evaluation system for compliance with state law. Section 1012.34(1)(b) and (6), F.S.

⁵ Section 1012.34(2), F.S.

⁶ Section 1012.34(3)(a), F.S.

⁷ See *id.*

Each employee's evaluation must be conducted by his or her supervisor, who may consider input from other trained personnel.⁸ Each performance evaluation system must provide training to evaluators on the proper use of the evaluation criteria and procedures and must include processes for monitoring evaluator reliability and system effectiveness.⁹

The criteria used to evaluate instructional personnel are student performance, instructional practice, and professional and job responsibilities.¹⁰ The criteria used to measure school administrator performance are student performance, instructional leadership, and professional and job responsibilities.¹¹ At least 50 percent of an instructional personnel or school administrator evaluation must be based upon student performance, with certain exceptions.¹² Student performance must be measured by statewide assessments¹³ and, by the 2014-2015 school year for subjects and grade levels not tested by statewide assessments, local assessments.¹⁴

How is an employee's overall performance rated on the performance evaluation?

School district performance evaluation systems must differentiate among four levels of performance:

- Highly effective;
- Effective;
- Needs improvement, or for instructional personnel in their first three years of employment who need improvement, developing; and
- Unsatisfactory.¹⁵

Beginning with the 2015-2016 school year, the State Board of Education must establish in rule specific, discrete standards for each performance evaluation level; including student performance levels that, if not met, will result in an unsatisfactory evaluation.¹⁶ The Commissioner of Education must consult with experts, instructional personnel, school administrators, and education stakeholders in developing the criteria for the performance evaluation levels.¹⁷

How is student performance measured for evaluation purposes?

Student learning growth, with certain exceptions, is the primary measure of student performance used to evaluate instructional personnel and school administrators for courses associated with statewide, standardized assessments in English Language Arts (ELA) and mathematics.¹⁸ School districts are required to measure student learning growth using the formulas approved by the Commissioner of Education for courses associated with statewide assessments for ELA and mathematics.¹⁹ Student learning growth formulas

⁸ Section 1012.34(3)(c), F.S.

⁹ Section 1012.34(2)(f)-(h), F.S.

¹⁰ Section 1012.34(3)(a)1., 2., and 4., F.S.

¹¹ Section 1012.34(3)(a)1., 3., and 4., F.S.

¹² Section 1012.34(3)(a)1., F.S. If less than three years of data are available for a classroom teacher, the student performance component of the evaluation may comprise no less than 40 percent of the evaluation. Section 1012.34(3)(a)1.a., F.S. A similar reduction applies for school administrators for whom less than three years of data are available. Section 1012.34(3)(a)1.b., F.S.

¹³ The statewide assessment program for public schools includes statewide, standardized assessments for ELA (grades 3-11) and mathematics (grades 3-8); end-of-course (EOC) assessments for Algebra I, Algebra II, geometry, Biology I, civics, and U.S. History; and FCAT 2.0 science (grades 5 and 8). EOC assessments count 30 percent of a student's final course grade. Section 1008.22(3)(c), F.S.

¹⁴ Sections 1012.34(3)(a)1. and 1008.22(6), F.S.

¹⁵ Section 1012.34(2)(e), F.S.

¹⁶ Section 1012.34(8), F.S.; s. 1012.34(9), F.S., *as created by* s. 13, ch. 2014-23, L.O.F. As of the time of publication of this fact sheet, the provisions of ch. 2014-184, L.O.F., are the subject of a constitutional challenge on unrelated grounds. *See Faassee v. Scott*, No. 37 2014 CA 001859 (2d Cir. Ct. filed July 16, 2014) (challenging ch. 2014-184, L.O.F. based on alleged violation of the single subject rule).

¹⁷ Section 1012.34(2)(e), F.S. (flush-left provisions at end of paragraph).

¹⁸ Section 1012.34(7)(a) and (b), F.S.

¹⁹ *See* s. 1012.34(7)(a) and (b), F.S.

ted to these assessments must be used to determine the learning growth a student makes in the year he or she is assigned to the instructional personnel or school administrator.²⁰

For classroom teachers of courses not measured by a statewide assessment, school districts may request, through the evaluation approval process, DOE approval to use a student's achievement level on a local assessment if achievement is demonstrated to be a more appropriate measure of classroom teacher performance than learning growth. A school district may also request to use a combination of student learning growth and achievement, if appropriate.²¹

School districts may also request DOE approval for a classroom teacher performance evaluation to include student learning growth of the teacher's students assigned to the course on one or more statewide, standardized assessments. The request must clearly explain the rationale supporting the request.²²

Additionally, school districts may use a student achievement measure to evaluate classroom teachers of courses measured by a statewide, standardized end-of-course assessment if a statewide learning growth formula has not been approved for that assessment or, for courses associated with local assessments, if achievement is demonstrated to be a more appropriate measure of teacher performance.²³

Measurement of student learning growth must be based upon at least three school years of student data. If less than three years of data is available for a classroom teacher or school administrator, the school district must include available data and may reduce the weight attributed to student learning growth from not less than 50 percent to not less than 40 percent.²⁴ If less than three years of data is available for a nonclassroom instructional personnel, the school district must include available data and may reduce the weight attributed to student learning growth from not less than 30 percent to not less than 20 percent.²⁵

The student performance portion of a nonclassroom instructional personnel's²⁶ performance evaluation must be measured by student outcome data that reflects the employee's actual contribution to the performance of students in his or her area of responsibility. Such outcome data may include student learning growth on statewide assessments, measurable student outcomes unique to the personnel assignment, or a combination thereof.²⁷

What are the requirements for student learning growth formulas?

Student learning growth formulas must consider each student's prior performance and learning growth over time. A student's prior performance is compared to performance in the year assigned to the employee. Different expectations may not be established for students based upon gender, race, ethnicity, or socioeconomic status.²⁸ For statewide assessments in ELA and mathematics, as well as the Algebra I EOC assessment, Florida uses a value-added model to calculate student learning growth.²⁹

²⁰ Section 1012.34(7)(a)-(b), F.S.

²¹ Section 1012.34(7)(c), F.S. Student achievement must be demonstrated to be a more appropriate measure of teacher performance.
Id.

²² Section 1012.34(7)(d), F.S.

²³ Section 1012.3401(1), F.S.

²⁴ Section 1012.34(3)(a)1.a. and c., F.S.

²⁵ Section 1012.34(3)(a)1.b., F.S.

²⁶ Nonclassroom instructional personnel include guidance counselors, social workers, career specialists, school psychologists, librarians and media specialists, primary specialists, learning resource specialists, instructional trainers, and adjunct educators. Section 1012.01(b)-(d), F.S.

²⁷ Sections 1012.3401(2) and 1012.34(3)(a)1.a.-c., F.S.

²⁸ Section 1012.34(7)(a), F.S.

²⁹ Florida Department of Education, *Florida's Value Added Model* (2011), available at www.fldoe.org/committees/pdf/PresentationValue-addedModel.pdf.

How have learning growth formulas been developed and selected?

Pursuant to its Race to the Top grant proposal, DOE established a Student Learning Growth Implementation Committee to gather input and make recommendations regarding student learning growth formulas for FCAT and other statewide assessments. Among other members, the committee includes representatives of parents, classroom teachers, school administrators, teachers unions, and the business community.³⁰ The Commissioner of Education adopted the committee's recommended value-added model (VAM) student learning growth formula for FCAT Reading and Mathematics assessments in June 2011.^{31, 32} The variables used in Florida's student learning growth formula are:

- Up to two prior years of achievement scores;
- Students with Disabilities (SWD) status;
- English Language Learner status;
- Gifted status;
- Attendance;
- The number of subject-relevant courses in which the student is enrolled;
- Mobility, i.e., the number of school transitions a student makes in the same school year;
- Difference from modal age in grade, i.e., the student's age in relation to what is normal for students enrolled in that grade (as an indicator of retention);
- Class size (which is a continuous measure counting the number of students linked to the educator); and
- Homogeneity of entering test scores of students in the class (which identifies variations in the achievement levels of students in a class when first assigned to the educator).³³

Are school districts required to adopt assessments for courses not tested by statewide assessments?

Yes. Each school district must adopt a rigorous local assessment for each course that is not tested by statewide assessments.³⁴ School districts have the flexibility to use statewide assessments; other standardized assessments, including nationally recognized standardized assessments; industry certification assessments; district-developed or district selected end-of-course assessments; and teacher-selected or

³⁰ *Race to the Top MOU*, *supra* note 18, at 10-13; Florida Department of Education, *Value-Added Model Recommendation to the Commissioner of Education From the Student Learning Growth Implementation Committee* (June 8, 2011), available at <http://www.fldoe.org/committees/pdf/SummaryFinalRecommendation.pdf> [hereinafter *Student Learning Growth Implementation Committee Recommendations*]; Florida Department of Education, *Commissions, Committees, and Task Forces, Student Growth Implementation Committee*, <http://www.fldoe.org/committees/sg.asp> (last visited June 24, 2014). DOE also used Race to the Top funds to hire American Institutes for Research to assist it in developing student learning growth formulas for statewide assessments. Florida Department of Education, *American Recovery and Reinvestment Act, Competitive Procurements*, <http://www.fldoe.org/arra/procurements.asp> (last visited June 24, 2014) [hereinafter *Race to the Top Procurement*] (Value Added Model).

³¹ Press Release, Florida Department of Education, *Statement by Education Commissioner Dr. Eric J. Smith Regarding full approval of Florida's Value-Added Student Growth Model* (June 10, 2011), http://www.fldoe.org/news/2011/2011_06_10.asp (last visited June 24, 2014).

³² The state board has since updated the Next Generation Sunshine State Standards for ELA and mathematics. See Florida Department of Education, Bureau of Standard and Instructional Support, *Florida Standards*, <http://www.fldoe.org/bii/curriculum/sss/> (last visited June 24, 2014). Rule 6A-1.09401(a) and (b), F.A.C. (effective Mar. 25, 2014). The commissioner announced on March 17, 2014, that the not-for-profit American Institutes for Research had been selected to develop new statewide assessments aligned to the updated Next Generation Sunshine State Standards in ELA and mathematics. Letter from Pam Stewart, Commissioner, Fla. Dept. of Educ. to Florida Principals (March 17, 2014), available at www.fldoe.org/pdf/CommissionersMessagePrincipals3-17-14.pdf. It is unclear whether DOE will use the VAM model originally developed for FCAT assessments to measure student learning growth on the new assessments.

³³ American Institutes for Research, *Florida Value-Added Model Technical Report*, at 2 (working draft), available at <http://www.fldoe.org/committees/doc/Value-Added-Model-Technical-Report.docx> [hereinafter *VAM Technical Report*]. The law specifies student attendance, disability, and English proficiency as variables that must be considered in formula development. Section 1012.34(7)(a), F.S.

³⁴ Section 1008.22(6)(b), F.S.

principal-selected assessments to satisfy this requirement.³⁵ Each school district must measure student performance on local assessments using a district-determined methodology³⁶ and adopt policies for the selection, development, administration, and scoring of local assessments and for the collection of assessment results.³⁷

Until July 1, 2015, a district school superintendent may assign to instructional personnel in an instructional team the student learning growth of the instructional team's students on statewide assessments.³⁸

The commissioner must identify methods to support school districts in the development or acquisition of assessments. Such methods include developing test item banks, facilitating the sharing of assessments among districts, acquiring assessments from state and national curriculum-area organizations, and technical assistance.³⁹ Accordingly, DOE has provided technical assistance and used Race to the Top funds for the development of test item banks, a test platform, and grants to schools districts to develop assessments for hard-to-measure courses that can be shared across the state.⁴⁰

What may be used to measure student achievement in hard-to-measure subject areas?

School districts must identify teaching fields for which special evaluation procedures are necessary to accurately evaluate instructional personnel and school administrators.⁴¹ The law allows school districts to implement a variety of local assessment formats, including project-based assessments, adjudicated performances, and practical application assignments for hard-to-measure courses.⁴²

Hard-to-measure courses include such courses as art, music, physical education, and other courses that are not tested by statewide assessments that are skill or performance oriented. Use of such local assessment formats may be appropriate when student achievement is best demonstrated, for example, through mastery a job skill, ability to paint a picture, or ability to perform a musical piece. This may contrast with an advanced placement course, where student achievement can be demonstrated through the assessment or earning college credit. Likewise, including student learning growth on a statewide assessment in determining student performance may be more appropriate when reading or mathematics instruction is integrated into the course.

What are instructional practice and instructional leadership criteria?

Instructional practice criteria for classroom teachers are based upon the Florida Educator Accomplished Practices (FEAP). For nonclassroom instructional personnel who are not classroom teachers, instructional practice criteria must be based upon the FEAPs and may include specific job expectations related to student support.⁴³ Instructional leadership criteria for school administrators are based upon the Florida Principal Leadership Standards (FPLS). School administrators are also evaluated based upon, among other things, recruitment and retention of effective or highly effective classroom teachers, execution of evaluation duties,

³⁵ Sections 1008.22(6)(b) and 1012.34(7)(b), F.S. However, for all ELA, mathematics, science, and social studies courses offered by the district that are used to meet graduation requirements that are not otherwise assessed by statewide, standardized assessments, the district school board may not use teacher-selected or principal-selected assessments. *See* s. 1008.22(6)(c), F.S.

³⁶ Section 1012.34(7)(b), F.S.

³⁷ Section 1012.34(7)(c), F.S.

³⁸ Section 1012.34(7)(e), F.S. In 2013, the Legislature passed CS/CS/SB 1664, which, among other things, provides that the student performance component of a classroom teacher's evaluation must be based upon learning growth or achievement of the teacher's students, notwithstanding any provision to the contrary in s. 1012.34, F.S. Section 3, ch. 2013-185, L.O.F., *codified* at s. 1012.3401(1), F.S. Thus, a district superintendent may assign student learning growth to an instructional team member if the assignment does not result in the member being evaluated based upon a student he or she did not actually teach. *See* s. 1012.3401(1), F.S.

³⁹ Section 1008.22(6)(d), F.S.

⁴⁰ *Race to the Top Procurement*, *supra* note 28 (test item banks, test platform and assessments for hard-to-measure courses); *see* Florida Department of Education, *American Recovery and Reinvestment Act, Teacher and Principal Evaluation Systems*, <http://www.fldoe.org/arra/TeacherEvaluationSystems.asp> (last visited June 24, 2014).

⁴¹ Section 1012.34(2)(d), F.S.

⁴² Section 1008.22(6)(c), F.S.

⁴³ Section 1012.34(3)(a)2., F.S. The Educator Accomplished Practices are adopted in rule and include several competencies and skills that are essential to effective teaching. Rule 6A-5.065, F.A.C.

and other leadership practices that result in student learning growth.⁴⁴ The State Board of Education and district school boards may adopt additional performance criteria based upon employee job responsibilities.⁴⁵

Instructional practice indicators are aligned to the FEAP adopted in state board rule.⁴⁶ The FEAP provide the essential competencies and skills for effective teaching and form the foundation for instructional personnel preparation programs, certification requirements, and performance evaluation systems.⁴⁷ In district evaluation systems, instructional practice indicators measure the FEAP regarding:

- Instructional design and lesson planning;
- The learning environment, including classroom management;
- Instructional delivery and facilitation;
- Assessment of student progress;
- Continuous professional improvement; and
- Professional responsibility and ethical conduct.⁴⁸

Instructional leadership criteria for school administrators are based upon the FPLS.⁴⁹ The FPLSs form the foundation for school administrator performance evaluations, professional development systems, preparation programs, and certification requirements.⁵⁰ Instructional leadership criteria measure the FPLSs regarding:

- Student learning results;
- Prioritization of student learning;
- Instructional plan implementation;
- Faculty and leadership development;
- The school learning environment;
- Effective decision-making;
- School management;
- Communication and collaboration with students, faculty, parents, and the community; and
- Ethical and professional behavior.⁵¹

School districts are responsible for developing the instructional practice and instructional leadership portion of the performance evaluation. DOE has used Race to the Top funds to hire consultants to assist school districts in doing so. In addition, DOE has developed model evaluation systems for instructional personnel and school administrators that are aligned with the FEAP and FPLS, respectively. The model evaluation includes observation and evaluation instruments, crosswalks between each instructional practice and instructional leadership criterion and its corresponding FEAP or FPLS, and proficiency levels and scoring methods for measuring each criterion. Use of the model evaluation by school districts is optional.⁵²

How is information on instructional personnel and school administrator performance provided to parents and the public?

School districts must annually report to DOE instructional personnel and school administrator performance evaluation ratings (i.e., highly effective; effective; needs improvement; or, for instructional personnel in their first three years of employment who need improvement, developing; and unsatisfactory). DOE must post on

⁴⁴ Section 1012.34(3)(a)3., F.S. The Florida Principal Leadership Standards provide the essential competencies and skills for school administrators. Rule 6A-5.080, F.A.C.

⁴⁵ Section 1012.34(3)(a)4., F.S.

⁴⁶ Rule 6A-5.065, F.A.C.

⁴⁷ Rule 6A-5.065(1)(a), F.A.C.

⁴⁸ Rule 6A-5.065(2), F.A.C.

⁴⁹ Section 1012.34(3)(a)3., F.S. and rule 6A-5.080, F.A.C.

⁵⁰ Rule 6A-5.080(1)(a), F.A.C.

⁵¹ Rule 6A-5.080(2)(a)-(d), F.A.C.

⁵² *Race to the Top Procurement*, *supra* note 31 (Improvement of Educator Evaluation Systems); *see* Florida Department of Education, *District Performance Evaluation Systems, Florida Models of Evaluation Systems*, <http://www.fldoe.org/profdev/pa.asp> (last visited June 24, 2014).

its website the percentage of classroom teachers, other instructional personnel, and school administrators receiving each performance rating by school district and school.⁵³ DOE must also annually report by December 1 each district's performance evaluation results, as well as the status of any evaluation system revisions requested by a school district, to the Governor and the Legislature.⁵⁴

School districts must report to DOE instructional personnel and school administrators who receive two consecutive unsatisfactory evaluations and those who are given written notice of intent to terminate or not renew their employment.⁵⁵ Additionally, districts must annually report to parents the fact that their child is assigned to a classroom teacher or school administrator who has two consecutive unsatisfactory performance evaluations, two unsatisfactory evaluations in a three-year period, or three consecutive evaluations of needs improvement or any combination of needs improvement and unsatisfactory.⁵⁶

Are there restrictions on assigning students to classroom teachers based on performance evaluation ratings?

Depending on the subject area and a student's grade level, yes. If an elementary school student is currently taught by a classroom teacher who, during that school year, is rated as "needs improvement" or "unsatisfactory," the student may not be assigned the following school year to a classroom teacher who received either of those ratings the preceding year.⁵⁷ If a high school or middle school student is currently taught by a classroom teacher who, during that school year, is rated "needs improvement" or "unsatisfactory," the student may not be assigned in the following school year to a classroom teacher in the same subject area who was rated "needs improvement" or "unsatisfactory" the preceding year.⁵⁸

For students enrolling in an extracurricular course,⁵⁹ a parent may choose to have the student taught by a teacher who received a performance evaluation of needs improvement or unsatisfactory in the preceding school year if the student and the student's parent receive an explanation of the impact of teacher effectiveness on student learning and the principal receives written consent from the parent.⁶⁰

Where can I get additional information?

Florida Department of Education

Bureau of Educator Recruitment, Development, and Retention

(850) 245-0435

<http://www.fldoe.org/profdev/>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

⁵³ Sections 1012.2315(5)(a) and 1012.34(1)(c), F.S.

⁵⁴ *Id.*

⁵⁵ Section 1012.34(5), F.S.

⁵⁶ Section 1012.2315(5)(b), F.S.

⁵⁷ Section 1012.2315(6)(b), F.S.

⁵⁸ Section 1012.2315(6)(a), F.S.

⁵⁹ Section 1003.01(15), F.S., defines "extracurricular courses" as all courses that are not defined as "core-curricula courses," which may include, but are not limited to, physical education, fine arts, performing fine arts, career education, and courses that may result in college credit.

⁶⁰ Section 1012.2315(6), F.S.



How is compensation determined for instructional personnel and school administrators?

Florida law requires district school boards to adopt and use a salary schedule for determining compensation for school district employees,¹ including instructional personnel² and school administrators.³ In all but one of Florida's 67 school districts, salary schedules for instructional personnel are collectively bargained by the district school board and the certified bargaining agent (i.e., union) that represents the district's instructional personnel.⁴ The district and union negotiate wages, hours, and terms and conditions of employment, which are included in a collective bargaining agreement.⁵ A typical collective bargaining agreement includes, among other things, the salary schedule, health insurance and retirement benefits, leave policies, school holidays, and grievance procedures for school district instructional personnel.⁶

Historically, seniority and educational degree level have been the primary focus of instructional personnel compensation negotiations. A typical instructional personnel salary schedule sets forth an escalating salary scale based upon "steps." Each step represents the employee's years of service, and salary increases are provided based upon these steps. Instructional personnel with advanced degrees may receive additional salary increases.⁷

Because school administrators are managerial employees, they are not entitled to collectively bargain wages, hours, and terms and conditions of employment.⁸ Instead, compensation for school administrators is determined by the district school board. Like instructional personnel, seniority and educational degree level factor heavily in setting school administrator base salary. An employee's classification as a lead or assistant

¹ Sections 1011.60(4), 1012.22(1)(c), and 1012.27(2), F.S.

² Instructional personnel provide direct instructional services or direct instructional support to students in grades K-12. Instructional personnel include classroom teachers; staff who provide student personnel services (e.g., guidance counselors, social workers, career specialists, and school psychologists); librarians and media specialists; other instructional staff (e.g., learning resource specialists); and education paraprofessionals. Section 1012.01(2), F.S.

³ School administrators serve as school-level managers, i.e., school principals, school directors, career center directors, and assistant principals. Section 1012.01(3)(c), F.S.

⁴ Sections 447.203(2), 447.309(1), and 1012.22(1)(c)4., F.S. The State Constitution provides that "the right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged." Section 6, Art. I of the State Constitution. The only school district whose instructional personnel are not represented by a union is Calhoun County. Section 447.305, F.S., requires that every employee organization seeking to become a certified bargaining agent for public employees register with the Public Employees Relations Commission (PERC). No such registration exists for Calhoun County. See Public Employees Relations Commission, *Search Registration Orders*, <http://perc.myflorida.com/co/regfilter.aspx> (last visited June 12, 2014).

⁵ Section 447.309(1), F.S. The Legislature is constitutionally empowered to provide the standards and guidelines for implementing the collective bargaining rights of public employees, including public school teachers. *Chiles v. State Employees Attorneys Guild*, 734 So.2d 1030, 1032 (Fla. 1999). This includes the authority to determine which public employees and matters are subject to collective bargaining and which issues must be bargained. *State Employees Attorneys Guild*, 734 So.2d at 1032; *School District of Martin County v. Public Employee Relations Commission*, 15 So.3d 42, 45-46 (4th D.C.A. 2009).

⁶ See, e.g., Hillsborough County School District and Hillsborough Classroom Teachers Association, Inc., *Teacher Contract 2013-2016*, at ss. 2, 12, 13, 17, and 24 (2014), available at <http://www.sdhc.k12.fl.us/humanresources/PDFs/CONTRACT/1316HCTATeacherContract.pdf> [hereinafter *Hillsborough Agreement*]; Hillsborough County Public Schools, *Salary Schedules 2013-2014*, at 7 (2014), available at http://www.sdhc.k12.fl.us/humanresources/PDFs/SALARY/HCPS_SalarySchedule_Entire.PDF [hereinafter *Hillsborough Salary Schedule*].

⁷ See, e.g., Escambia County Board of Education, *Salary Schedule: July 1, 2013 – June 30, 2014*, at 2 (2013), available at <http://www.escambiak12.net/Download.asp?L=3&LMID=288923&PN=DocumentUploads&DivisionID=7221&DepartmentID=7048&SubDepartmentID=2907&SubP=&Act=Download&T=1&I=280824> [hereinafter *Escambia Salary Schedule*]; see, e.g., *Hillsborough Salary Schedule*, *supra* note 5, at 15.

⁸ See s. 447.203(4)(a)6., F.S.

school administrator and the type of school in which he or she serves, e.g., elementary, middle school, or high school, are also used to set base salary. Like instructional personnel, salary increases are provided in “steps.”⁹

In 2011, the Legislature enacted the Student Success Act, which made significant changes to the law regarding educator performance evaluations, contracts, and compensation. The Act requires Florida’s school districts to transition from instructional personnel and school administrator salary schedules, which base annual salary adjustments upon seniority and degree level, to salary schedules that base salary adjustments upon performance as measured by annual performance evaluations.¹⁰

As of July 1, 2014, district school boards must have adopted a performance salary schedule and a grandfathered salary schedule for instructional personnel and school administrators.¹¹ Instructional personnel retain the right to collectively bargain compensation awarded under both the performance salary schedule and the grandfathered salary schedule; however, the priorities for negotiating compensation under each salary schedule differ.¹²

What is the performance salary schedule?

The performance salary schedule predicates adjustments to an instructional personnel’s base salary upon his or her annual performance evaluation.¹³ Instructional personnel and school administrators hired on or after July 1, 2014, and instructional personnel on annual contracts as of July 1, 2014, must be placed on the performance salary schedule.¹⁴

Under the performance salary schedule, annual salary adjustments may only be given to employees rated highly effective or effective on annual performance evaluations.¹⁵ The salary adjustment for highly effective performance must be greater than the highest annual salary adjustment available to an employee of the same classification on any salary schedule adopted by the school district. The salary adjustment for effective performance must be between 50 and 75 percent of the adjustment provided to a highly effective employee.¹⁶ Employees rated below effective are not eligible for a salary adjustment.¹⁷

Similar to differentiated pay awarded under the grandfathered salary schedule, salary supplements must reward instructional personnel and school administrators who are assigned to Title I¹⁸ schools or schools that

⁹ See, e.g., Hardee District Schools, *FY 2013-14: Hardee County School Board Salary Schedule*, at 1-2 (Nov. 11, 2013), available at http://hardee.k12.fl.us/webfiles/Departments/Finance/Documents/transparency/SalarySchedule/salarieschedule_13-14approved11-19-13.pdf; see e.g., *Hillsborough Salary Schedule*, *supra* note 5, at 15-57. The Hardee and Hillsborough County School Districts have separate salary schedules for high school principals with a master’s degree and high school principals with a doctorate degree. *Id.*

¹⁰ Section 4, ch. 2011-1, L.O.F., *codified at* s. 1012.22(1)(c), F.S. (2011).

¹¹ Section 1012.22(1)(c)4. and 5., F.S.

¹² Section 1012.22(1)(c)4. and 5., F.S.; s. 447.309(1), F.S.

¹³ Requirements for instructional personnel and administrator performance evaluations are established in s. 1012.34, F.S. District school superintendents must establish procedures for evaluating the performance of all instructional personnel and school administrators employed by the school district. The department approves and monitors all district evaluation systems. Section 1012.34(1), F.S.

¹⁴ Section 1012.22(1)(c)4. and 5., F.S. Section 1012.335, F.S., provides that all instructional personnel newly hired by a district school board on or after July 1, 2011, must be awarded a probationary contract, and then, if qualified, an annual contract thereafter. A probationary contract may not be awarded more than once to the same personnel unless the personnel has been rehired after a break in service. Thus, instructional personnel hired on or after July 1, 2011 by a district school board will hold either a probationary or annual employment contract as of July 1, 2014.

¹⁵ Section 1012.22(1)(c)5.b., F.S. Beginning with the 2015-2016 school year, the standards for each educator evaluation performance level (i.e., highly effective, effective, needs improvement, and unsatisfactory) must be established by the state board. Section 13, ch. 2014-23, L.O.F. Nothing in law prohibits school districts from establishing standards for each performance level before the 2015-2016 school year. Student assessment data used in a classroom teacher’s evaluation, for performance salary purposes, must be from statewide assessments or local assessments as provided in s. 1008.22(6), F.S., in the subject areas taught. See s. 1012.3401(3), F.S.

¹⁶ Section 1012.22(1)(c)5.b., F.S.

¹⁷ See s. 1012.22(1)(c)5.b.III., F.S.

¹⁸ Typically, a Title I school is an urban or rural school serving a high proportion of economically disadvantaged students. See Pub. L. No. 89-10, 79 Stat. 27 (April 11, 1965).

earn a grade of “F” or three consecutive grades of “D,” certified and teaching in a critical teacher shortage area, or assigned additional academic responsibilities.¹⁹ If budget constraints limit a school board’s ability to fully fund all adopted salary schedules, the board may not disproportionately reduce the performance salary schedule.²⁰

What is the grandfathered salary schedule?

The grandfathered salary schedule is the salary schedule or schedules adopted by a district school board before July 1, 2014, in which compensation is generally based upon seniority and educational degree level. An undefined portion of instructional personnel compensation must be based upon performance, as measured by annual performance evaluations. The grandfathered salary schedules for instructional personnel²¹ and school administrators must include differentiated pay based upon district-determined factors, including additional responsibilities, school demographics, critical teacher shortage areas, and level of job performance difficulties.²²

Tenured instructional personnel, i.e., those awarded continuing or professional service contracts before July 1, 2011, and school administrators hired before July 1, 2014, are compensated under the grandfathered salary schedule, but may opt into the performance salary schedule at any time. Instructional personnel who opt in must relinquish their continuing or professional service contract for an annual contract. Such employees may not return to continuing or professional service contract status or the grandfathered salary schedule.²³

What is the difference between a salary adjustment and a supplement?

A salary adjustment becomes part of the employee’s permanent base salary, is not a bonus, and is considered compensation under the Florida Retirement System.²⁴

A supplement is an annual addition to base salary for the term of the negotiated supplement as long as the employee continues his or her employment for the purpose of the supplement. A supplement does not become a part of the employee’s continuing base salary, but is considered compensation under the Florida Retirement System.²⁵

May school districts continue to award cost-of-living adjustments and compensation for advanced degrees?

Yes, under certain circumstances. School districts may provide a cost-of-living salary adjustment only if the adjustment:

- Does not discriminate among comparable classes of employees based upon the salary schedule under which they are compensated; i.e., performance or grandfathered.
- Does not exceed 50 percent of the annual adjustment provided to instructional personnel rated as effective.²⁶

School districts may not use educational degree level in setting base salary for instructional personnel and school administrators hired on or after July 1, 2011. School districts may provide a salary supplement for advanced degrees if the degree is in the individual’s area of certification.²⁷

¹⁹ Section 1012.22(1)(c)5.c., F.S.

²⁰ Section 1012.22(1)(c)5., F.S. (flush-left provisions at end of subparagraph).

²¹ Unlike the definition of “instructional personnel” in s. 1012.01(2), the definition of “instructional personnel” for salary schedule purposes excludes substitute teachers and education paraprofessionals. *See* s. 1012.22(1)(c)1.c., F.S.

²² Section 1012.22(1)(c)4., F.S.

²³ Section 1012.22(1)(c)4.a.-b., F.S.; *see* s. 1012.335(2)(a)-(b), F.S. (requiring annual contracts for employees hired on or after July 1, 2011).

²⁴ Section 1012.22(1)(c)1.a., F.S.

²⁵ Section 1012.22(1)(c)1.g., F.S.

²⁶ Section 1012.22(1)(c)2., F.S.

²⁷ Section 1012.22(1)(c)3., F.S.

How has Florida law historically addressed performance pay for instructional personnel and school administrators?

Performance pay was first addressed by the Legislature in 1997 with legislation requiring each school district to adopt a salary schedule for instructional personnel and school administrators which bases a portion of each employee's salary upon his or her annual performance evaluation.²⁸ Legislation enacted in 1999 strengthened these provisions by requiring performance evaluations to be primarily based upon student performance on statewide assessments or, for subjects and grades not tested on statewide assessments, district-determined assessments. This legislation also required that at least 5 percent of salary be based upon the evaluation.²⁹

School districts were given broad discretion to develop eligibility criteria and measures of student performance with little state-level oversight. As a result, many districts established stringent eligibility criteria to limit the number of employees who qualified for pay supplements. Additionally, many districts did not develop assessments for measuring student performance in subjects and grade levels not tested by statewide assessments. Lastly, local teachers unions negotiated performance pay plans that awarded too few teachers to be meaningful.³⁰

Beginning in 2006, three successive statewide performance pay programs were developed in an attempt to create a workable framework for implementing performance pay on a statewide basis—Effectiveness Compensation (E-Comp),³¹ Special Teachers Are Rewarded (STAR),³² and the Merit Award Program (MAP).³³ Each program allocated funding for performance pay, provided for state-level oversight of school district performance pay programs, and established criteria and expectations related to award amounts and employee eligibility.³⁴

In January 2006, the Department of Education (DOE) proposed an amendment to its rule regarding school district performance evaluation systems for instructional personnel and school administrators. This rule amendment would have required each school district to incorporate performance pay into its performance evaluation system. The performance pay system proposed by this rule amendment came to be known as E-Comp. Under E-Comp, the top 10 percent of each district's instructional personnel would receive awards based upon improvements in student learning on statewide assessments and, for subjects and grades not tested on statewide assessments, district-determined assessments. Award amounts were set at a minimum of 5 percent of an employee's salary.³⁵ DOE proposed approximately \$50 million to fund the program.³⁶

²⁸ Sections 1 and 2, ch. 97-212, L.O.F.

²⁹ Section 58, ch. 99-398, L.O.F., initially codified at s. 231.29(3)(a), F.S. (1999), redesignated in 2002 as s. 1012.34(3), F.S. (2002); s. 14, ch. 99-398, L.O.F., initially codified at s. 230.23(5)(c), F.S. (1999), redesignated in 2002 as s. 1012.22(1)(c), F.S. (2002), repealed by s. 7, ch. 2007-3, L.O.F. The Legislature replaced the "5 percent" requirement in 2007, with a requirement that school districts base a "portion" of each employee's salary on performance and award differentiated pay based in part on performance. Beginning July 1, 2014, such requirements will comprise the grandfathered salary schedule for instructional personnel and school administrators. Compare s. 1012.22(1)(c) 4., F.S. (2012), with s. 1012.22(1)(c)2., F.S. (2010).

³⁰ Center for Educator Compensation Reform, *Performance Pay in Florida*, at 2-4 (Nov. 2007), available at <http://cecr.ed.gov/guides/summaries/FloridaCaseSummary.pdf> [hereinafter *The Evolution of Performance Pay in Florida*]; Council for Education Policy Research and Improvement, *Florida Teachers and the Teaching Profession*, at 24-27 (March 2003), available at <http://www.cepri.state.fl.us/pdf/Final%20Teach%20Prof.pdf>; Office of Program Policy Analysis and Government Accountability, *Restrictive District Requirements Limited Participation in Performance Pay Systems*, at 1-4 (Jan. 2007), available at <http://www.opaga.state.fl.us/MonitorDocs/Reports/pdf/0701rpt.pdf>.

³¹ Vol. 32, Nos. 3 and 9, Fla. Admin. Weekly (notice of proposed amendment to rule 6B-4.010, F.A.C., dated Jan. 20, 2006 and notice of change to proposed amendment to rule 6B-4.010, F.A.C., dated March 3, 2006) [hereinafter *E-Comp Rulemaking 2006*]; see also Florida Department of Education, *Press Release: Florida Department of Education Unveils "Effectiveness Compensation" Plan for Teachers* (Feb. 10, 2006), available at http://www.fldoe.org/news/2006/2006_02_10.asp [hereinafter *Press Release*].

³² Specific Appropriation 91, s. 2, ch. 2006-25, L.O.F.

³³ Section 1012.225, F.S. (2007).

³⁴ See *E-Comp Rulemaking 2006*, *infra* note 37, Specific Appropriation 91, s. 2, ch. 2006-25, L.O.F., and s. 1012.225, F.S. (2007).

³⁵ *E-Comp Rulemaking 2006*, *infra* note 37.

³⁶ See *Press Release*, *infra* note 37.

The E-Comp rule amendment was never adopted by the State Board of Education because the 2006 Legislature established a new program, STAR, in the 2006 General Appropriations Act. School district participation in STAR was voluntary. Under STAR, participating districts were required to provide awards to at least 25 percent of instructional personnel based upon improvements in student learning on statewide assessments or district-determined assessments, as applicable. Award amounts were set at a minimum of 5 percent of an employee's salary. The Legislature appropriated \$147.5 million to fund STAR in FY 2006-07.³⁷ Fifty-four school districts, three lab schools, and the Florida Virtual School participated in STAR.³⁸

In 2007, the Legislature repealed STAR and established MAP.³⁹ MAP provided state-funded performance pay supplements to high-performing instructional personnel⁴⁰ and school administrators.⁴¹ MAP pay supplements were required to be at least 5 percent, but not more than 10 percent, of the average teacher's salary for the school district.⁴² School districts were required to award MAP pay supplements according to an assessment of employee performance, which was based at least 60 percent upon student performance.⁴³ Student performance was measured in terms of academic proficiency, student learning gains, or both on statewide assessments or, for subjects and grades not tested by statewide assessments, a national, state, or district-determined assessment.⁴⁴ Use of seniority or base salary as the basis of the supplements was prohibited.⁴⁵

School district participation in MAP was voluntary.⁴⁶ Each school district seeking participation in MAP was required to submit a plan to DOE for approval. MAP plans were subject to collective bargaining.⁴⁷ In the 2010-11 school year, only three school districts were participating in MAP.⁴⁸ The Legislature repealed MAP in 2011, the same year the Student Success Act was enacted.⁴⁹

E-Comp, STAR, and MAP were stand-alone bonus programs with dedicated state funding for supplementing collectively bargained base salary. These programs did not change the practice of determining instructional personnel and school administrator base salary primarily upon seniority and educational degree level. Unlike E-Comp, STAR, and MAP, the performance salary schedule established in statute is not a stand-alone bonus program. Rather, the Act realigns the priorities upon which base salary must be collectively bargained. Under the performance salary schedule, teaching performance is the basis for base salary negotiations, rather than seniority and educational degree level.⁵⁰

³⁷ Specific Appropriation 91, s. 2, ch. 2006-25, L.O.F.

³⁸ Email, Florida Department of Education, Legislative Affairs Director (Aug. 24, 2010).

³⁹ Sections 1, 4, and 5, ch. 2007-3, L.O.F., *codified at* s. 1012.225, F.S. (2007). Districts with STAR plans in effect as of July 1, 2006, and districts which obtained approval of a revised STAR plan by May 1, 2007, were authorized to award performance pay for the 2006-07 academic year. Section 5, ch. 2007-3, L.O.F.

⁴⁰ Instructional personnel eligible for MAP included classroom teachers, staff who provide student personnel services (*e.g.*, guidance counselors, social workers, career specialists, and school psychologists), librarians and media specialists, and other instructional staff (*e.g.*, learning resource specialists), as well as reading coaches and prekindergarten exceptional student education teachers. Substitute teachers, education paraprofessionals, and prekindergarten instructors in the Voluntary Prekindergarten Education Program were not eligible for MAP pay supplements. Section 1012.01(2)(a)-(d), F.S.; s. 1012.225(1), F.S. (2010); Florida Department of Education, *Florida Performance Pay Guidance 2007-2008 and Beyond*, at 2 (March 30, 2007), available at <http://fldoe.org/PerformancePay/pdfs/MeritAwardProgram.pdf> [hereinafter *Performance Pay Guidance*].

⁴¹ Florida law defines "school administrators" as school principals or school directors and assistant principals. Section 1012.01(3)(c), F.S.

⁴² Section 1012.225(2)(a), F.S. (2010).

⁴³ Section 1012.225(1) and (3)(c), F.S. (2010).

⁴⁴ Section 1012.225(3)(c), F.S. (2010); rule 6A-7.0100(2)(b)3.b., F.A.C.; *Performance Pay Guidance*, *supra* note 46, at 3-4.

⁴⁵ Section 1012.225(2)(a), F.S. (2010).

⁴⁶ *See* s. 1012.225(1)(a) and (2)(a), F.S. (2010). Charter schools were authorized to participate in MAP, either by using the sponsoring school district's MAP plan or by adopting an alternative plan. Section 1012.225(1)(a), F.S. (2010).

⁴⁷ Section 1012.225(1)(a) and (4)(a), F.S. (2010).

⁴⁸ Duval, Hillsborough, and Gilchrist. Staff of the Florida House of Representatives, *Legislative Bill Analysis for HB 7087* (2011).

⁴⁹ Section 11 and 12, ch. 2011-37, L.O.F.

⁵⁰ *Compare E-Comp Rulemaking 2006*, *supra* note 37, Specific Appropriation 91, s. 2, ch. 2006-25, L.O.F., and s. 1012.225, F.S. (2010) with s. 4, ch. 2011-1, L.O.F.

How much funding is provided for programs that support teachers?

Florida Education Finance Program. The Legislature allocates public education funding to Florida's 67 school districts through the Florida Education Finance Program (FEFP). The FEFP is a funding formula that uses such factors as student population, local property tax bases, varying costs of living, and varying costs of equivalent education programs due to scarcity and dispersion of the student population to determine a school district's share of public education funding. The FEFP is the primary mechanism for funding the operating costs of Florida school districts, which among other things, includes the payment of teacher salaries.⁵¹ The FY 2014-15 FEFP provides \$18.9 billion including approximately \$10 billion from the General Revenue Fund, \$256 million from the Principal State School Trust Fund, \$481 million from the Educational Enhancement Trust Fund, and \$7.2 billion from local revenue.⁵² In addition to funding school district operating costs, the FEFP also funds:

- **The School Recognition Program**, which provides approximately \$135 million in monetary awards to schools that earn a school grade of "A," improve at least one letter grade, or improve two or more letter grades and maintain such grade the following school year. For FY 2014-15, a recognized school will be awarded up to \$100 per student. School recognition awards may be used for nonrecurring bonuses to school faculty and staff, nonrecurring expenditures for educational equipment or materials, or for temporary personnel to assist the school in maintaining or improving student performance.⁵³
- **The Florida Teachers Classroom Supply Assistance Program**, which provides approximately \$45.3 million for payment to classroom teachers for the purchase of classroom materials and supplies. The amount provided per teacher depends upon the number of eligible teachers.⁵⁴
- **Bonuses for Teachers of Advanced Courses**, such as International Baccalaureate (IB) courses, Advanced International Certificate of Education (AICE) courses, and Advanced Placement (AP) courses, whose students earn specified scores on the course examinations.⁵⁵
 - *International Baccalaureate* bonus provides an IB teacher a \$50 bonus for each student who scores 4 or higher on the IB examination. An IB teacher in a "D" or "F" school who has at least one student scoring 4 or higher on the IB examination receives an additional \$500 bonus.⁵⁶ The bonus awarded to a teacher may not exceed \$2,000 in any given school year; however, the maximum bonus may be \$3,000 if, in a school designated with a grade of "A," "B," "C," at least 50 percent of the students enrolled in the teacher's course earn a score of 4 or higher on the examination or if, in a school designated with a grade of "D" or "F," at least 25 percent of the students enrolled in the teacher's course earn a score of 4 or higher.⁵⁷
 - *Advanced International Certificate of Education* bonus provides an AICE teacher a \$50 bonus for each student in a full-credit AICE course, or \$25 bonus for a student in a half-credit AICE course, who scores "E" or higher on the AICE examination. An AICE teacher in a "D" or "F" school receives an additional \$500 bonus if one of the teacher's students scores "E" or higher on the full-credit AICE examination, or a \$250 bonus for each half-credit AICE course taught which has at least one student scoring "E" or higher on the half-credit AICE examination, not to

⁵¹ See s. 1011.62, F.S. The performance salary schedule, effective beginning with the 2014-2015 school year, will be funded from the same sources used to pay instructional personnel and school administrators under the grandfathered salary schedule.

⁵² Specific Appropriations 11-12 and 96-97, s. 1, ch. 2014-51, L.O.F. Local revenue is known as "required local effort."

⁵³ Section 1008.36, F.S.; Specific Appropriation 11, s. 1, ch. 2014-51, L.O.F.

⁵⁴ Specific Appropriation 96, s. 2, ch. 2014-51, L.O.F.; s. 1012.71, F.S.

⁵⁵ Section 1011.62(1)(l)-(n), F.S.; *International Baccalaureate*, <http://www.ibo.org> (last visited June 16, 2014); University of Cambridge, International Examinations, *Cambridge Advanced International Certificate of Education Diploma*, <http://www.cie.org.uk/qualifications/academic/uppersec/aice> (last visited June 16, 2014); College Board, *Advanced Placement Program*, <http://www.collegeboard.com/student/testing/ap/about.html> (last visited June 16, 2014).

⁵⁶ Section 1011.62(1)(l), F.S.

⁵⁷ *Id.*

exceed an additional \$500 bonus.⁵⁸ The bonus awarded to a teacher may not exceed \$2,000 in any given school year.⁵⁹

- *Advanced Placement* bonus provides an AP teacher a \$50 bonus for each of his or her students who scores 3 or higher on the College Board AP examination. An AP teacher in a “D” or “F” school who has at least one student scoring 3 or higher on the College Board AP examination receives an additional \$500 bonus.⁶⁰ The bonus awarded to a teacher may not exceed \$2,000 in any given school year; however, the maximum bonus may be \$3,000 if, in a school designated with a grade of “A,” “B,” “C,” at least 50 percent of the students enrolled in the teacher’s course earn a score of 3 or higher on the examination or if, in a school designated with a grade of “D” or “F,” at least 25 percent of the students enrolled in the teacher’s course earn a score of 3 or higher.⁶¹

Teacher Professional Development Program. Funding for teacher professional development is provided through a federal grant authorized under Title II, Part A of the *No Child Left Behind Act of 2001 (NCLB)*.⁶² Grant funds may be used for the recruitment, retention, and professional development of highly qualified teachers.⁶³ Since the enactment of NCLB, the Legislature has authorized use of the state’s allocation of Title II, Part A funds for teacher professional development programs, including approximately \$134.6 million in FY 2014-15.⁶⁴

Have school districts received any recognition for implementing salaries based on teacher performance?

Yes. The 2014 Legislature passed CS/SB 1642,⁶⁵ which, in part, provides that school districts making outstanding progress toward educator effectiveness, including implementation of instructional personnel salaries based on performance results and the use of local assessment results in personnel evaluations, are eligible for bonus rewards as provided in the 2014 General Appropriations Act.⁶⁶

What is the average teacher salary in Florida’s public schools?

The average public school teacher salary in the 2012-13 academic year was \$46,583. The statewide average public school teacher salary from 2003-04 through 2012-13 is as follows.⁶⁷

2003-04	2004-05	2005-06	2006-07	2007-08
\$ 40,598	\$ 41,578	\$ 42,702	\$ 45,296	\$ 46,922
2008-09	2009-10	2010-11	2011-12	2012-13
\$ 46,938	\$46,696	\$45,723	\$ 46,479	\$46,583

⁵⁸ Section 1011.62(1)(m), F.S.

⁵⁹ *Id.*

⁶⁰ Section 1011.62(1)(n), F.S.

⁶¹ *Id.*

⁶² Sections 2102-2151, Pub. L. No. 107-110, 115 Stat. 1425, 1620-42 (Jan. 8, 2002), *codified at* 20 U.S.C ss. 6601-6651; *see* U.S. Department of Education, *Guide to U.S. Department of Education Programs*, at 260-261 (Aug. 2011), *available at* <http://www2.ed.gov/programs/gtep/gtep.pdf>.

⁶³ *See* 20 U.S.C. s. 6613.

⁶⁴ *See, e.g.*, Specific Appropriation 109, s. 2, ch. 2014-51, L.O.F.

⁶⁵ Section 13, ch. 2014-23, L.O.F. (creating new subsection (10) under s. 1012.24, F.S.).

⁶⁶ Specific Appropriation 100A, s. 2, ch. 2014-51, L.O.F., provided \$50,000 each to 25 school districts and lab schools that met the criteria established in s. 1012.34(10), F.S. The districts and lab schools are Bay, Broward, Clay, Escambia, Flagler, Gadsden, Gilchrist, Highlands, Hillsborough, Lake, Lee, Madison, Martin, Nassau, Okeechobee, Orange, St. Johns, Sumter, Taylor, Volusia, Wakulla, FAMU Lab School, FAU Palm Beach Lab School, FSU Broward Lab School and UF Lab School.

⁶⁷ Florida Department of Education, *Data Report: Teacher Salary Data, 2012-13*, (Oct. 2013), *available at* (<http://www.fldoe.org/eias/eiaspubs/word/tchslldg113.doc>); Florida Department of Education, *Education Information and Accountability Services Data Archives*, <http://www.fldoe.org/eias/eiaspubs/archives.asp> (last visited June 12, 2014) (*see* documents listed under heading entitled Teacher Salary, Experience, and Degree Level for 2003-04 to 2011-12).

Where can I get additional information?

Florida Department of Education

Bureau of Educator Recruitment, Development, & Retention

(850) 245-0435

<http://www.teachinflorida.com/>

<http://www.fldoe.org/profdev/>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

Florida House of Representatives

Appropriations Committee

(850) 717-4810

<http://www.myfloridahouse.gov>

Postsecondary Education

Florida College System



What is “developmental education”?

Developmental education is instruction through which a high school graduate who applies for any college credit program may attain the communication and computation skills necessary to successfully complete college credit instruction.¹ It may be delivered through a variety of accelerated and corequisite strategies, including:

- Modularized instruction that is customized and targeted to address specific skills gaps.
- Compressed course structures that accelerate student progression from developmental instruction to college level coursework.²
- Contextualized developmental instruction that is related to meta-majors³.
- Corequisite developmental instruction or tutoring that supplements credit instruction while a student is concurrently enrolled in a credit-bearing course.⁴

Developmental education instruction may be offered by the 28 institutions in the Florida College System (FCS) and the Florida Agricultural and Mechanical University (FAMU). Other state universities may contract with a FCS institution for the provision of developmental education instruction on the university’s campus.⁵

Florida law affords institutions great flexibility to deliver developmental education through a variety of methods. In 2013, the legislature eliminated the prohibition on concurrent enrollment in developmental education instruction and college credit coursework addressing the same skills.⁶ Thus, students may receive developmental education instruction at the same time they earn college-credit, thereby accelerating their progression towards attainment of a degree. Students may also receive instruction prior to entering into credit-bearing courses. Students may retake developmental education courses up to two times before they will be required to pay 100 percent of the cost of instruction for the course.⁷

How do colleges assess student readiness for college-level coursework?

There are a variety of indicators of college readiness that postsecondary institutions can use to determine if a student has the necessary skills to succeed in college-level coursework. Such indicators may include, but are not limited to, the following:

College Placement Test

The State Board of Education (state board), in conjunction with the Board of Governors must develop and implement a common placement test to assess students’ basic computation and communication skills .⁸

¹ Section 1008.02(1), F.S.

² Such college level courses will typically consist of gateway courses, or the first courses that provide transferable, college-level credit allowing a student to progress in his or her program of study.

³ “Meta-major” is defined as a collection of programs of study or academic discipline groupings that share common foundational skills. Section 1008.02(3), F.S.

⁴ Section 1008.02, F.S.

⁵ Section 1008.30(6)(c), F.S.

⁶ See Section 19, ch. 2013-51, L.O.F., amending Section 1008.30, F.S

⁷ Section 1009.28, F.S.

⁸ Sections 1001.03(10) and 1008.30(1), F.S.

The test currently used to meet the assessment requirement is the Postsecondary Education Readiness Test (PERT), developed by McCann Associates for the Department of Education (DOE). The PERT is aligned to the state's recently developed Postsecondary Readiness Competencies in reading, writing, and mathematics and may be administered on a computer or as a paper test. It has diagnostic capabilities that identify skill deficiencies and allow developmental education offered by FCS institutions to be tailored to a student's individual needs.⁹

Alternative Assessments

The state board has also identified alternative assessments, the College Board's Accuplacer and SAT-I and the American College Testing Program's Enhanced ACT, which are accepted in lieu of the PERT for placement purposes.¹⁰ Additionally, state board rule allows FCS institutions to utilize statewide standardized test scores in Reading and Mathematics.¹¹ Accordingly, scores from the CPT, PERT, SAT-I, or ACT may be accepted by FCS and State University System (SUS) institutions, and FCAT scores may be accepted by FCS institutions for purposes of assessing a student's readiness for college-level coursework.¹²

Other Methods

Each FCS Board of Trustees must develop a plan which includes, at a minimum, local policies that outline documented student achievements such as grade point average, work history, military experience, participation in juried competitions, career interests, degree major declaration, or any combination of such activities that the institution may consider in addition to common placement test scores, for advising students regarding enrollment options.¹³

Who is required to take the PERT upon entry to an FCS institution?

All First-Time-In-College (FTIC) students who have not either met college level competencies through the completion of developmental education requirements or been awarded credit for college-level coursework shall be assessed prior to the completion of initial registration.¹⁴ The following students are exempt from this requirement:

- Students who entered the 9th grade in a Florida public school in the 2003-2004 school year, or any year thereafter, and graduated with a standard high school diploma; and
- Students who presently serve as active-duty members of any branch of the U.S. Armed Services.¹⁵

Students who meet the exemption criteria may opt to take the PERT and participate in developmental education.¹⁶

Are high school students assessed for college-readiness?

Yes. High schools administer the PERT to all students in 11th grade who scored at Level 2 or 3 on the Reading or the English Language Arts portion of the 10th grade state standardized assessment or Levels 2 through 4 on the required Algebra I assessment.¹⁷ Students who demonstrate college readiness by achieving scores established by the state board on alternate assessments are not required to take the PERT.¹⁸ When a

⁹ See Florida Department of Education, Division of Florida Colleges: Correspondence, *Postsecondary Education Readiness Test (PERT) Transition Plan Memorandum*, (Aug. 5, 2010), <http://www.fldoe.org/fcs/OSAS/correspondence.asp> (last visited July 24, 2014).

¹⁰ Rule 6A-10.0315(2)(a), F.A.C.

¹¹ Rule 6A-10.0315(2)(d), F.A.C.

¹² Section 1008.30(3), F.S.; rule 6A-10.0315(1), F.A.C.

¹³ Section 1008.30(6)(a)1., F.S.

¹⁴ Rule 6A-10.0315(1)(b), F.A.C.

¹⁵ Section 1008.30(4)(a), F.S.

¹⁶ *Id.*

¹⁷ Section 1008.30(3), F.S.

¹⁸ Rule 6A-10.0315(2), F.A.C.

student does not achieve the minimum scores necessary to demonstrate college readiness on either the PERT or an alternative assessment, the school must use the test results to advise the student of identified deficiencies and provide appropriate postsecondary preparatory instruction during his or her 12th grade year. The student is required to complete the postsecondary preparatory instruction prior to high school graduation.¹⁹

How are students advised of developmental education options?

FCS institutions must provide admissions counseling to students entering a college or career credit program.²⁰ In the case of a student who is not exempt from placement testing, such counseling must use tests to measure achievement of college-level communication and computation competencies.²¹ The counseling must also provide developmental education options to students whose test scores indicate the need to improve communication or computation skills essential to perform college-level work.²² Institutions must counsel students into college credit courses as quickly as possible and limit the delivery of developmental education to only the content necessary for success in a student's chosen meta-major.²³ Each FCS institution board of trustees must establish policies for the purpose of notifying students about developmental education options essential to performing college-level work, including:

- Tutoring;
- Extended time in gateway²⁴ courses;
- Free online courses;
- Adult basic education;
- Adult secondary education; or
- Private provider instruction.²⁵

Any student who takes the PERT²⁶ and whose score on the test indicates a need for developmental education must be advised of all the developmental education options offered at the institution. After the FCS institution has so advised the student, it must allow the student to enroll in the developmental education option of his or her choice.²⁷

How are FCS institutions held accountable for their developmental education program offerings?

Each FCS institution must prepare an annual accountability report which includes student success data relating to each developmental education option implemented by the institution.²⁸ Starting in 2015, FCS institutions must submit the report to the Division of Florida Colleges by October 31 in a format determined by the chancellor of the FCS. The chancellor must compile the reports and submit them to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the state board by December 31, each year.²⁹

¹⁹ *Id.*; rule 6A-10.0315(2), F.S.

²⁰ Section 1007.263(1), F.S.

²¹ The competencies diagnosed by the PERT must be those essential for success in meta-majors. The testing program must have the capacity to provide information to students on the specific skills they must attain. Section 1008.30(2), F.S.

²² Section 1007.263(1), F.S.

²³ Section 1008.30(5), F.S.

²⁴ "Gateway course" is defined as the first course that provides transferrable, college-level credit allowing a student to progress in his or her program of study. Section 1008.02(2), F.S.

²⁵ Section 1007.263, F.S.

²⁶ This includes those students who opt to test but are not required to do so. *See* Section 1008.30(4)(a).

²⁷ Section 1008.30(4)(b).

²⁸ Section 1008.30(6)(b), F.S.

²⁹ *Id.*

Where may I get additional information?

Florida Department of Education

Division of Florida Colleges

(850) 245-0407

<http://www.fldoe.org/fcs/>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>



Are Florida College System (FCS) institutions authorized to independently offer baccalaureate degree programs?

Yes, under specified circumstances. FCS institutions may offer baccalaureate degrees in two ways – through concurrent or joint-use partnerships with four-year public or private postsecondary institutions or by obtaining State Board of Education approval to independently offer baccalaureate degree programs that meet district, regional, or statewide workforce needs.¹

A FCS institution that is approved to independently offer baccalaureate degrees remains under the authority of the state board and the FCS institution's board of trustees.²

However, a provision passed during the 2014 legislative session prohibits the state board from approving any FCS institution baccalaureate degree program proposals from March 31, 2014, through May 31, 2015.³ Additionally, the Board of Trustees of St. Petersburg College is prohibited from establishing any new baccalaureate degree programs from March 31, 2014, through May 31, 2015.⁴

What are concurrent or joint-use partnerships?

FCS institutions are statutorily authorized to offer baccalaureate or higher degree coursework on their campuses through concurrent or joint-use partnerships (partnerships) with State University System (SUS) institutions or independent colleges or universities.⁵ Partnerships are contractual in nature and do not require state board approval.⁶ Such partnerships enable students to earn a baccalaureate degree or higher from a four-year postsecondary institution while taking all or most of the coursework on the FCS institution's campus or via distance learning, transfer agreements, and concurrent enrollment.⁷

According to the DOE, in 2012-13, 25 of the 28 FCS institutions had a total of 323 partnerships with other colleges and universities.⁸ Such programs included 263 baccalaureate programs, 44 masters programs, two education specialist programs, nine doctorate programs, and five professional programs. Almost three-quarters (74.4 percent) of the students participating in concurrent- and joint-use partnerships were enrolled in programs offered by SUS institutions, 22 percent were enrolled in programs offered by the Independent Colleges and Universities of Florida, and four percent of the student enrollments were with out-of-state

¹ Section 1007.33(4)(a)-(c), F.S. St. Petersburg College has been statutorily authorized to offer baccalaureate degrees since 2001. The college may establish a new baccalaureate degree program if its board of trustees determines that the program is warranted and feasible based upon the same statutory criteria considered by the state board when considering baccalaureate degree program proposals submitted by other FCS institutions. Before developing or proposing a new baccalaureate degree program, the college must engage in need, demand, and impact discussions with the SUS institution in its service district and other local and regional accredited postsecondary providers. In addition to baccalaureate degrees, the local board may establish one or more bachelor of applied science (BAS) degree programs based upon an analysis of workforce needs in Pinellas, Pasco, and Hernando Counties or other counties approved by DOE. The college must offer a related AS or AAS degree program in the subject area covered by each BAS degree. Section 1007.33(4), F.S. (flush-left provisions at end of subsection).

² Section 1001.03(15), F.S.

³ Section 1001.03(15), F.S.

⁴ Section 1007.33(4), F.S.

⁵ Sections 1007.22(1) and (4) and 1007.33(4)(a), F.S.

⁶ Section 1007.22(1), F.S.

⁷ *Id.*

⁸ Florida Department of Education, Florida Colleges, *The Florida College System Transparency, Accountability, Progress, and Performance – How Many Concurrent- and Joint-Use Partnerships Does the Florida College System Have?(2013)*, available at <http://www.fldoe.org/fcs/pdf/concurrentjoint.pdf>.

universities.⁹ Of the 323 partnerships, the top five program areas were Business (60 programs), Education (52 programs), Nursing and Health Professions (26 programs), Liberal Arts (25 programs), and Visual and Performing Arts (20 programs).¹⁰

Which FCS institutions have received SBE approval to independently offer baccalaureate degrees?

A total of 175 baccalaureate degree programs have been approved to be offered at the following 24 FCS institutions: Broward College, Chipola College, College of Central Florida, Daytona State College, Eastern Florida State College, Florida SouthWestern State College, Florida Gateway College, Florida State College at Jacksonville, Gulf Coast State College, Indian River State College, Lake-Sumter State College, Miami Dade College, Northwest Florida State College, Palm Beach State College, Pasco-Hernando State College, Pensacola State College, Polk State College, Santa Fe College, Seminole State College of Florida, St. Johns River State College, St. Petersburg College, South Florida State College, State College of Florida, Manatee-Sarasota, and Valencia College. A list of the specific programs that have been approved for each institution is available on DOE's website.¹¹

If approved to offer one or more baccalaureate degree programs, a FCS institution must:

- Maintain, as its primary mission, responsibility for responding to community needs for postsecondary academic education and career degree education and for providing associate degrees that provide access to a university;
- Maintain an open-door admissions policy for associate-level degree and workforce education programs;
- Continue to provide remedial education and outreach to underserved populations;
- Comply with all provisions of the statewide articulation agreement; and
- Not award graduate credit or participate in intercollegiate athletics beyond the two-year level.¹²

What is the process a FCS institution must follow to obtain state board approval to offer baccalaureate degrees?

A FCS institution proposing to offer a baccalaureate degree must notify the Division of Florida Colleges (division) of its intent to propose the baccalaureate degree program at least 100 days before submitting its proposal to the division.¹³ The notice of intent must include a brief description of the program, workforce demand and unmet need for graduates of the program to include evidence from entities independent of the institution, the geographic regions to be served, estimated timeframe for implementation, and evidence that the college engaged in need, demand, and impact discussions with the state university and other regionally accredited postsecondary education providers in its service district. A notice of intent may be submitted by a FCS institution at any time throughout the year.¹⁴

Within 10 days of its receipt of the notice, the division must forward the notice to the Chancellor of the State University System (SUS), the President of the Independent Colleges and Universities of Florida, and the Executive Director of the Commission for Independent Education.¹⁵

A FCS institution's baccalaureate degree program proposal at a minimum must include the following:

- A description of the planning process and timeline for implementation;
- An analysis of workforce demand and unmet need on a district, regional or statewide basis, as appropriate, including evidence from entities independent of the institution;

⁹ *Id.*

¹⁰ *Id.*

¹¹ Florida Department of Education, Florida Colleges, Florida College Bachelor's Degree Programs, *List of Approved Bachelor's Degree Programs by College*, http://www.fldoe.org/fcs/students/bach_degree.asp, (last visited June 4, 2014).

¹² Section 1007.33(2)(a)-(g), F.S.

¹³ Section 1007.33(5)(a), F.S.

¹⁴ *Id.*

¹⁵ Section 1007.33(5)(b), F.S.

- Identification of facilities, equipment, and library and academic resources that will be used to deliver the program;
- Program cost analysis of creating a new baccalaureate degree when compared to alternative proposal and other delivery options;
- Program admission requirements, academic content, curriculum, faculty credentials, student-to-teacher ratios, and accreditation plan;
- Enrollment projections and funding requirements; and
- A plan of action in case of program termination.¹⁶

The state universities and independent colleges and universities may submit alternative proposals or objections to FCS institutions offering baccalaureate degree programs.¹⁷

What is the process for SUS institutions or independent colleges and universities to submit an alternative proposal or objections to the baccalaureate degree proposal?

State Universities have 60 days after the SUS Chancellor receives a FCS notice of intent to submit to the division an alternative proposal or objection to the proposed new baccalaureate degree program. If no alternative proposal or objection is received during the 60 day time period, regionally accredited private colleges and universities must have 30 days to submit an alternative proposal or objection.¹⁸

An alternative proposal submitted by a SUS institution or independent college or university must adequately address the following:

- The extent to which the workforce demand and unmet need for graduates of the program will be met;
- The extent to which access will be provided to students in the geographic region proposed to be served by the FCS institution;
- The level of financial commitment to development, implementation, and maintenance of the program;
- The level of collaboration between FCS institution and college or university faculty in program development and delivery;
- The ability of the FCS institution and college or university to develop and approve the program's curriculum within six months after an agreement between the two institutions is signed; and
- The extent that students will incur additional costs above those incurred if the program were offered by the FCS institution.¹⁹

Are there additional accreditation requirements when offering specified baccalaureate degree programs?

Yes. A FCS institution that has been approved by the state board or the Legislature to award baccalaureate degrees must pursue Level 2 accreditation by the Commission on Colleges (COC) of the Southern Association of Colleges and Schools (SACS).²⁰

Are baccalaureate degree programs offered at FCS institutions evaluated?

Yes. Part of the approval process for baccalaureate degree programs requires the FCS institutions to annually, and upon the request of the state board, Commissioner of Education, Chancellor of the Florida College System, or Legislature, report on the status using the following performance and compliance indicators:

¹⁶ Section 1007.33(5)(d), F.S.; rule 6A-14.095(6)(a), F.A.C.

¹⁷ Section 1007.33(5)(b), F.S.

¹⁸ *Id.*

¹⁹ Section 1007.33(5)(c), F.S.; rule 6A-14.095(5), F.A.C.

²⁰ Section 1007.33(5)(f), F.S.; Southern Association of Colleges and Schools, Commission on Colleges, *Resource Manual for the Principles of Accreditation: Foundations for Quality Enhancement*, at 116 (2012), available at <http://www.sacscoc.org/pdf/Resource%20Manual.pdf>.

- Obtaining and maintaining appropriate SACS/COC accreditation;
- Maintaining qualified faculty and institutional resources;
- Maintaining enrollment in previously approved programs;
- Managing fiscal resources appropriately;
- Complying with primary mission and responsibility requirements;
- Submitting the institution's annual performance accountability report timely; and
- Other indicators of success including program completers, placements, and surveys of graduates and employers.

The state board, upon review of the performance and compliance indicators, has the authority to require a FCS institution's board of trustees to modify or terminate a baccalaureate degree program.²¹

What is the State Board of Education review and approval process for baccalaureate degree programs?

The division will review the proposal, and notify the FCS institution of any deficiencies in writing within 30 days following receipt of the proposal. The FCS institution is provided an opportunity to correct the deficiencies. Within 45 days following the division's receipt of a completed proposal, the Commissioner must recommend approval or disapproval of the proposal to the state board. The state board will consider the Commissioner's recommendation, the proposal and any alternative proposals or objections at the next state board meeting. If the state board disapproves the proposal, it must provide the college with written reasons for that determination.²²

What fees are authorized for baccalaureate degree level programs at FCS institutions?

A student who enrolls in an upper division course at a public FCS institution is charged tuition and may also be required to pay a capital improvement fee, a financial aid fee, an activity and service fee, a technology fee, and a distance learning fee.²³ If the student is not classified as a resident for tuition purposes, an additional out-of-state fee is required.²⁴

Proviso language in the 2014-15 General Appropriations Act establishes standard tuition at \$71.98 per credit hour for residents beginning with the Fall 2014 semester for the following FCS programs: advanced and professional, postsecondary vocational, college preparatory, and educator preparation institutes. The out-of-state fee for non-residents is \$215.94 per credit hour in addition to standard tuition at \$71.98 per credit hour for a total of \$287.92 per credit hour for non-resident students.²⁵

Each FCS board of trustees must establish tuition and out-of-state fees which may vary no more than 10% below and 15% above the combined total of the standard tuition and out-of-state fee.²⁶

FCS boards of trustees are authorized by statute to establish an activity and service fee, financial aid fee, capital improvement fee, technology fee, distance learning user fee, and user fees and fines.²⁷

Tuition and out-of-state fees for upper-division courses must reflect the fact that the FCS institution has a less expensive cost structure than that of a state university. A board of trustees must establish tuition and out-of-state fees for upper-division courses in baccalaureate degree programs that are consistent with law and proviso language in the General Appropriations Act.²⁸

²¹ Section 1007.33(5)(h), F.S.

²² Section 1007.33(5)(e), F.S.; rule 6A-14.095, F.A.C.

²³ Section 1009.23, F.S.

²⁴ Section 1009.01(2), F.S.

²⁵ Specific Appropriation 126, Section 2, ch. 2014-51, L.O.F.

²⁶ Section 1009.23(4), F.S.

²⁷ Section 1009.23(7), (8)(a), (10), (11)(a), and (16)(a), F.S.

²⁸ Section 1009.23(2)(b), F.S.

Proviso language in the 2014-15 General Appropriations Act establishes the standard tuition for baccalaureate programs at \$91.79 per credit hour for residents.²⁹ The sum of the tuition and the out-of-state fee per credit hour for nonresidents may be no more than 85% of the sum of tuition and out-of-state fee per credit hour at the state university nearest the FCS institution.³⁰

What is the \$10,000 baccalaureate degree challenge?

In 2012, Governor Rick Scott challenged the FCS to work to develop baccalaureate degrees costing students no more than \$10,000.³¹ The Legislature included provisions during the 2013 session to facilitate the colleges' ability to offer these degrees by providing them the authority to waive any portion of the tuition, the activity and service fee, the financial aid fee, the technology fee, the capital improvement fee, and distance learning fee for the purpose of offering a baccalaureate degree for state residents that does not exceed \$10,000 for the entire program.³² The baccalaureate degrees are offered in select program areas based on local and community needs. Constituents are encouraged to contact the college of their choice for more specific information on these baccalaureate degrees.³³

Which state colleges are offering the \$10,000 degree?

All 24 baccalaureate-granting colleges accepted the Governor's challenge to offer \$10,000 degrees. As of spring 2014, nine colleges reported offering \$10,000 degrees. Eleven additional colleges plan to offer the \$10,000 degrees beginning in the fall of 2014, with the four remaining colleges in the planning stages.³⁴

Where may I get additional information?

Florida Department of Education

State Board of Education
Governmental Relations Office
(850) 245-0507
<http://www.fldoe.org/board>

Florida Department of Education

Division of Florida Colleges
(850) 245-0407
<http://www.fldoe.org>

Florida House of Representatives

Education Committee
(850) 717-4830
<http://www.myfloridahouse.gov>

²⁹ Specific Appropriation 126, Section 2, ch. 2014-51, L.O.F.

³⁰ Section 1009.23(3)(b)2., F.S.

³¹ Florida Department of Education, Florida College System, *Florida College System's Response to Governor's \$10,000 Degree Program (May 2014)*, available at, http://www.fldoe.org/fcs/students/bach_degree.asp.

³² Section 1009.26(11), F.S.

³³ *Id.*

³⁴ Florida Department of Education, Florida College System, Data Snapshots, *Florida College System Institutions offer \$10,000 baccalaureate degrees*, available at, <http://www.fldoe.org/fcs/OSAS/Evaluations/datasnapshots.asp>.

State University System



What is the Preeminent State Universities program?

In 2013, the Legislature passed Senate Bill 1076, which established a collaborative partnership between the Board of Governors (BOG) and the Legislature to raise the academic and research excellence and national preeminence of the highest performing state research universities in Florida.¹ The partnership stems from the March 24, 2010, State University System (SUS) Governance Agreement that affirmed the commitment of the BOG and the Legislature to continue collaboration on accountability measures, the use of data, and recommendations derived from such data.²

Under the bill, the BOG must designate as a “preeminent state research university” any state research university that substantially meets at least 11 of 12 academic and research excellence standards specified by statute.³

What are the academic and research excellence standards?

The academic and research excellence standards are a series of benchmarks in research productivity, endowment size, student success indicators, national rankings, and other measures identified by national databases and research groups that indicate national preeminence. The twelve standards are predicated in part upon data collected by the following nationally recognized entities:

Integrated Postsecondary Education Data System (IPEDS)

IPEDS is a system of interrelated surveys conducted annually by the U.S. Department of Education’s National Center for Education Statistics (NCES). IPEDS gathers information from every college, university, and technical and vocational institution that participates in federal student financial aid programs.⁴ The Higher Education Act of 1965,⁵ as amended, requires institutions that participate in federal student aid programs [to] report data on enrollments, program completions, graduation rates, faculty and staff, finances, institutional prices, and student financial aid. Data from IPEDS are commonly used as the foundation of state and national reports.

The Center for Measuring University Performance

The Center for Measuring University Performance (Center) is a research enterprise focused on comparative performance of major research universities.⁶ The Center publishes an annual report, *The Top American Research Universities* (TARU), which provides analysis and data to assess the performance of research universities based on nine research-specific measures.⁷ These data are the same or similar to data used by nationally recognized ranking systems.

¹ Section 1001.7065(1), F.S.

² *Id.*

³ Section 1001.7065(3), F.S.

⁴ Integrated Postsecondary Education Data System, About IPEDS, <http://nces.ed.gov/ipeds/about/> (last visited July 31, 2014).

⁵ The Higher Education Opportunity Act (HEOA) was enacted on August 14, 2008, and reauthorizes the Higher Education Act (HEA) of 1965, as amended. U.S. Department of Education, *Higher Education Opportunity Act-2008*, <http://www2.ed.gov/policy/highered/leg/hea08/index.html> (last visited July 31, 2014).

⁶ The Center for Measuring University Performance, *The Center for Measuring University Performance*, <http://mup.asu.edu/index.html> (last visited July 31, 2014).

⁷ The Top American Research Universities, *2012 Annual Report*, <http://mup.asu.edu/research.html> (last visited July 31, 2014).

The National Science Foundation (NSF)

NSF is an independent federal agency created by Congress in 1950 "to promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense; and for other purposes."⁸ NSF ranks institutions based on research and development expenditures in science and engineering fields.⁹

The BOG must designate a SUS institution as a preeminent state research university once it substantially meets, as verified by the BOG, at least 11 of the following 12 academic and research excellence standards:¹⁰

1. An average weighted grade point average of 4.0 or higher on a 4.0 scale and an average SAT score of 1800 or higher for fall semester incoming freshman, as reported annually.
2. A top 50 ranking on at least two well-known and highly respected national public university rankings, reflecting national preeminence, using most recent rankings.
3. A freshman retention rate of 90 percent or higher for full-time first-time-in-college students, as reported annually to the IPEDS.
4. A 6-year graduation rate of 70 percent or higher for full-time first-time-in-college students, as reported annually to the IPEDS.
5. Six or more faculty members at the state university who are members of a national academy, as reported in the TARU annual report.
6. Total annual research expenditures, including federal research expenditures, of \$200 million or more, as reported annually by the NSF.
7. Total annual research expenditures in diversified nonmedical sciences of \$150 million or more, as reported annually by the NSF.
8. A top 100 university national ranking for research expenditures in five or more science, technology, engineering, or mathematics fields of study, as reported annually by the NSF.
9. One hundred or more total patents awarded by the United States Patent and Trademark Office for the most recent 3-year period.
10. Four hundred or more doctoral degrees awarded annually, as reported in the BOG Annual Accountability Report.
11. Two hundred or more post-doctoral appointees annually, as reported in the TARU annual report.
12. An endowment of \$500 million or more, as reported by the BOG Annual Accountability Report.

What support does the State provide to preeminent state research universities?

The state research university that met all twelve of the academic and research excellence standards as of July 1, 2013, was required to establish an institute for online learning that offers affordable, high-quality, fully online baccalaureate degree programs.¹¹ The university must submit to the BOG a 5-year benchmark plan with target rankings on key performance metrics for national excellence. Upon the university's meeting the benchmark plan goals annually, and upon the BOG's approval, the BOG will award the university an amount specified in the General Appropriations Act each year throughout the 5-year period.¹²

The state research university that met 11 of the 12 standards as of July 1, 2013, receives the benefits of the Preeminent State Research University Enhancement Initiative (Initiative). Under the Initiative, the university, like the university that meets all 12 of the standards, must establish and meet on an annual basis goals set in a 5-year benchmark plan in order to be awarded funds by the BOG as specified in the General Appropriations Act.¹³ The university must use funds awarded under the Initiative for the purpose of recruiting National

⁸ 42 U.S.C.A. s. 1861; *see also* National Science Foundation, *About the National Science Foundation*, <http://www.nsf.gov/about/> (last visited July 31, 2014).

⁹ National Science Foundation, *Academic Research and Development Expenditures: Fiscal Year 2009*, available at http://www.nsf.gov/statistics/nsf11313/content.cfm?pub_id=4065&id=2 (last visited July 31, 2014).

¹⁰ Section 1001.7065(2), F.S.

¹¹ Section 1001.7065(5), F.S.

¹² *Id.*

¹³ Section 1001.7065(6), F.S.

Academy Members, expediting provision of a master's degree in cloud virtualization, and instituting an entrepreneurs-in-residence program throughout its campus.¹⁴

The BOG is encouraged to identify and grant all reasonable and feasible authority and flexibility to keep designated preeminent universities free from unnecessary restrictions.¹⁵ It is also encouraged to identify individual programs within state universities that objectively reflect national excellence and make recommendations to the Legislature as to how any such programs could be enhanced and promoted.

A preeminent state research university may require its incoming first-time-in-college students to take a 9-to-12 credit set of courses specifically determined by the university.¹⁶ The university may stipulate that credit for such courses may not be earned through any acceleration mechanism pursuant to ss. 1007.27 or 1007.271, F.S., or other transfer credit. Any accelerated credits earned up to the limits specified in ss. 1007.27 and 1007.271, F.S., must be applied toward graduation at the student's request.¹⁷

Where may I get additional information?

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

The Florida Board of Governors

(850) 245-0466

<http://www.flbog.edu/>

¹⁴ *Id.*

¹⁵ Section 1001.7065(8), F.S.

¹⁶ Section 1001.7065(7), F.S.

¹⁷ *Id.*

Student Financial Aid & Tuition Assistance Programs



What is the Florida Prepaid College Program?

The Stanley G. Tate Florida Prepaid College Program (Prepaid Program) is offered by the State of Florida to assist families in planning and saving for a college education.¹ The Prepaid Program is administered by the Florida Prepaid College Board (Board).²

The Prepaid Program is a qualified tuition plan, which is a tax advantaged college savings plan authorized by Section 529 of the Internal Revenue Code.³ Contributions to these plans grow tax-deferred, and, when the beneficiary (student) is ready for college, withdrawals for qualified higher education expenses⁴ are exempt from federal income and State of Florida taxes.⁵

The Prepaid Program provides for the purchase of advanced payment contracts (Prepaid Plans) for postsecondary education.⁶ At the time of purchase, Prepaid Plans guarantee the future payment of certain costs associated with attendance at institutions in the Florida College System (FCS) and State University System (SUS) for a beneficiary.⁷ The specific postsecondary charges covered by one or more Prepaid Plans are as follows:

- **Registration Fee:** The tuition, financial aid, building, and Capital Improvement Trust Fund fees charged by FCS and SUS institutions.⁸
- **Local Fees:** The activity and service, athletic, and health fees charged by a SUS institution or the student activity and service and technology fees charged by a FCS institution.⁹
- **Tuition Differential Fee:** The tuition differential assessed for undergraduate courses by a SUS Board of Trustees when approved by the Board of Governors.¹⁰
- **Dormitory Fee:** The fee charged by SUS institutions for residence in a double-occupancy, air-conditioned dormitory room.¹¹

As of June 30, 2013, more than 1.6 million Prepaid Plans have been purchased.¹²

¹ Section 1009.98(1), F.S.

² Section 1009.971(1), F.S.

³ 26 U.S.C. § 529(b)(1)

⁴ “Qualified Higher Education Expenses” means the tuition, fees, room and board, and the cost of books, supplies and equipment permitted under Section 529 of the Code and required for the enrollment or attendance of a beneficiary at an Eligible Educational Institution, including undergraduate and graduate schools. Room and board expenses are subject to limitations under Section 529 of the Code. Rule 19B-4.001(2); Florida Prepaid College Board, *Master Contract* at s. 1.24 (2014), available at <https://www.flrules.org/gateway/reference.asp?No=Ref-04374> [hereinafter *Master Contract*].

⁵ 26 U.S.C. § 529(c)(3)(B).

⁶ Section 1009.98(1), F.S.

⁷ Section 1009.98(2), F.S.

⁸ Section 1009.97(3)(g), F.S.; rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 1.27.

⁹ Rule 19B-4.001(2), F.A.C.; *Master Contract* *supra* note 4 at s. 1.13.

¹⁰ Section 1009.24(16), F.S.; rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 1.33.

¹¹ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 1.09.

¹² Florida Prepaid College Board, *2013 Annual Report*, at 2, available at <http://www.myfloridaprepaid.com/wp-content/uploads/2013-annual-report.pdf> [hereinafter *Annual Report*].

What options are available through the Prepaid Program?

During the 2014-15 Open Enrollment period, the Prepaid Program will offer the following six¹³ types of Prepaid Plans to beneficiaries:

- **4-Year Florida University Plan:** This plan guarantees the registration fee, local fees, and tuition differential fee for 120 undergraduate credit hours of enrollment at a SUS institution.¹⁴
- **2 + 2 Florida Plan:** This plan guarantees the registration fee and local fees for 60 credit hours of lower division enrollment at a FCS institution and the registration fee, local fees, and tuition differential fee for 60 undergraduate credit hours of enrollment at a SUS institution.¹⁵
- **4-Year Florida College Plan:** This plan guarantees the registration fee and local fees for 60 credit hours of lower division enrollment and for 60 credit hours of upper division enrollment at a FCS institution.¹⁶
- **2-Year Florida College Plan:** This plan guarantees the registration fee and local fees for 60 credit hours of lower division enrollment at a FCS institution.¹⁷
- **1-Year Florida University Plan:** This plan guarantees the registration fee, local fees, and tuition differential fee for 30 undergraduate credit hours of enrollment at a SUS institution.¹⁸
- **1-Year University Dormitory Plan:** This plan guarantees the payment for a double-occupancy, air-conditioned dormitory room for two semesters at a SUS institution.¹⁹

Florida families may purchase more than one Prepaid Plan for a beneficiary, but, in aggregate, may not purchase more than 120 credit hours and eight semesters of dormitory fees for a beneficiary.²⁰

Who may purchase a Prepaid Plan?

Any person, corporation, or organization may purchase a Prepaid Plan for a qualified beneficiary.²¹ A person purchasing a Prepaid Plan must be 18 years of age or older and either a U.S. citizen or resident alien.²²

Who may be designated as a survivor of a Prepaid Plan?

The account owner may designate a survivor (i.e. the person who will control the Prepaid Plan if the account owner passes away), who must be 18 years of age or older and either a U.S. citizen or resident alien.²³

¹³ Prior to the 2010-11 open enrollment period, the Prepaid Program offered three types of Prepaid Plans: (1) tuition plans for registration fees at FCS or SUS institutions; (2) local fee plans for FCS or SUS institutions; and (3) tuition differential fee plans for SUS institutions. During the 2014-15 Open Enrollment period, the Prepaid Program will continue to offer local fee plans and tuition differential fee plans to account owners of eligible Tuition Plans.

¹⁴ Rule 19B-4.001(2), F.A.C.; *Master Contract, supra* note 4 at s. 4.02.

¹⁵ Rule 19B-4.001(2), F.A.C.; *Master Contract, supra* note 4 at s. 4.03.

¹⁶ Rule 19B-4.001(2), F.A.C.; *Master Contract, supra* note 4 at s. 4.04.

¹⁷ Section 1009.98(2), F.S.; rule 19B-4.001(2), F.A.C.; *Master Contract, supra* note 4 at s. 4.05.

¹⁸ Rule 19B-4.001(2), F.A.C.; *Master Contract, supra* note 4 at s. 4.06.

¹⁹ Rule 19B-4.001(2), F.A.C.; *Master Contract, supra* note 4 at s. 4.10.

²⁰ Rule 19B-4.001(2), F.A.C.; *Master Contract, supra* note 4 at ss. 4.01(b) and 4.10(b).

²¹ A corporation or organization must provide to the Florida Prepaid College Foundation certification that they are a state or local government or an organization described in s. 501(c)(3) of the IRS Code.

²² *Master Contract, supra* note 4 at s. 3.01(c).

²³ Rule 19B-4.001(2), F.A.C.; *Master Contract, supra* note 4 at s. 1.32.

What rights does a survivor have for a Prepaid Plan?

The survivor may obtain information regarding the Prepaid Plan and enjoys a right of survivorship with the account owner for the Prepaid Plan.²⁴ Additionally, for Prepaid Plans²⁵ purchased on or after February 1, 2009, changes to the account owner, survivor, or beneficiary, requests for cancellation, and refund requests associated with involuntarily terminations of the Prepaid Plan(s) must be consented to by both the account owner and survivor.²⁶

Who may be a beneficiary?

The beneficiary must be a U.S. citizen or resident alien who is under 21 years of age on the first day of the month in which the open enrollment period begins and who has not completed the 11th grade.²⁷ Additionally, a beneficiary must have been a resident of Florida for at least 12 consecutive months prior to, and including, the date of the application for a Prepaid Plan or an infant born in Florida who is less than one year of age.²⁸ A child who is not a resident of Florida, but whose noncustodial parent is a resident of Florida, is eligible to have his or her Florida parent purchase a contract for him or her.²⁹

May a Prepaid Plan be purchased without naming a beneficiary?

A beneficiary must be named when purchasing a Prepaid Plan.³⁰ However, the Stanley G. Tate Florida Prepaid College Foundation and nonprofit organizations that operate a scholarship program approved by the Board are not required to identify the beneficiary until the scholarship recipient³¹ is assigned.³²

How may Prepaid Plans be purchased?

Prepaid Plans may be purchased online at the Board's website (www.myfloridaprepaid.com).³³ A Prepaid Plan must be purchased during an open enrollment period, which typically is held between mid-October and the end of February, except that the Florida Prepaid College Foundation, persons participating in employer participation programs, or persons purchasing pursuant to a court order may purchase a Prepaid Plan year round.³⁴ A one-time, non-refundable application fee of up to \$50 is charged to purchase a Prepaid Plan.³⁵ Prepaid Plan prices are posted on the Board's website.³⁶

What types of payment options are available?

There are three types of payment options: a single, lump-sum payment; a monthly payment plan consisting of equal payments each month until October of the year the child enters college; and a five-year installment plan consisting of 55 equal monthly payments.³⁷

²⁴ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 3.04(a) and (e)

²⁵ All Prepaid Plans purchased by an account owner for a beneficiary are part of a single Contract. Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at ss. 1.07 and 1.20.

²⁶ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 3.04.

²⁷ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 1.04.

²⁸ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 1.28.

²⁹ Section 1009.97(3)(f), F.S.; rule 19B-4.001(2) F.A.C.; *Master Contract*, *supra* note 4 at s. 1.28.

³⁰ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 1.04.

³¹ The scholarship beneficiary must be a graduate of an accredited high school in this state and a Florida resident at the time he or she is designated to receive the benefits of the Prepaid Contract. Section 1009.97(3)(f)3., F.S.; rule 19B-8.004, F.A.C.

³² Rules 19B-5.003(1) and 19B-5.007, F.A.C.; *see also* Section 1009.98(9), F.S. (authorizing nonprofit organizations to purchase Prepaid Plans for a scholarship program approved by the Board and operated by the organization).

³³ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 2.04.

³⁴ Rule 19B-4.001(1), F.A.C.

³⁵ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 6.01.

³⁶ Rule 19B-4.002, F.A.C.; Florida Prepaid College Board, *Stanley G. Tate Florida Prepaid College Plan 2013-2014 Contract Prices*, <http://www.myfloridaprepaid.com/who-we-are/about-the-board/board-reports-and-plans/>.

³⁷ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 5.01.

How may payments be submitted?

There are five primary ways by which payments may be made: 1) online at www.myfloridaprepaid.com; 2) through an interactive voice response system at 1-800-552-GRAD(4723); 3) by mailing a check, Money Order or cashier's check; 4) by automatic withdrawal from a checking or savings account; or 5) through payroll deduction, if offered by the employer.³⁸

How do the benefits of a Prepaid Plan work at a public institution in Florida?

The benefits of a Prepaid Plan are available beginning with the summer semester of beneficiary's matriculation year.³⁹ Generally, as long as the social security number for the beneficiary matches the one used to enroll at the public institution, no additional documentation or authorization is necessary for the Prepaid Plan to pay all eligible costs.⁴⁰ The Board provides eligible educational institutions information about the beneficiary's available Prepaid Plan benefits.⁴¹ Based on invoices submitted by public institutions, the Prepaid Program transfers the amount payable under the beneficiaries' Prepaid Plans to the public institution.⁴² The beneficiary is responsible for any additional fees not covered by the Prepaid Plan.⁴³

What options exist if a beneficiary receives a Scholarship or decides not to use a Prepaid Plan?

If a beneficiary receives a Scholarship,⁴⁴ the beneficiary may still use his or her Prepaid Plan to pay all eligible costs and utilize Scholarship funds for any additional costs charged by the eligible educational institution.⁴⁵ If a beneficiary decides not to use a Prepaid Plan, the account owner may either: 1) change the beneficiary of the Prepaid Plan to a Member of the Family⁴⁶ of the original beneficiary; or 2) request a refund, in semester installments, in an amount not to exceed the current rates payable under the beneficiary's Prepaid Plans to a public institution.⁴⁷

How may a Prepaid Plan be used at in-state private and out-of state institutions?

A student may use the benefits of a Prepaid Plan at any eligible educational institution. The account owner or beneficiary must authorize the use of a Prepaid Plan at an in-state private or out-of-state institution before any invoices from that institution are paid by the Prepaid Program. On a term-by-term basis, the Prepaid Program transfers an amount to the eligible educational institution not to exceed the current average rates payable under the beneficiaries' Prepaid Plans to a public institution.⁴⁸

³⁸ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 5.02.

³⁹ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 7.01(a). A Prepaid Plan may be utilized prior to the Projected Enrollment Year if the child graduates from high school early. Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 7.01. Additionally, if a beneficiary does not start college immediately after his or her high school graduation, the beneficiary has 10 years from the Projected Enrollment Year to utilize the Prepaid Plan Benefits. Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 7.01. The 10 year benefit period may be extended. Rule 19B-5.003(3), F.A.C. Factors the Board considers for granting an extension of benefits for up to two years are time spent by the beneficiary as an active duty member of the U.S. Armed Services, prior extensions, prior beneficiary changes, recent plan usage, available alternatives, and financial and medical hardships.

⁴⁰ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 7.02(a).

⁴¹ Section 1009.98(6), F.S.

⁴² Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 7.02(b).

⁴³ Section 1009.98(1), F.S.; rule 19B-4.001(2) F.A.C.; *Master Contract*, *supra* note 4 at s. 11.02.

⁴⁴ "Scholarship" means financial or in-kind award or grant given to the beneficiary for study, training, or research, and which does not constitute compensation for personal services. Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 1.30.

⁴⁵ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 9.08(a).

⁴⁶ "Member of the Family" means the same as defined in Section 529 of the Code, which includes: (1) a son or daughter, or a descendant of either; (2) a stepson or stepdaughter; (3) a brother, sister, stepbrother, or stepsister; (4) the father or mother, or an ancestor of either; (5) a stepfather or stepmother; (6) a son or daughter of a brother or sister; (7) a brother or sister of the father or mother; (8) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law; or; (9) the spouse of the beneficiary or the spouse of any individual described in (1) through (8) above. Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 1.16.

⁴⁷ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 9.08(a).

⁴⁸ Section 1009.98(3), F.S.; rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at ss. 1.11 and 7.04(a) and (b).

What tax benefits are associated with a Prepaid Plan?

When a Prepaid Plan is used for qualified higher education expenses, earnings are exempt from federal income tax and State of Florida taxes.⁴⁹ Qualified higher education expenses include tuition, fees, books, supplies, equipment for the enrollment or attendance at an eligible educational institution, expenses for special needs services, and room and board for students who attend school at least half-time.⁵⁰

Under what circumstances may an account owner of a Prepaid Plan receive a refund?

Voluntary Termination - The account owner may request a refund of the Redemption Value⁵¹ at any time by sending a Notarized Request⁵² to the Board.⁵³ A termination fee of up to \$50 is assessed for each Prepaid Plan terminated.⁵⁴

Involuntary Termination – If the first payment is not paid within 120 days or any subsequent payment is not paid within 210 days of its due date, the Board may involuntarily terminate a Prepaid Plan.⁵⁵ A termination fee of up to \$50 is assessed for each Prepaid Plan terminated.⁵⁶ To receive a refund from an involuntarily terminated Prepaid Plan, a Notarized Request⁵⁷ must be submitted to the Board.⁵⁸

Overpayment Refund – The account owner may request an overpayment refund at any time for any amount paid in excess of the amount due for a Prepaid Plan.⁵⁹

Death or Disability - If the beneficiary dies or is disabled, a refund is available for an amount not to exceed the average rates payable under the beneficiary's Prepaid Plan to a State University or a Florida College at the time of death or disability.⁶⁰

Account Owner Reimbursement - If the account owner pays an eligible educational Institution for qualified higher education expenses otherwise payable by the beneficiary's Prepaid Plan, then the account owner may request an account owner reimbursement refund from the Prepaid Plan.⁶¹

Are Prepaid Plans financially guaranteed?

Yes. Prepaid Plans are financially guaranteed by the State of Florida.⁶² If the state determines the Prepaid Program to be financially infeasible, the state may discontinue the Prepaid Program.⁶³ Any beneficiary of a Prepaid Plan who has been accepted by and is enrolled in an eligible educational institution or is within five years of enrollment in an eligible educational Institution will be entitled to exercise the complete benefits for

⁴⁹ 26 U.S.C. § 529(c)(3)(B).

⁵⁰ 26 U.S.C. § 529(e)(3); rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 1.24.

⁵¹ “Redemption Value” means the balance of the Plan(s) and consists of valid payments received by the Board for the Plan(s) less any fees, usage, withdrawals, and refunds. Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 1.26.

⁵² “Notarized Request” means an authorization requiring the notarized signature of the account owner and, for Contracts with an Effective Date after February 1, 2009 and for Prepaid Plans where the account owner and survivor irrevocably elected to have the Prepaid Plan subject to such requirements, the notarized signature of the survivors. The original document must be received by the Board prior to processing. Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 1.18.

⁵³ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 9.02.

⁵⁴ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 6.04.

⁵⁵ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 9.03(a).

⁵⁶ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 6.04.

⁵⁷ “Notarized Request” means an authorization requiring the notarized signature of the account owner and, for Prepaid Plans with an Effective Date after February 1, 2009 and for Prepaid Plans where the account owner and Survivor irrevocably elected to have the Prepaid Plan subject to such requirements, the notarized signature of the Survivor(s). The original document must be received by the Board prior to processing. Rule 19B-4.001(2), F.A.C.; *Master Contract* *supra* note 4 at s. 1.18.

⁵⁸ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 9.03(b).

⁵⁹ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 9.06(c).

⁶⁰ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 9.07(a).

⁶¹ Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 9.11.

⁶² Section 1009.98(7), F.S.

⁶³ Section 1009.98(8), F.S.

which he or she has contracted. All account owners will receive a refund of the redemption value⁶⁴ plus interest.⁶⁵

Does Florida offer families another way to save for college?

Yes. The Board also offers a 529 college savings plan known as the Florida College Savings Program (Savings Plan).

The Savings Plan was established in 2002 by the Board to provide an alternative and supplement to the Prepaid Program to save for qualified higher education expenses.⁶⁶

The Savings Plan differs from the Prepaid Program in several significant ways, which include, but are not limited to: 1) funds invested in the Savings Plan are not guaranteed by the State of Florida;⁶⁷ 2) participation in the Savings Plan does not guarantee that sufficient funds will be available to cover all qualified higher education expenses;⁶⁸ 3) there are no state of Florida residency requirements;⁶⁹ and 4) a Savings Plan can be opened for a beneficiary of any age.⁷⁰

A Savings Plan may be opened at any time at the Board's website (www.myfloridaprepaid.com). The Savings Plan must be funded with an automatic contribution of just \$25 per month or an initial contribution of \$250.⁷¹ Account owners are otherwise able to make contributions at any time.⁷² To administer the Savings Plan, the Board collects an annualized Administration Fee of up to 75 basis points (0.0075 or ¾ of 1%) from the account balance.⁷³ There are no application, commission, or sales fees.⁷⁴

The Savings Plan offers 11 different Investment Options.⁷⁵ There are three diversified, pre-designed portfolios with investment allocations to certain underlying fund options: 1) Age Based/Years to Enrollment Portfolio; 2) Blended Equity Portfolio; and 3) Balanced Portfolio.⁷⁶ There are eight funds that offer money market, bond, and stock choices for the account: 1) Money Market Fund; 2) Fixed Income Fund; 3) Domestic Equity Index Fund; 4) Large Cap Growth Fund; 5) Large Cap Value Fund; 6) Mid Cap Fund; 7) Small Cap Fund; and 8) International (Developed Markets) Fund.⁷⁷

Funds in the Savings Plan grow free from federal income tax and such earnings may be withdrawn free of such tax if used to pay qualified higher education expenses, including tuition, room and board, textbooks, graduate school and more.⁷⁸

As required by the Internal Revenue Code, the Board has established a maximum contribution amount of \$418,000 for participation in both the Prepaid Program and Savings Plan.⁷⁹

⁶⁴ "Redemption Value" means the balance of the Plan(s) and consists of valid payments received by the Board for the Plan(s) less any fees, usage, withdrawals, and refunds. Rule 19B-4.001(2), F.A.C.; *Master Contract*, *supra* note 4 at s. 1.26.

⁶⁵ Section 1009.98(8), F.S.

⁶⁶ Section 1009.981(1)(a), F.S.

⁶⁷ Section 1009.981(2)(c)1., F.S.

⁶⁸ Section 1009.981(2)(c)2., F.S.

⁶⁹ Section 1009.97(3)(j), F.S.

⁷⁰ *Id.*

⁷¹ Florida Prepaid College Board, *Florida 529 Savings Plan Program Description and Participation Agreement*, at 4, available at <http://www.itppv.com/documents/pdf/investment/investment-disclosure-statement.pdf> [hereinafter *Savings Plan Agreement*].

⁷² Section 1009.98(2), F.S.

⁷³ *Savings Plan Agreement*, *supra* note 67 at 27; *Master Contract*, *supra* note 4 at s. 7.01.

⁷⁴ *Savings Plan Agreement*, *supra* note 67 at 4.

⁷⁵ *Savings Plan Agreement*, *supra* note 67 at 7.

⁷⁶ *Id.*

⁷⁷ *Savings Plan Agreement*, *supra* note 67 at 8.

⁷⁸ 26 U.S.C. § 529(a) and (c)(3)(B).

⁷⁹ 26 U.S.C. § 529(b)(6); rule 19B-4.005, F.A.C.; *Savings Plan Agreement*, *supra* note 67 at 7.

What is the Stanley G. Tate Florida Prepaid College Foundation?

The Stanley G. Tate Florida Prepaid College Foundation (Foundation) is the nonprofit 501(c)(3) direct support organization for the Board.⁸⁰ The Foundation was created in 1990 to operate as a public/private partnership through which nonprofit 501(c)(3) organizations⁸¹ approved by the Board may purchase Prepaid Plans to award as scholarships.⁸² The Prepaid Plans may be awarded to students who are Florida residents and who meet the organization's criteria for scholarship awards.⁸³ Since its inception, the Foundation has purchased nearly 35,000 Prepaid Plans and, as of fall 2013, more than 19,000 Foundation scholarship recipients have gone to college using their benefits.⁸⁴

Additionally, the Foundation administers Project STARS, which is a scholarship program funded by state appropriations that are matched dollar-for-dollar by private sector donations.⁸⁵ For this program, the Foundation purchases Prepaid Plan to award as scholarships to economically disadvantaged youth in Florida who remain drug free⁸⁶ and crime free.⁸⁷ The Legislature has appropriated approximately \$91.7 million for Project STARS since its inception in 1990.⁸⁸ During the 2014 Session, the Legislature appropriated another \$7 million for the 2013-14 FY.⁸⁹ Through legislative appropriations and contributions from private sector donors, Project STARS has received more than \$183 million for scholarships.⁹⁰

Prepaid Plans purchased by the Foundation or by nonprofit organizations through the Foundation afford flexibility not available for traditional contract purchases. Foundation Prepaid Plans may be purchased year round, not only during the annual enrollment period, and may be for an unnamed beneficiary.⁹¹ The beneficiary does not have to be designated until April 1 of his or her anticipated matriculation year.⁹² Additionally, if a Foundation Prepaid Plan is not fully used by the beneficiary, the Foundation or purchasing nonprofit organization may receive the value of the unused portion of the Prepaid Plan payable to a public institution, rather than the pro rata amount of the purchase price, if those funds are used to purchase additional scholarships.⁹³

Where may I obtain additional information?

Florida Prepaid College Board

1-800-552-GRAD (4723)

<http://www.myfloridaprepaid.com>

Florida House of Representatives

Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

⁸⁰ Section 1009.98(1), F.S.

⁸¹ Section 1009.98(9), F.S.

⁸² Section 1009.983, F.S.; rule 19B-5.007, F.A.C.

⁸³ Section 1009.97(3)(f)3.; F.S., rule 19B-5.003, F.A.C.

⁸⁴ Stanley G. Tate Florida Prepaid College Foundation, *2013 Florida Prepaid College Foundation Annual Report*, Foundation Annual Report at 3, available at <https://www.floridaprepaidcollegefoundation.com/documents/pdf/foundation/foundation-annual-report-2013.pdf> [hereinafter *Foundation Annual Report*].

⁸⁵ Section 1009.984, F.S.

⁸⁶ The term “drug free” means “not being convicted of, or adjudicated delinquent for, any violation of chapter 893 after being designated a recipient of a Florida Prepaid tuition scholarship.” Section 1009.984(3)(a), F.S.

⁸⁷ Section 1009.984, F.S.; rule 19B-13.001, F.A.C.; The term “crime free” means “not being convicted of, or adjudicated delinquent for, any felony or first degree misdemeanor as defined in ss. 775.08 and 775.081 after being designated a recipient of a Florida prepaid tuition scholarship.” Section 1009.984(3)(b), F.S.

⁸⁸ *Foundation Annual Report*, *supra* note 87 at 8.

⁸⁹ Specific Appropriation 71, Section 2, Chapter 2014-51, L.O.F.

⁹⁰ *Foundation Annual Report*, *supra* note 87 at 8.

⁹¹ Rules 19B-4.001(1)(b) and 19B-5.003(1), F.A.C.

⁹² Rule 19B-5.003(1), F.A.C.

⁹³ Section 1009.98(5)(f), F.S.



Who is eligible to pay in-state tuition rates in Florida?

A student may be eligible to pay in-state tuition rates if he or she qualifies as a resident for tuition purposes¹ or is eligible for an out-of-state fee waiver.²

How does a student qualify as a resident for tuition purposes?

Simply stated, a student can qualify as a resident for tuition purposes if he or she:

- Establishes legal residency in Florida;
- Maintains legal residency in Florida for 12 consecutive months prior to initial enrollment at a Florida institution of higher education; and
- Is able to provide “clear and convincing documentation” of his or her residency in Florida and establish that his or her residency is not temporary or incidental to the purpose of enrolling in a Florida institution of higher education.³

In the case of a student who is a dependent child,⁴ his or her parent,⁵ must be classified as a resident for tuition purposes⁶ in order to pay in-state tuition rates while enrolled at a Florida institution of higher education⁷, unless the student meets specific qualifications for a fee waiver.⁸

The person seeking to establish residency for tuition purposes must submit “clear and convincing documentation” of his or her residency in Florida for at least 12 consecutive months prior to the student’s initial enrollment in an institution of higher education.⁹ This requires the submission of at least two documents to the institution,¹⁰ one or more of which must be:

- A Florida voter’s registration card.
- A Florida driver’s license.
- A Florida identification card.
- A Florida vehicle registration.
- Proof of a permanent home occupied by the student or the student’s parent if the student is dependent.
- Proof of a homestead exemption in Florida.

¹ Section 1009.21(g) F.S.

² Section 1009.26 (12) and (13), F.S.

³ Section 1009.21(2), F.S.

⁴ A “dependent child” is a person, whether or not living with his or her parents, who is eligible to be claimed by his or her parents as a dependent under the federal Income Tax Code. If a dependent child’s parents are divorced, separated, or otherwise living apart, the child shall be deemed a legal resident of Florida if either parent is a legal resident of Florida notwithstanding which parent claims the child as a dependent for federal income tax purposes. Section 1009.21(1)(a) and (2)(c), F.S.

⁵ “Parent” means either or both parents of a student, any guardian of a student, or any person in a parental relationship to a student. Section 1009.21(1)(f), F.S.

⁶ A “resident for tuition purposes” is defined as a person who qualifies for Florida’s in-state tuition rate as provided by s. 1009.21, F.S. Section 1009.21(1)(g), F.S.

⁷ An “institution of higher education” includes a state university, Florida College System institution, charter technical career center, or career center operated by a school district. Section 1009.21(1)(c), F.S.

⁸ Section 1009.26 (12) and (13), F.S.

⁹ Section 1009.21(3), F.S.

¹⁰ If the student is a dependent child, the documentation submitted to the institution must pertain to the parent’s legal residence and duration. Section 1009.21(3)(a), F.S.

- Transcripts from a Florida high school for multiple years if the student's high school diploma or GED was earned within the previous 12 months.
- Proof of permanent full-time employment in Florida for at least 30 hours per week.¹¹

Additionally, the documents may include:

- *A declaration of domicile in Florida.*
- A Florida professional or occupational license.
- Florida incorporation.
- A document evidencing family ties in Florida.
- Proof of membership in a Florida-based charitable or professional organization.
- Any other documentation that supports the student's request for resident status, including but not limited to, utility bills and proof of 12 consecutive months of payments; a lease agreement and proof of 12 consecutive months of payments; or an official state, federal, or court document evidencing legal ties to Florida.¹²

Who determines a person's residency status for tuition purposes?

Each institution of higher education is responsible for determining whether each applicant meets the residency requirements at the time of initial enrollment.¹³

Can a person initially classified as a nonresident later be reclassified as a resident for tuition purposes?

Yes, a person who is initially classified as a nonresident for tuition purposes may subsequently become eligible for reclassification as a resident by submitting clear and convincing documentation of permanent legal residency in this state for at least 12 consecutive months rather than temporary residency for the purpose of pursuing an education. Documentation can include full-time permanent employment for the prior 12 months or the purchase of and residence in a home in this state for the prior 12 months while not enrolled in an institution of higher education.¹⁴

Can people appeal classification as a nonresident for tuition purposes?

Yes. As part of its duty to determine the residency status of applicants, each public postsecondary institution must establish a residency appeals committee comprised of at least three members to consider appeals of student residency determinations. The committee must provide, in writing, the reasoning for its final residency determinations.¹⁵ The committee's determination is subject to judicial review.¹⁶ Students should consult with their public postsecondary institutions to obtain additional information regarding residency. Other conditions may apply depending on a student's citizenship, dependency, marital, military, employment, or school transfer status.¹⁷

¹¹ Section 1009.21(3)(b) and (c), F.S.

¹² Section 1009.21(3)(c)2., F.S.

¹³ Section 1009.21(3)(c), F.S. Florida private postsecondary institutions make a similar determination of residency status prior to disbursing Florida Bright Futures Scholarship and Florida Resident Access Grant (FRAG) and Access to Better Learning and Education Grant (ABLE) funds to ensure student recipients meet all eligibility requirements for the awards. See Sections 1009.531, 1009.533, 1009.89, and 1009.891, F.S.

¹⁴ Section 1009.21(6)(a), F.S.

¹⁵ Section 1009.21(12), F.A.C.

¹⁶ See, e.g., *Hallendy v. Florida Atlantic University*, 16 So.3d 1057 (Fla. 4th DCA 2009)(holding that substantial evidence supported finding that university student's residency in Florida was merely incidental to her enrollment, and thus student was not entitled to residency reclassification).

¹⁷ Section 1009.21(2) and (5) through (11), F.S.

May public postsecondary institutions require U.S. citizen, dependent children to submit proof of their parents' lawful presence in this country in order to be classified as residents for tuition purposes?

No. While dependent children must establish the Florida residency of their parents in order to be classified as residents for tuition purposes, the U.S. District Court for the Southern District of Florida held in *Ruiz v. Robinson*¹⁸ that public postsecondary institutions may not require U.S. citizen dependent children to provide proof that their parents are lawfully present in the U.S. These provisions were codified in statute during the 2014 legislative session.¹⁹ However, parents must still submit documentation establishing legal residence in Florida in order for their child to be classified as a resident for tuition purposes.²⁰

Are there other categories of students who are classified as residents for tuition purposes?

Yes. The following persons are classified as residents for tuition purposes:

- Active duty members of:
 - The Armed Services who reside or are stationed in this state and their spouses and dependent children.
 - The Armed Services and their spouses and dependents when they attend an institution in the FCS or State University System (SUS) which is located within 50 miles of the military establishment where they are stationed if the military establishment is in a county contiguous to Florida.
 - The Canadian military who reside or are stationed in Florida under the North America Air Defense (NORAD) agreement and their spouses and dependent children when they attend an institution in the FCS or SUS located within 50 miles of the military establishment where they are stationed.
 - A foreign nation's military who are serving as liaison officers and are residing or stationed in this state and their spouses and dependent children when they attend a FCS institution or SUS institution located within 50 miles of the military establishment where they are stationed.
- Active drilling members of the Florida National Guard.
- United States citizens living on the Isthmus of Panama who have completed 12 consecutive months of college work at the Florida State University Panama Canal Branch and their spouses and dependent children.
- U.S. citizens living outside the U.S. who are teaching at a Department of Defense Dependent School or in an American International School and enroll in a graduate-level education program that leads to a Florida teaching certificate.
- Full-time instructional and administrative personnel employed by state public schools and public postsecondary institutions and their spouses and dependent children.
- Full-time employees of state agencies or political subdivisions of the state when the student fees are paid by the state agency or political subdivision for the purpose of job-related law enforcement or corrections training.
- Full-time students from Latin America and the Caribbean who receive scholarships from the federal or state government.
- Southern Regional Education Board's Academic Common Market graduate students who attend institutions in the SUS.
- McKnight Doctoral Fellows and Finalists who are U.S. citizens.²¹

¹⁸ 892 F. Supp. 2d 1321 (S.D. Fla. 2012).

¹⁹ Section 1009.21(2)(d), F.S.

²⁰ *Id.* at 1332.

²¹ Section 1009.21(10), F.S.

If a student does not meet the criteria for classification as a Florida resident for tuition purposes, may a student qualify for an out-of-state fee waiver?

The 2014 Legislature expanded student access to postsecondary institutions by passing two pieces of legislation that allow certain students to be eligible for an out-of-state fee waiver. The Congressman C.W. “Bill” Young Veteran Tuition Waiver Program requires a state university, FCS institution, a career center operated by a school district²², or a charter technical career center²³ to waive out-of-state fees for an honorably discharged veteran of the United States Armed Forces, the United States Reserve Forces, or the National Guard who physically resides in this state while enrolled in a Florida public postsecondary institution.²⁴

In addition, the Legislature established specific criteria by which a student may qualify for an out-of-state fee waiver. The law requires a state university, FCS institution, a career center operated by a school district, or a charter technical career center to waive out-of-state-fees for students, including, but not limited to, students who are undocumented for federal immigration purposes, who:

- Attended a secondary school in this state for 3 consecutive years immediately before graduating from a high school in this state;
- Apply for enrollment in an institution of higher education within 24 months after graduation; and
- Submit an official Florida high school transcript as evidence of attendance and graduation.²⁵

Postsecondary institutions must include students awarded these out-of-state fee waivers in their annual report to the BOG and State Board of Education.²⁶ A state university student granted this out-of-state fee waiver is still considered a nonresident student, is not eligible for state financial aid, and must not be reported as a resident for tuition purposes.²⁷ Institutions are required to prioritize the enrollment of a veteran who is granted an out of state fee waiver over a student who is granted a fee waiver under the criteria listed above.²⁸

Where may I get additional information?

**Florida Department of Education
State Board of Education**

Governmental Relations Office
(850) 245-0507
<http://www.fldoe.org/board>

Florida Department of Education

Division of Florida Colleges
(850) 245-0407
<http://www.fldoe.org/fcs/>

The Florida Board of Governors

(850) 245-0466
<http://flbog.edu/>

Florida House of Representatives

Education Committee
(850) 717-4830
<http://www.myfloridahouse.gov>

²² Section 1001.44, F.S.

²³ Section 1002.34, F.S.

²⁴ Section 1009.26(13)(a), F.S.

²⁵ Section 1009.26(12)(a), F.S.

²⁶ Section 1009.26(12)(b), F.S.

²⁷ Section 1009.26(12)(c), F.S.

²⁸ Section 1009.26(12)(d), F.S.

K20 Miscellaneous



What educational support services are provided for school-age children of military personnel?

In 2008, the Florida Legislature enacted the Interstate Compact¹ on Educational Opportunity for Military Children (compact). The compact is designed to remove barriers to educational success experienced by children of active duty military families caused by frequent moves and school transfers. The compact assists member states in uniformly addressing educational transition issues faced by these children in such areas as program eligibility and placement, enrollment, records transfers, and timely high school graduation. The compact was developed by the Council of State Governments in cooperation with the United States Department of Defense Office of Personnel. Florida is one of 43 states and the District of Columbia that have joined the compact.²

Florida law contains several provisions intended to assist transitioning military children entering Florida's public schools by:

- Improving the timely transfer of records.
- Developing systems to ease student transition during the first two weeks of entry into school.
- Promoting practices which foster access to extracurricular activities and programs.
- Establishing procedures to lessen the adverse impact of moves from the end of the junior year as well as before and during the senior year.
- Providing services for transitioning students when applying to and finding funding for postsecondary study.
- Providing other assistance as identified by Department of Education (DOE), school districts, and military personnel.³

In addition, DOE must facilitate the development and implementation of memoranda of agreement between school districts and military installations to assist transitioning students whose parents are active duty military personnel.⁴

Are children of active duty military personnel who relocate to Florida from out of state or a foreign country eligible for the McKay Scholarship Program?

Yes. A dependent child of a member of the U.S. Armed Forces who transfers to a school in this state from out of state or a foreign country due to a parent's permanent change of station orders is exempt from the requirement that the child attend a Florida public school in the previous school year in order to be eligible for a McKay Scholarship. The McKay Scholarship Program provides Florida students with disabilities a scholarship to attend a private school or the option of choosing another public school, provided that the student has an

¹ An interstate compact is a mutual agreement between two or more states to cooperate in the regulation of a particular public policy matter shared by each state. The compact has the force and effect of law in member states and supersedes conflicting member state laws.

² Sections 1000.36, 1000.37, and 1000.39, F.S.

³ See ss. 1000.36 and 1003.05, F.S.; Compact Rule Section 3.101(1)(b). Florida Department of Education, *Military Families General Education Information, General Provisions and Attendance*; <http://www.fldoe.org/military/generaled/generalprov.asp> (last visited July 21, 2014).

⁴ Section 1003.05, F.S.

individual educational plan or an accommodation plan issued under s. 504 of the federal Rehabilitation Act of 1973.⁵

Is priority course registration available to veterans attending a Florida College System Institution or state university?

Yes. Florida College System (FCS) institutions and state universities offering priority course registration for a segment of the student population, or upon the implementation of such a policy, must provide priority course registration to veterans of the U.S. Armed Forces who are receiving GI Bill educational benefits. The spouse or dependent child of the veteran to whom the GI Bill educational benefits have been transferred must also be granted priority course registration. Such individuals are eligible for priority course registration until the expiration of the GI Bill educational benefits.⁶

Independent postsecondary educational institutions that offer priority course registration for a segment of the student population, or upon the implementation of such a policy, are encouraged to provide priority course registration to veterans of the U.S. Armed Forces who are receiving GI Bill educational benefits.⁷

Are military personnel, veterans, and their families eligible for a tuition exemption or fee waiver to attend a public postsecondary institution?

Yes. The Educational Dollars for Duty Program provides tuition assistance to eligible Florida National Guard members. The Department of Military Affairs may pay the full cost of tuition and fees for members attending a public postsecondary institution or nonpublic vocational-technical program, whereas members attending a nonpublic postsecondary institution or vocational-technical program will receive an amount that may not exceed the rate of the highest in-state tuition and fees at public institutions or programs. Such tuition assistance is subject to legislative appropriations.⁸

A state university, a FCS institution, a career center operated by a school district, or a charter technical career center must waive tuition for undergraduate college credit program and career certificate programs for each recipient of a Purple Heart or another combat decoration superior in precedence if the individual is currently a Florida resident and was a resident at the time of the military action that resulted in the award of the Purple Heart or combat decoration. The tuition waiver is applicable to 110 percent of the number of credit hours required for the degree or certificate program in which the student is enrolled.⁹

A state university, FCS institution, a career center operated by a school district or a charter technical career center must waive out-of state fees for an honorably discharged veteran of the United States Armed Forces, the United States Reserve Forces, and the National Guard who physically resides in this state while enrolled in the institution. The tuition and fees charged to a veteran who qualifies for the out-of-state fee waiver may not exceed the tuition and fees charged to a resident student. The tuition waiver is applicable to 110 percent of the number of credit hours required for the degree or certificate program in which the student is enrolled.¹⁰

⁵ Section 1002.39(2)(a), F.S. (flush left provision at the end of the paragraph). Florida Department of Education, *McKay Scholarship for Children of Military Families*, available at http://www.floridaschoolchoice.org/information/mckay/mckay_military_intent_instructions.asp (last visited July 21, 2014).

⁶ Section 1004.075, F.S.

⁷ Section 1005.09, F.S.

⁸ Section 250.10(7) and (8), F.S.

⁹ Section 1009.26(8), F.S. Other combat decorations superior in precedence to the Purple Heart include the Medal of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross, Silver Star, Legion of Merit (must be “V” designation or device), Distinguished Flying Cross, and Bronze Star Medal (must be “V” designation or device). The “V” designation or device represents that the medal was presented as a combat decoration. Florida Department of Veterans Affairs, Education Benefits, *Waiver for Recipients of the Purple Heart or Superior Combat Decorations*, at 1 (2013) available at http://173.241.197.162/wp-content/uploads/2012/08/FDVA_ph_waiver.pdf.

¹⁰ Section 1009.26(12)(a), F.S.

School districts, FCS institutions, and state universities may defer tuition and fees for students receiving financial aid from a federal or state assistance program when the aid is delayed in being transmitted to the student through circumstances beyond the control of the student. Military veterans or eligible students who receive certain federal educational benefits, i.e., the All Volunteer Force Educational Assistance Program,¹¹ Training and Rehabilitation for Veterans with Service Connected Disabilities,¹² Post-Vietnam Era Veterans Educational Assistance,¹³ Post 9/11 Veterans Educational Assistance,¹⁴ Veterans Educational Assistance,¹⁵ Survivors and Dependents Educational Assistance,¹⁶ or Educational Assistance for Members of the Selected Reserve,¹⁷ are entitled to receive one tuition deferment each academic year and an additional deferment each time there is a delay in the receipt of benefits.¹⁸

The Scholarship for Children and Spouses of Deceased or Disabled Veterans and Servicemembers (CSDDV) provides scholarships for dependent children or unremarried spouses of Florida veterans or servicemembers who died as a result of service-connected injuries, diseases, or disabilities sustained while on active duty or who have been certified by the Florida Department of Veterans Affairs as having service-connected 100 percent permanent and total disabilities. CSDDV also provides scholarships for dependent children whose parent is classified as a prisoner of war or missing in action by the U.S. Armed Forces.¹⁹

May military personal receive college credit for military training?

Yes. Members of the U.S. Armed Forces are eligible to earn academic college credit at public postsecondary educational institutions for college-level training and education acquired in the military. The Board of Governors (BOG) by regulations and State Board of Education by rules must provide procedures for credential evaluation and the award of academic college credit, equivalency and alignment of military coursework with appropriate college courses, course descriptions, type and amount of college credit that may be awarded, and transfer of credit.²⁰

Both BOG's regulation (state universities) and the state board's rule (FCS institutions) direct their respective institutions to adopt policies authorizing the award of credit for military training or coursework that is recognized by the American Council on Education. Credit so awarded must be noted on the student's transcript and documentation of the credit equivalency evaluation must be maintained in the student veteran's file.²¹

Are military personnel penalized for withdrawing from a postsecondary course due to military service?

No. Students who withdraw from courses at a public postsecondary institution or career center due to active military service are not subjected to financial penalties and have the option to either complete the course at a later date or withdraw and have the fees refunded in full. If the student elects to withdraw, his or her academic records will note that withdrawal was due to active military service.²²

¹¹ 38 U.S.C. pt. III, ch. 30.

¹² 38 U.S.C. pt. III, ch. 31.

¹³ 38 U.S.C. pt. III, ch. 32.

¹⁴ 38 U.S.C. pt. III, ch. 33.

¹⁵ 38 U.S.C. pt. III, ch. 34.

¹⁶ 38 U.S.C. pt. III, ch. 35.

¹⁷ 10 U.S.C. ss. 16131-16136.

¹⁸ Section 1009.27(2), F.S.

¹⁹ Section 295.01, F.S.; Florida Department of Education, State Scholarship and Grants Programs, *Scholarships for Children and Spouses of Deceased or Disabled Veterans*, <http://www.floridastudentfinancialaid.org/SSFAD/factsheets/CDDV.pdf> (last visited July 22, 2014).

²⁰ Section 1004.096, F.S.

²¹ Regulation 6.013, Board of Governors; rule 6A-14.0302, F.A.C.

²² Section 1004.07(2), F.S.

What is the Troops to Teachers Program?

“Troops to Teachers” is a national program that provides registered participants counseling and support services to help them prepare for a second career in teaching. Military personnel may be eligible to receive referral and placement assistance to help begin new careers as public school teachers through the program. The Troops to Teachers Program provides stipends of up to \$5,000 for achieving teacher certification and stipends of up to \$10,000 for teaching at high-needs schools.²³

Which military personnel and their families are specifically classified as residents for tuition purposes?

The following military personnel are classified as residents for tuition purposes:

- Active duty members of the U.S. Armed Forces residing or stationed in this state, their spouses and dependent children, and active drilling members of the Florida National Guard.²⁴
- Active duty members of the U.S. Armed Forces and their spouses and dependents who attend a FCS institution or state university within 50 miles of the military establishment where they are stationed, if the military establishment is within a county contiguous to Florida.²⁵
- Active duty members of the Canadian military residing or stationed in Florida under the North America Air Defense (NORAD) agreement, and their spouses and dependent children attending a FCS institution or state university within 50 miles of the military establishment where they are stationed.²⁶
- Active duty members of a foreign nation’s military who are serving as liaison officers and are residing or stationed in this state, and their spouses and dependent children, who attend a FCS institution or state university within 50 miles of the military establishment where the foreign liaison officer is stationed.²⁷

Where can I get additional information?

Florida House of Representatives Education Committee

(850) 717-4830

<http://www.myfloridahouse.gov>

Florida Department of Education Division of Florida Colleges

(850) 245-0407

<http://www.fldoe.org/fcs/>

Florida Department of Education Office of Student Financial Assistance

(850) 410-5160

1-888-827-2004 Toll-Free

<http://www.floridastudentfinancialaid.org>

Florida Department of Veterans’ Affairs Division of Veterans’ Benefits and Assistance

1-727-319-7421

www.floridavets.org

²³ Florida Atlantic University, *Troops to Teachers*, http://www.fau.edu/explore/homepage-stories/2011_05troopsteachers.php (last visited July 22, 2014); see also Florida Atlantic University, *Troops to Teachers Homepage*, <http://www.coe.fau.edu/CentersAndPrograms/troopstoteachers/default.aspx> (last visited July 22, 2014).

²⁴ Section 1009.21(10)(a), F.S.

²⁵ Section 1009.21(10)(b), F.S.

²⁶ Section 1009.21(10)(j), F.S.

²⁷ Section 1009.21(10)(k), F.S.

**Department of Military Affairs
Education Office**
(904) 823-0364
<http://dma.myflorida.com>

**Troops to Teachers
Florida Caribbean Region**
(888) 358-7667
www.troopstoteachers.fau.edu



What is Workforce Education?

Workforce education¹ programs in Florida are designed to assist individuals in attaining the skills necessary for economic self-sufficiency and provide training to meet local and state workforce needs. These programs include both adult general education and career education programs and may be offered by school districts and Florida College System (FCS) institutions.² State agency oversight for workforce education is provided by the Division of Career and Adult Education within the Department of Education (DOE).³

The charts below set forth the broad array of workforce education programs offered in this state:

Adult General Education⁴	
Program Description	Delivery Systems
Adult Basic Education (ABE): Noncredit instruction for the development of basic literacy skills by adults at up to grade nine proficiency in mathematics, reading, and language, and workforce readiness skills.	<ul style="list-style-type: none"> • FCS institutions • School Districts
Adult Secondary Education: High school equivalent examination preparation courses and high school credit courses that lead to a diploma or permit credit recovery by co-enrolled high school students.	
English for Speakers of Other Languages: Noncredit literacy instruction to enhance abilities to read, write, and speak in English.	
Applied Academics Instruction: Noncredit instruction for students enrolled in a Technical Certificate program, whose results on a Basic Skills Assessment indicate a need for remediation.	
Instruction for Adults with Disabilities: Instruction in literacy, work-related behaviors, and living skills based on an Adult Individual Educational Plan.	

¹ Section 1004.02(25), F.S., providing that “workforce education” means “adult general education or career education and may consist of a continuing workforce education course or a program of study leading to an occupational completion point, a career certificate, an applied technology program, or a career degree.”

² Sections 1004.02(3) and (25), 1004.92(1), 1004.93, and 1011.80(1) and (2), F.S. Only FCS institutions may confer college credit. However, if an associate in applied science or an associate in science degree program contains within it an occupational completion point that confers a certificate or an applied technology diploma, that portion of the program may be conducted by a school district career center. Section 1011.80(2), F.S.

³ Section 20.15(3)(c), F.S.

⁴ Section 1004.02(3), F.S. Office of Program Policy Analysis and Government Accountability, *School Districts and Colleges Share Responsibility for Workforce Education; Duplication is Minimal*, Report No. 10-61 (December 2010), available at <http://www.oppaga.state.fl.us/summary.aspx?reportnum=10-61> [hereinafter *OPPAGA -- Responsibility for Workforce Education*].

Career Education⁵	
Program Description	Delivery Systems
Associate in Science (AS) and Associate in Applied Science (AAS) Degrees: College credit courses that lead to a degree and employment in a specific occupation. When authorized, AS and AAS degrees may articulate to a baccalaureate degree program.	<ul style="list-style-type: none"> • FCS institutions
Career Certificates: Course of study that leads to at least one occupational completion point. Includes Technical Certificates, composed of college credit hours and awarded when only the core technical credits of an AS or AAS degree program are completed; and Technical Certificates, composed of clock hours. Technical certificates may, if authorized, articulate to an AS or AAS degree program.	<ul style="list-style-type: none"> • FCS institutions • School Districts
Applied Technology Diploma: Less than 60 credit hours of study that leads to a diploma and employment in a specific occupation. May consist of technical or college credit. School districts may only award technical credit, with college credit awarded upon articulation to a Florida College System institution for an AS or AAS degree program. <i>Examples:</i> Customer Service Technology, Dental Assisting Technology & Management, and Pharmacy Technician.	<ul style="list-style-type: none"> • FCS institutions • School Districts
Apprenticeship: Training in an occupation which combines on-the-job experience with classroom instruction. <i>Examples:</i> Carpentry, Firefighter, and Nursery Management.	<ul style="list-style-type: none"> • FCS institutions • School Districts
Continuing Workforce Education: Instruction that does not result in a technical certificate, diploma, or degree, e.g., licensure or certification renewal training; employee training; and occupational skill training. <i>Example:</i> Real Estate License Renewal Training.	<ul style="list-style-type: none"> • FCS institutions • School Districts

What is Adult General Education?

Adult general education provides comprehensive instructional programs designed to improve the employability of the state's workforce through adult basic education, adult secondary education, English for Speakers of Other Languages, applied academics for adult education instruction, and instruction for adults with disabilities.⁶ Each program is discussed below.

Adult Basic Education. Adult Basic Education (ABE) is designed to improve the employability of the state's workforce through instruction in reading, mathematics, language, and workforce readiness skills. ABE courses are taught at or below the eighth grade level.⁷

To be eligible for an ABE program, a student must have legally left the elementary or secondary school. Additionally, the student must take one of the assessments approved by the State Board of Education, which include the Test for Adult Basic Education, the Comprehensive Adult Student Assessment System, the General Assessment of Instructional Needs (test of English skills) and the General Assessment of Instructional Needs (test of Math skills).⁸ Based on the results of the assessment, students are placed into one of the following four Educational Functioning Levels (EFLs) for each academic course in reading, mathematics and language: Level 1 - Beginning Literacy (grades 0.0 to 1.9); Level 2 - Beginning Basic

⁵ Section 1003.01(4), F.S.; *OPPAGA -- Responsibility for Workforce Education.*

⁶ Section 1004.02(3), F.S.

⁷ Section 1004.02(1), F.S.

⁸ Rule 6A-6.014, F.A.C.

Education (grades 2.0 to 3.9); Level 3 - Intermediate Low (grades 4.0 to 5.9); and Level 4 - Intermediate High (grades 6.0 to 8.9).⁹

Adult Secondary Education. Adult Secondary Education (ASE) consists of courses through which a person receives high school credit that leads to the award of a high school diploma or courses through which a student prepares to take the high school equivalency examination.¹⁰ In practice, ASE has been implemented to offer the following types of programs: adult high school, co-enrollment, and high school equivalency examination preparation. To be eligible for any program, a student must have legally withdrawn from elementary or secondary school or be temporarily assigned for a course required for high school graduation.¹¹

High school equivalency examination preparation programs are non-graded, open-entry/open-exit, self-paced instructional modules evaluated based on performance. Students should be functioning at or above a ninth grade level in order to enter the program.¹² For students functioning below the ninth grade level, there are pre-high school equivalency examination preparation courses. These courses prepare students functioning above the sixth grade level, but below the ninth grade level to pass the high school equivalency examination tests.¹³

English for Speakers of Other Languages. Adult English for Speakers of Other Languages (Adult ESOL) programs are noncredit English literacy courses designed to improve the employability of the state's workforce through the acquisition of communication skills and cultural competencies that enhance the ability to read, write, speak, and listen in English.¹⁴

To be eligible for any ESOL program, a student must have legally left elementary or secondary school.¹⁵ Additionally, students must take one of the placement tests approved by the state board, which include the: Comprehensive Adult Student Assessment System (CASAS); Basic English Skills Test (BEST) Plus; Basic English Skills Test (BEST) Literacy; Comprehensive Adult Student Assessment System (CASAS) Lipedwork 80 Series; and Test for Adult Basic Education Complete Language Assessment System – English (TABE CLAS-E).¹⁶

School districts and FCS institutions offer the following six adult ESOL courses:¹⁷

- **Academic Skills for Adult ESOL Learners.** This course improves the advanced ESOL student's ability to communicate in English and allows the student to acquire secondary level English language skills. As this course is intended for students that plan to take credit courses at a university or college, the curriculum focuses on topics necessary for that transition, including: language grammar structures; college-level reading and writing; the culture of the United States (U.S.) higher educational system; and how to use technology for postsecondary-level work.¹⁸
- **Adult ESOL.** This course increases a student's ability to communicate in English for a variety of purposes including employment, education, and life in the U.S. Adult ESOL curricula cover the

⁹ Florida Department of Education, Division of Career and Adult Education, *Adult Basic Education Technical Assistance Paper*, at 11 (June 21, 2013), available at <http://www.fldoe.org/Workforce/AdultEd/pdf/2012-2013finalassessmentpaper.pdf>. [hereinafter *TAP: ABE*]. The ABE program is divided into levels that are reported as student educational gains. For purposes of federal funding, EFLs are utilized and for purposes of state funding, literacy completion points are utilized.

¹⁰ Section 1004.02(4), F.S.

¹¹ Rule 6A-6.014(2), F.A.C.

¹² Florida Department of Education, Division of Career and Adult Education, 2014-2015 Adult Education Curriculum Frameworks, GED® Preparation Program, GED® Preparation Comprehensive (July 2014), available at http://www.fldoe.org/workforce/dwdframe/ad_frame.asp

¹³ Florida Department of Education, 2014-2015 Adult Education Curriculum Frameworks, *GED® Preparation*, at 1 (July 2013), available at <http://www.fldoe.org/workforce/dwdframe/pdf/GED-PreGED-2013.pdf>.

¹⁴ Section 1004.02(2), F.S.

¹⁵ Rule 6A-6.014(2), F.A.C.

¹⁶ Rule 6A-6.014(4)(b), F.A.C.

¹⁷ Florida Department of Education, Division of Career and Adult Education, *Technical Assistance Paper: Adult English for Speakers of Other Languages Program*, at 1 (July 1, 2013), available at www.fldoe.org/workforce/AdultEd/pdf/adult_esol_tap.pdf [hereinafter *TAP: Adult ESOL Program*]. The Workplace Readiness adult ESOL course will not be offered in 2014-15.

¹⁸ Florida Department of Education, Division of Career and Adult Education, *Curriculum Framework: Academic Skills for Adult ESOL Learners Course* (2013-2014), available at <http://www.fldoe.org/workforce/dwdframe/pdf/ESOL-AcademicSkills-2013.pdf>

following seven topics: Communication; Civics, Family, and Community Resources; Employment; Consumer Education; Health and Nutrition; Transportation and Travel; and Safety and Security. Students should be able to read and write in at least one language before enrolling in the course.¹⁹

- **Citizenship.** This course is designed for immigrants who plan to take the U.S. Bureau of Citizenship and Immigration Services (CIS) Citizenship Interview and Examination. It focuses on English language skills and pertinent information needed to pass the Citizenship Interview and Examination. The course curriculum covers U.S. history, government, culture, and symbols and places an emphasis on the rights and responsibilities of citizens as stated in the U.S. Constitution.²⁰
- **English Literacy for Career and Technical Education (ELCATE).** This course is designed to prepare students for transition to one of the Career and Technical Education courses provided by a school district or FCS institution. The course curriculum focuses on academic reading and writing skills, use of technology, test-taking skills, and culture of the workplace and career and technical classroom. ELCATE also addresses listening, speaking, reading, and writing as used in everyday life situations and in the workplace.²¹
- **Literacy Skills.** This course is designed to provide literacy instruction at the same time as English language instruction to adults with emerging literacy skills. Students who successfully complete this course will have acquired basic literacy skills in English and will be ready to enter an Adult ESOL course. The course is intended for students who have little or no ability to read and write in their native language or in any other language. The curriculum covers: basic literacy skills competencies, including sound discrimination and reading; communication; employment; consumer and community education; health and nutrition; and transportation and travel.²²
- **Workplace Readiness Skills.** This course is designed for adult learners who need to improve their English language skills and are employed by an employer that requests ESOL instruction. The course is taught at the student's place of work or other location provided by the employer and it allows students to take classes before, during, or after working hours. It is primarily intended to help students maintain employment and enhance their opportunities within the company. The course curriculum is customized through a training plan developed in collaboration with the Local Educational Agency and the employer.²³

Applied Academics Instruction. Applied Academics for Adult Education (AAAE) means adult general education through which persons attain academic and workforce readiness skills at the level of functional literacy (grade levels 6.0-8.9) or higher so that they may pursue technical certificate education or higher-level technical education.²⁴

An AAAE program provides:

- Career assessment designed to assist persons with special needs in identifying vocational interests, temperament, aptitudes, and learning styles.
- Individualized basic skills related instruction to educationally disadvantaged students whose basic skills deficiencies may prevent success in vocational job preparatory programs or prevent completion of licensure vocational job preparatory programs of their choice.
- Employability behavior instruction for job acquisition and job retention.²⁵

¹⁹ TAP: *Adult ESOL Program*, at 13.

²⁰ Florida Department of Education, Division of Career and Adult Education, *Curriculum Framework: Citizenship* (2014-15), available at <http://www.fldoe.org/workforce/dwdframe/pdf/2014-ESOL-Citizenship.pdf>.

²¹ Florida Department of Education, Division of Career and Adult Education, *Curriculum Framework: English Literacy for Career and Technical Education (ELCATE)* (July 2014), available at <http://www.fldoe.org/workforce/dwdframe/pdf/2014-ESOL-ELCATE.pdf>.

²² Florida Department of Education, Division of Career and Adult Education, *Curriculum Framework: Literacy Skills for Adult ESOL Learners* (2014-2015), available at <http://www.fldoe.org/workforce/dwdframe/pdf/2014-ESOL-LiteracySkills.pdf>.

²³ TAP: *Adult ESOL Program*, at 21-22; see Florida Department of Education, Division of Career and Adult Education, *Curriculum Framework: Workplace Readiness Skills for Adult ESOL Learners* (July 2013), available at <http://www.fldoe.org/workforce/dwdframe/pdf/ESOL-WorkplaceReadiness-2013.pdf>.

²⁴ Section 1004.02(23), F.S.

²⁵ *Curriculum Framework: VPI*, at 1-2.

For students functioning below the sixth grade level, there are Pre-AAAE courses. These courses prepare students for academic, technical, and personal success.²⁶

Instruction for Adults with Disabilities. Adults with disabilities are individuals who have a physical or mental impairment that substantially limits one or more major life activities or have a record of such impairment or are regarded as having such an impairment and who require modifications to the educational program, adaptive equipment, or specialized instructional methods and services in order to participate in workforce development programs that lead to competitive employment.²⁷ Adult general education for adults with disabilities provides instruction in literacy, work-related skills, employability skills, and life skills to enable these students to participate in work and community activities.²⁸

To be eligible, an adult with a disability must provide his or her Adult Individual Education Plan (AIEP), which must include the particular outcomes and student performance standards the student is required to master in order to complete the program. After completing the program, a student who needs additional training in a different occupational field or for advancement in the same field may enroll in the program again with a new Section 504 Accommodation plan (or comparable academic plan).²⁹

What is postsecondary career education?

Postsecondary career education consists of programs that lead to Associate in Science and Associate in Applied Science degrees, career certificates, Applied Technology Diplomas, Apprenticeship programs, and Continuing Workforce Education Programs.³⁰

Associate in Science and Associate in Applied Science degrees. Both the Associate in Science (AS) and Associate in Applied Science (AAS) degrees are two-year technical degree education programs that confer college credit and are offered only by FCS institutions.³¹

The AS degree requires at least 15 credit hours of general education credit, that are transferable and applicable to the 36 hours of general education credit required for a baccalaureate degree.³² The AS and the AAS degree may articulate to a baccalaureate degree program on an individual or block basis if authorized by either statewide or local interinstitutional articulation agreements.³³

Career and Technical Certificates. A career certificate program is a course of study that leads to at least one occupational completion point.³⁴ The program may also confer credit that may articulate with a diploma or career degree education program, if authorized by state board rules.³⁵ Career certificate programs are provided by school districts and FCS institutions; however, college credit may be awarded only by a FCS institution.³⁶

Eligibility and certificate completion requirements vary by program. If a student enrolls in a program that consists of at least 450 clock hours, he or she must take a basic skills examination within the first six weeks

²⁶ Florida Department of Education, Division of Career and Adult Education, *Curriculum Framework: Pre-Applied Academics for Adult Education (Pre-VPI)* (July 2013), available at <http://www.fldoe.org/workforce/dwdframe/pdf/PreAA-AdultEd.pdf>.

²⁷ Section 1004.02(6), F.S.

²⁸ Florida Department of Education, Division of Career and Adult Education, *Curriculum Framework: Adult General Education for Adults with Disabilities*, at 1 (July 2014), available at <http://www.fldoe.org/workforce/dwdframe/pdf/2014-AGE-AWD.pdf>.

²⁹ *Id.*

³⁰ *OPPAGA -- Responsibility for Workforce Education*, at 2.

³¹ Sections 1004.02(13) and 1011.80(2), F.S.; rules 6A-10.024(5) and 6A-14.030(2) and (3), F.A.C. A school district, however, may conduct the portion of an AS or AAS degree program that contains within it an occupational completion point that confers a certificate or an applied technology diploma. Section 1011.80(2), F.S.

³² Section 1007.23(4), F.S.; rule 6A-10.024(5), F.A.C.

³³ Section 1007.23(5), F.S.; *OPPAGA -- Responsibility for Workforce Education*, at 2.

³⁴ Section 1004.02(20), F.S. The term “occupational completion point” means “the occupational competencies that qualify a person to enter an occupation that is linked to a career and technical program.” Section 1004.02(21), F.S.

³⁵ Section 1004.02(20), F.S.

³⁶ Section 1011.80(2), F.S.

after entry into the program. If the student scores below the minimum standards established by the DOE, the student must complete remedial instruction prior to the award of a career certificate.³⁷

Technical Certificates. A technical certificate, also referred to as a college credit certificate, program is composed of less than 60 college credit hours, which are part of an AS degree or AAS degree program and prepare students for entry into employment. The standard credit hour length of all technical certificate programs is maintained according to DOE.³⁸

Applied Technology Diploma. An Applied Technology Diploma (ATD) program is a course of study that is part of an AS or AAS degree program, consists of less than 60 credit hours, and leads to employment in a specific occupation. The program may offer technical or college credit. A school district may award only technical credit, while a FCS institution may offer technical or college credit.³⁹

To be eligible for an ATD program, a student must have earned a standard high school diploma or its equivalent. Within six weeks of entry into a program that consists of 450 or more clock hours, a student must take an entry-level basic skills examination. If the student's score is below minimum standards established by the DOE, the student must complete remedial instruction prior to the award of an ATD.⁴⁰

A list of statewide ATD to AS and AAS articulation agreements may be found on the DOE's website.⁴¹

Apprenticeship. An apprenticeship program is an organized course of instruction that is registered and approved by the DOE and that must address all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.⁴² The length of an apprenticeship program varies from one to five years depending on the occupation's training requirements.⁴³

An apprenticeship may be offered only in occupations that:

- Are customarily learned in a practical way through a structured, systematic program of on-the-job, supervised training.
- Are commonly recognized throughout the industry or recognized with a positive view toward changing technology.
- Involve manual, mechanical, or technical skills and knowledge that require a minimum of 2,000 hours of work and training, excluding the time spent in related instruction.
- Require related instruction to supplement on-the-job training.
- Involve the development of skills sufficiently broad to be applicable in like occupations throughout an industry, rather than skills that are of restricted application to the products or services of any one company.⁴⁴

The following categories of occupations may not create an apprenticeship program: selling, retailing, or similar occupations in the distributive field; managerial occupations; and professional and scientific vocations for which entrance requirements customarily require an academic degree.⁴⁵

To be eligible for an apprenticeship, the person must be at least 16 years of age. Admission requirements relating to education, physical ability, work experience, and other criteria vary based on the program's training needs.⁴⁶

³⁷ Section 1004.91(2), F.S.; rule 6A-10.040(1), (3), and (4), F.A.C.

³⁸ Rule 6A-14.030(5), F.S.

³⁹ Section 1004.02(7), F.S.

⁴⁰ Rules 6A-10.024(6)(a) and (b) and 6A-10.040, F.A.C.

⁴¹ Florida Department of Education, Career and Technical Education, *Applied Technology Diploma to Associate in Applied Science or Associate in Science Program Articulation Agreements*, http://www.fldoe.org/workforce/dwdframe/artic_frame.asp (last view Aug. 1, 2014).

⁴² Section 446.021(6), F.S.

⁴³ Section 446.021(6), F.S.; rule 6A-23.004, F.A.C.

⁴⁴ Section 446.092, F.S.

⁴⁵ Section 446.092(6), F.S.

⁴⁶ United States Department of Labor, Employment and Training Administration, *Apprentices*, <http://www.doleta.gov/oa/apprentices.cfm> (last visited Aug. 1, 2014).

A pre-apprenticeship program is an organized course of instruction designed to prepare a person 16 years of age or older to become an apprentice. The program must be registered with the DOE and sponsored by a registered apprenticeship program.⁴⁷ The program's purpose is to provide training that will enable students, upon completion, to obtain entrance into a registered apprenticeship program.⁴⁸

Continuing Workforce Education. Continuing Workforce Education (CWE) is instruction that does not result in a technical certificate, diploma, AAS degree, or AS degree.⁴⁹ CWE programs offer a sequence of courses that provide coherent and rigorous content needed to prepare for further education and career advancement. The programs also offer content to improve academic knowledge, high-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills.⁵⁰

CWE courses are for individuals who are required to have training for licensure renewal or certification renewal by a regulatory agency or credentialing body; new or expanding businesses; business, industry, and government agencies whose products or services are changing so that retraining of employees is necessary or whose employees need training in specific skills to increase efficiency and productivity; or individuals who are enhancing occupational skills necessary to maintain current employment, cross train, or upgrade employment.⁵¹

How do school districts and Florida College System institutions determine which workforce education programs to offer?

Under Florida law, both school districts and FCS institutions are authorized to offer any type of workforce education program with the exception that only FCS institutions may award college credit.⁵² As a result, workforce education programming varies throughout the state given that school districts and FCS institutions determine how to organize program delivery at the local level.

In a December 2010 report, the Office of Program Policy Analysis and Government Accountability (OPPAGA) found that 58 of the state's 67 school districts and each of the 28 FCS institutions currently offer workforce education programs. OPPAGA conducted research to determine how school districts and FCS institutions organize program offerings and found that these decisions are "based on a mixture of historical arrangements and ongoing discussions" between the entities. In some cases, there are formal agreements specifying which entity will provide certain types of programs, e.g., Brevard Community College and Brevard County School District have an agreement stating that the college is responsible for providing career education and the district is responsible for providing all adult general education. In other cases, the school districts and FCS institutions conduct regular joint meetings to discuss and plan workforce education programming.⁵³

OPPAGA also conducted case studies to determine if school districts and FCS institutions were unnecessarily duplicating workforce program offerings and concluded that although, "the two systems are authorized to offer similar programs, districts and colleges typically avoid duplicating local training programs."⁵⁴

How are workforce education programs funded?

Funding for workforce education programs is provided by state and federal sources and student tuition and fees. For the 2014-15 FY, these sources are expected to generate approximately \$1.3 billion of which \$1 billion is projected to be expended for career education and \$200 million is projected to be expended for adult general education.⁵⁵

⁴⁷ Section 446.021(5), F.S.

⁴⁸ Rule 6A-23.010(1), F.A.C.

⁴⁹ Section 1004.02(12), F.S.

⁵⁰ Florida Department of Education, Division of Career and Adult Education, *Curriculum Framework: Continuing Workforce Education*, at 1-2 (Feb. 4, 2014), available at <http://www.fldoe.org/workforce/dwdframe/1415/other/rtf/E91010.rtf>.

⁵¹ Section 1004.02(12), F.S.

⁵² Section 1011.80(2), F.S.

⁵³ *OPPAGA -- Responsibility for Workforce Education*, at 4-5.

⁵⁴ *Id.* at 1 and 5-7.

⁵⁵ Email, Florida House of Representatives, Education Appropriations Subcommittee and Florida Department of Education, Division of Florida Colleges and Career and Adult Education (June 21, 2013).

The majority of workforce education funding, approximately \$945 million of the estimated \$1.5 billion or 64.9 percent, is provided from state resources. For the 2014-15 FY, the state appropriated the following for workforce education programs:

- A total of \$456.9 million in state funding to school districts.⁵⁶ Of the total appropriation, \$446.9 million is base funding determined by a weighted enrollment formula⁵⁷ and \$4,982,722 is performance-based incentive funding.⁵⁸ The remaining \$5,000,000 is appropriated for specific projects, \$500,000 each for Lake and Hernando district workforce education programs, and \$4,000,000 for a Workforce Education Student Information System.
- An estimated total of \$488.1 million in state funding to FCS institutions.⁵⁹ The precise amount cannot be ascertained because workforce education funding for the FCS is not set forth in a separate line item; instead, this funding is included in overall Florida College System Program Fund (FCSPF) appropriations⁶⁰ and the actual amount expended for workforce education programs is locally determined by each FCS institution.

In addition to state funding, it is estimated that school districts and FCS institutions for FY 2014-15 will collect approximately \$446 million in tuition and fees⁶¹ and receive \$63.1 million in federal grant funding for workforce education.⁶²

Who is responsible for the governance of workforce education programs?

DOE's Division of Career and Adult Education is primarily responsible for state-level governance of both school district and college workforce education programs, including the development of curriculum frameworks, management of federal funding, and providing technical assistance. DOE's Division of Florida Colleges works collaboratively with the Division of Career and Adult Education to help colleges and districts implement workforce education program.⁶³

Where can I get additional information?

Florida Department of Education

Division of Career and Adult Education
(850) 245-0446

<http://www.fldoe.org/workforce>

Florida House of Representatives

Education Committee
(850) 717-4830

<http://www.myfloridahouse.gov>

⁵⁶ Specific Appropriations 13 and 122, General Appropriations Act, ch. 2014-51, L.O.F.

⁵⁷ *Id.*; see s. 1011.80(4) and (6), F.S.

⁵⁸ Performance-based incentive funding is allocated to districts based on a DOE-developed model that considers program outputs and outcomes in certain district workforce education programs. Florida Department of Education, Division of Career and Adult Education, *District Workforce Education Performance Funding Allocation for 2012-13*, at 2, (March 2012), available at www.fldoe.org/workforce/pdf/1213CompleteDocument.pdf.

⁵⁹ FCS cost reports indicate approximately \$497.5 million from state funding was expended on workforce education programs in 2012-13. The 2014-15 estimate is adjusted to include a 2.9% decline in workforce program enrollment.

⁶⁰ Specific Appropriations 16, 125 and 126, General Appropriations Act, ch. 2014-51, L.O.F.

⁶¹ FCS tuition revenues are estimated at \$397.1 million for 2014-15. This figure is based on 2012-13 cost reports/ state funds to tuition ratio, adjusted for enrollment declines). DOE, Division of Career and Adult Education estimates school district technical center tuition revenues at \$48.9 million.

⁶² Email, Florida Department of Education, Career and Adult Education (August 11, 2014).

⁶³ *OPPAGA -- Responsibility for Workforce Education*, at 2.

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