



## **Private School Accountability in State School Choice Scholarship Programs**

### **Which private schools must comply with the statutory accountability requirements?**

Private schools<sup>1</sup> participating in state school choice scholarship programs are required to comply with statutorily-specified fiscal and operational accountability requirements.<sup>2</sup> Currently, the two state school choice scholarship programs are the Florida Tax Credit (FTC) Scholarship Program<sup>3</sup> and the McKay Scholarships for Students with Disabilities (McKay) Program.<sup>4</sup> Private schools participating in these programs must also comply with the general statutory requirements governing all private schools<sup>5</sup> and, as appropriate, with statutory requirements specifically governing the FTC and McKay scholarship programs.<sup>6</sup>

### **What are the accountability requirements for private schools participating in state school choice scholarship programs?**

Participating private schools must:

- ❖ Be located in Florida and registered with the Florida Department of Education (DOE).<sup>7</sup>
- ❖ Notify DOE of its intent to participate in the scholarship program and keep DOE apprised of any change in the school's name, location, or director.<sup>8</sup>

<sup>1</sup> A "private school" is a "nonpublic school defined as an individual, association, copartnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade or as an elementary, secondary, business, technical, or trade school below college level or any organization that provides instructional services that meets the intent of the regular school attendance requirements in s. 1003.01(13), F.S., or that gives preemployment or supplementary training in technology or trade or industry or that offers academic, literary, or career training below college level, or any combination of the above, including an institution that performs the functions of the above schools through correspondence or extension, except those licensed under the provisions of chapter 1005, F.S., nonpublic postsecondary education. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. Home education programs as defined in s. 1002.41, F.S., are not included in this definition." Section 1002.01(2), F.S.

<sup>2</sup> Section 1002.421(1), F.S.

<sup>3</sup> Section 1, ch. 2010-24, L.O.F. (transferring, renumbering, and amending s. 220.187, F.S.), *codified* at s. 1002.395, F.S.; *see also* Florida Tax Credit Scholarship Program Fact Sheet.

<sup>4</sup> Section 1002.39, F.S.; *see also* McKay Scholarships for Students with Disabilities Program Fact Sheet.

<sup>5</sup> Section 1002.42, F.S.

<sup>6</sup> Sections 1002.39(8), and 1002.395(8), F.S.

<sup>7</sup> Section 1002.421(2), F.S.

<sup>8</sup> Section 1002.421(2)(c), F.S.

- ❖ Complete student enrollment and attendance verification requirements prior to receiving a scholarship payment.<sup>9</sup>
- ❖ Demonstrate fiscal soundness and accountability by having been in operation for at least three school years or obtaining a surety bond or letter of credit and by requiring parents of each scholarship student to restrictively endorse scholarship warrants to the school.<sup>10</sup>
- ❖ Comply with federal law<sup>11</sup> prohibiting discrimination based on race, color, or national origin by any program receiving federal financial assistance.<sup>12</sup>
- ❖ Meet applicable state and local health, safety, and welfare laws, codes, and rules.<sup>13</sup>
- ❖ Employ or contract with teachers who hold baccalaureate or higher degrees, have at least three years teaching experience in public or private schools, or have special skills, knowledge, or expertise that qualify them to provide instruction in the relevant subject areas taught.<sup>14</sup>
- ❖ Complete and annually submit to DOE a notarized scholarship compliance statement certifying that all employees and contracted personnel with direct student contact have undergone a state and national background screening.<sup>15</sup>
- ❖ Provide the parent of a scholarship recipient with a written explanation of student progress at least annually and cooperate with a parent who wishes for his or her child to take the Florida Comprehensive Assessment Test.<sup>16</sup>

Additionally, private schools participating in the FTC Scholarship Program must annually:

- ❖ Administer a DOE-approved norm-referenced test to each scholarship recipient in grades 3-10 and must report student scores to parents and an independent research organization selected by DOE.<sup>17</sup>
- ❖ Contract with a certified public accountant for the performance of an agreed upon procedures review for each fiscal year in which the school received more than \$250,000 in scholarship funds. The review must determine whether the private school has been verified by DOE as an eligible participant in the program; 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 purposes.<sup>18</sup>

The Commissioner of Education is required to deny, suspend, or revoke a private's school participation in a state school choice scholarship program if a private school fails to comply with the above-described accountability requirements, unless the instance of noncompliance is correctable within a reasonable amount of time and does not threaten the health, safety, or welfare of students. In this latter case, the commissioner may issue a notice of noncompliance

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<sup>9</sup> Section 1002.421(2)(d), F.S.

<sup>10</sup> Section 1002.421(2)(f), F.S.

<sup>11</sup> 42 U.S.C. s. 2000d.

<sup>12</sup> Section 1002.421(2)(a), F.S.

<sup>13</sup> Section 1002.421(2)(g), F.S.

<sup>14</sup> Section 1002.421(2)(h), F.S.

<sup>15</sup> Section 1002.421(2)(e), F.S.

<sup>16</sup> Sections 1002.39(8), 1002.395(8), and 1002.421(2), F.S.

<sup>17</sup> Section 1002.395(8)(c), F.S.

<sup>18</sup> Section 1002.395(6)(n), (8)(c), F.S.

that sets forth a period of time in which the noncompliance may be corrected prior to suspension or revocation of the private school's participation in the scholarship program.<sup>19</sup>

***What type of background screening is required at a participating private school and what is the penalty for the continued employment of a person who has failed a background screening?***

As of July 1, 2006, in order to be hired or retained, each employee and contracted personnel with direct student contact have to undergo a state and national background screening and meet the screening standards set forth in s. 435.05, F.S. (a Level 2 background screening).<sup>20</sup> Continued employment of an employee or contracted personnel after notification that he or she has failed the s. 435.05, F.S., background screening "shall cause a private school to be ineligible for participation in a scholarship program."<sup>21</sup> This screening is a fingerprint-based criminal history check.<sup>22</sup>

Beginning July 1, 2007, the Florida Department of Law Enforcement (FDLE) is required to retain the fingerprints of each person screened for a participating private school and to continually search retained fingerprints against all new arrest fingerprint cards. The FDLE must report any new arrest record found to the private school employer.<sup>23</sup>

As of July 1, 2008, pursuant to the Ethics in Education Act, in addition to the requirements set forth in s. 435.05, F.S., instructional personnel and school administrators employed in any position that requires direct contact with students must meet the standards set forth in s. 1012.315, F.S. A private school that accepts scholarship students must disqualify instructional personnel and school administrators from employment who fail to meet the requirements in s. 1012.315, F.S.<sup>24</sup> DOE must suspend the payment of funds to a private school that knowingly fails to comply with these requirements and prohibit the school from enrolling new scholarship students for one fiscal year and until the school complies and constitutes a basis for the ineligibility of the private school to participate in a scholarship program as determined by DOE.<sup>25</sup>

***Are participating private schools required to comply with the educator employment and conduct requirements set forth in the Ethics in Education Act?***

Yes, as previously discussed, the Ethics in Education Act created new requirements governing employment by participating private schools of instructional personnel and school administrators

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<sup>19</sup> Sections 1002.39(7)(a) and 1002.395(11)(a)1., F.S.

<sup>20</sup> Chapter 2006-75, L.O.F.; s. 1002.421(2)(i), F.S.

<sup>21</sup> Section 1002.421(2)(i)3., F.S.

<sup>22</sup> Section 943.0542, F.S.

<sup>23</sup> Section 1002.421(3), F.S.

<sup>24</sup> Section 16, ch. 2008-108, L.O.F.; see Educator Ethics Fact Sheet.

<sup>25</sup> Section 1002.421(4) and (5), F.S.

in direct contact with students.<sup>26</sup> The act's requirements apply to public schools, including charter schools, and private schools participating in the school choice scholarship programs. The act lists certain felonies, misdemeanors, and delinquent acts, which if committed, would preclude initial or continued employment by a public school or participating private school.<sup>27</sup>

Additionally, the act requires participating private schools, prior to hiring a person for an instructional or school administrator position with direct student contact, to 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.<sup>28</sup>

Participating private 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
- ❖ Include an explanation of available liability protections pertaining to reporting misconduct.<sup>29</sup>

Participating private schools are prohibited from entering into confidentiality agreements regarding an instructor or school administrator who is terminated, dismissed, or who resigns in lieu of termination due to misconduct affecting the health, safety, or welfare of a student. Further, schools may not provide employment references for such personnel without disclosing such misconduct.<sup>30</sup>

### ***Which employees are considered instructional personnel or school administrators?***

“Instructional personnel” is defined as any K-12 staff member whose function includes the provision of direct instructional services or educational support to students. Such persons include:

- ❖ Classroom teachers;
- ❖ Student personnel services staff such as guidance counselors, social workers, career specialists, and school psychologists;
- ❖ Librarians/media specialists;
- ❖ Education paraprofessionals; and
- ❖ Other instructional staff such as primary specialists, learning resource specialists, instructional trainers, and adjunct educators.<sup>31</sup>

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<sup>26</sup> Section 16, ch. 2008-108, L.O.F.

<sup>27</sup> Sections 1002.421(4)(a) and 1012.315, F.S.

<sup>28</sup> Sections 1001.10(5) and 1002.421(4)(c), F.S.

<sup>29</sup> Section 1002.421(4)(b), F.S.

<sup>30</sup> Section 1002.421(4)(b), F.S.

<sup>31</sup> Section 1012.01(2), F.S.

Employees classified as “school administrators” include school principals, school directors, career center directors, and assistant principals.<sup>32</sup>

***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

<http://www.floridaschoolchoice.org>

***Florida House of Representatives***

Education Committee

(850) 488-7451

<http://www.myfloridahouse.gov/>

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<sup>32</sup> Section 1012.01(3)(c), F.S.