

Capital Office for Administrative, Accreditation & Legislative Services

October 20, 2016

TO: All FACCS Administrators

FROM: Dr. Howard G. Burke, FACCS Executive Director

RE: Capital Office Update

There are a number of initiatives and events taking place prior to the elections that you should be aware of that have been implemented under new Florida Statutes, Administrative Rule, DCF Promulgated Rules via Legislative provided authority, and actions at the Federal level that have a direct impact on Christian schools and religious or faith-based ministries and beyond.

In the 2016 Legislative Session a number of changes to the School Readiness Program as well as child care provider requirements took place. The changes were made to align state requirements with provisions of the federal Child Care and Development Block Grant (CCDBG) Reauthorization of 2014. Here is an overview of key requirements for background screening for School Readiness and child care programs (before/after care, extended day, etc.). There is also clarification applicable to the Voluntary Prekindergarten Education Program (VPK) which falls under a different and less stringent set of background screening requirements.

School Readiness Program and Child Care Changes: The School Readiness Program allows provider schools to tap services generated from state and federal funds to offer after-school care/ programs with academic components. This in turn allows low-income families to seek maintain employment.

New Screening Requirements – Key changes for screening by School Readiness and child care providers are excerpted below from the new law.

402.302 Definitions.—As used in this chapter, the term:

(15) “Screening” means the act of assessing the background of child care personnel, in accordance with state and federal law, and volunteers and includes, but is not limited to:

(a) **Employment history checks**, including documented attempts to contact each employer that employed the applicant **within the preceding 5 years and documentation of the findings.**

(b) **A search** of the criminal history records, sexual predator and sexual offender registry, and child abuse and neglect registry **of any state in which the applicant resided during the preceding 5 years.**

Additional detailed guidance from the Florida Department of Children and Families (DCF) is being developed as to how these new screening requirements are being implemented. For example, there is the question of documenting attempts to reach past employers (all past employers of any new employee). Practical questions come into play such as whether this can be done by keeping a phone call log and noting whether or not there was any reply and the level of action necessary to complete due diligence on reaching back to a specific period in time (does this go back to initial employment in ancient history or the last 10 employers, etc.?).

Voluntary Prekindergarten Education Program: At present, the per-child scholarships are set at \$2,437. This amount is determined each year by the Legislature during its annual budget process. It should be noted that VPK is established under state funds as opposed to School Readiness which involves a combination of state and federal funds.

The screening requirements for personnel under VPK do not appear to have been addressed by the Legislature since the 2013 session. The current requirements are excerpted below.

1002.55 School-year prekindergarten program delivered by private prekindergarten providers.—

*(d) Each prekindergarten instructor employed by the private prekindergarten provider must be of good moral character, **must be screened using the level 2 screening standards in s. 435.04 before employment and rescreened at least once every 5 years, must be denied employment or terminated if required under s. 435.06**, and must not be ineligible to teach in a public school because his or her educator certificate is suspended or revoked.*

(e) A private prekindergarten provider may assign a substitute instructor to temporarily replace a credentialed instructor if the credentialed instructor assigned to a prekindergarten class is absent, as long as the substitute instructor is of good moral character and has been screened before employment in accordance with level 2 background screening requirements in chapter 435. The Office of Early Learning shall adopt rules to implement this paragraph which shall include required qualifications of substitute instructors and the circumstances and time limits for which a private prekindergarten provider may assign a substitute instructor.

History.—s. 1, ch. 2004-484; s. 7, ch. 2008-196; s. 6, ch. 2009-3; s. 12, ch. 2011-55; s. 452, ch. 2011-142; s. 8, ch. 2013-252.

Since 1002.55, F.S. has cross-references to two other sections in Statute thus they are included in Addendum One below. Those cross-references are to 435.04 and 435.06, F.S.

Integral Programs Distinguished from Child Care: In addition to the VPK statute referenced above, there are other parts of Florida law which distinguish the requirements for the “integral programs” **(which is legal language FACCS placed in the Statute in 1974 at original passage of the established religious exemption in FS 402.316 and then referenced in the nonpublic school programs under FS 402.3025)** as opposed to the screening requirements for child care. Integral programs for example may include prekindergarten programs for children age 3-4 that are set up on a private-pay basis.

402.302 Definitions.—As used in this chapter, the term:

(1) “Child care” means the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.

(2) “Child care facility” includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included:

(a) Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025;

(b) Summer camps having children in full-time residence;

(c) Summer day camps;

(d) Bible schools normally conducted during vacation periods; and

(e) Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435.

(15) “Screening” means the act of assessing the background of child care personnel, in accordance with state and federal law, and volunteers and includes, but is not limited to:

(a) Employment history checks, including documented attempts to contact each employer that employed the applicant within the preceding 5 years and documentation of the findings.

(b) A search of the criminal history records, sexual predator and sexual offender registry, and child abuse and neglect registry of any state in which the applicant resided during the preceding 5 years.

An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Fingerprint submission must comply with s. 435.12.

(16) "Secretary" means the Secretary of Children and Families.

(17) "Substantial compliance" means that level of adherence which is sufficient to safeguard the health, safety, and well-being of all children under care. Substantial compliance is greater than minimal adherence but not to the level of absolute adherence. Where a violation or variation is identified as the type which impacts, or can be reasonably expected within 90 days to impact, the health, safety, or well-being of a child, there is no substantial compliance.

(18) "Weekend child care" means child care provided between the hours of 6 p.m. on Friday and 6 a.m. on Monday.

History.—s. 2, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 6, 7, ch. 83-248; s. 2, ch. 84-551; s. 23, ch. 85-54; s. 22, ch. 87-238; s. 2, ch. 88-391; s. 1, ch. 90-35; s. 34, ch. 90-306; s. 7, ch. 91-300; ss. 1, 2, ch. 93-115; s. 1, ch. 94-257; s. 1059, ch. 95-148; s. 57, ch. 95-228; s. 75, ch. 96-175; s. 1, ch. 97-63; s. 1, ch. 98-165; s. 8, ch. 99-304; s. 16, ch. 2000-253; s. 989, ch. 2002-387; s. 57, ch. 2004-267; s. 2, ch. 2006-91; s. 22, ch. 2010-114; s. 1, ch. 2010-158; s. 2, ch. 2011-75; s. 23, ch. 2013-252; s. 143, ch. 2014-19; s. 6, ch. 2015-79; s. 10, ch. 2016-238.

402.3025 Public and nonpublic schools.—For the purposes of ss. 402.301-402.319, the following shall apply:

(2) NONPUBLIC SCHOOLS.—

(a) Programs for children under 3 years of age shall be deemed to be child care and subject to the provisions of ss. 402.301-402.319.

(b) Programs for children in 5-year-old kindergarten and grades one or above shall not be deemed to be child care and shall not be subject to the provisions of ss. 402.301-402.319.

(c) Programs for children who are at least 3 years of age, but under 5 years of age, shall not be deemed to be child care and shall not be subject to the provisions of ss. 402.301-402.319 relating to child care facilities, provided the programs in the schools are operated and staffed directly by the schools, provided a majority of the children enrolled in the schools are 5 years of age or older, and provided there is compliance with the screening requirements for personnel pursuant to s. 402.305. A nonpublic school may designate certain programs as child care, in which case these programs shall be subject to the provisions of ss. 402.301-402.319.

(d)1. Programs for children who are at least 3 years of age, but under 5 years of age, which are not licensed under ss. 402.301-402.319 shall substantially comply with the minimum child care standards promulgated pursuant to ss. 402.305-402.3057.

2. The department or local licensing agency shall enforce compliance with such standards, where possible, to eliminate or minimize duplicative inspections or visits by staff enforcing the minimum child care standards and staff enforcing other standards under the jurisdiction of the department.

3. The department or local licensing agency may commence and maintain all proper and necessary actions and proceedings for any or all of the following purposes:

a. To protect the health, sanitation, safety, and well-being of all children under care.

b. To enforce its rules and regulations.

c. To use corrective action plans, whenever possible, to attain compliance prior to the use of more restrictive enforcement measures.

d. To make application for injunction to the proper circuit court, and the judge of that court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of ss. 402.301-402.319. Any violation of this section or of the standards applied under ss. 402.305-402.3057 which threatens harm to any child in the school's programs for children who are at least 3 years of age, but are under 5 years of age, or repeated violations of this section or the standards under ss. 402.305-402.3057, shall be grounds to seek an injunction to close a program in a school.

e. To impose an administrative fine, not to exceed \$100, for each violation of the minimum child care standards promulgated pursuant to ss. 402.305-402.3057.

4. It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

a. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any required written documentation for exclusion from licensure pursuant to this section a material fact used in making a determination as to such exclusion; or

b. Use information from the criminal records obtained under s. 402.305 or s. 402.3055 for any purpose other than screening that person for employment as specified in those sections or release such information to any other person for any purpose other than screening for employment as specified in those sections.

5. It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use information from the juvenile records of any person obtained under s. 402.305 or s. 402.3055 for any purpose other than screening for employment as specified in those sections or to release information from such records to any other person for any purpose other than screening for employment as specified in those sections.

(e) The department and the nonpublic school accrediting agencies are encouraged to develop agreements to facilitate the enforcement of the minimum child care standards as they relate to the schools which the agencies accredit.

(3) INSPECTION FEE.—The department shall establish a fee for inspection activities performed pursuant to this section, in an amount sufficient to cover costs. However, the amount of such fee for the inspection of a school shall not exceed the fee imposed for child care licensure pursuant to s. 402.315.

History.—s. 3, ch. 88-391; s. 1, ch. 89-296; s. 35, ch. 90-347; ss. 1, 2, ch. 93-115; s. 94, ch. 2000-349; s. 50, ch. 2013-18; s. 21, ch. 2016-238.

Addendum One, VPK Statute (1002.55) Cross References to 435.04 and 435.06, F.S.

435.04 Level 2 screening standards.—

(1)(a) All employees required by law to be screened pursuant to this section must undergo security background investigations as a condition of employment and continued employment which includes, but need not be limited to, fingerprinting for statewide criminal history records checks through the Department of Law Enforcement, and national criminal history records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

(b) Fingerprints submitted pursuant to this section on or after July 1, 2012, must be submitted electronically to the Department of Law Enforcement.

(c) An agency may contract with one or more vendors to perform all or part of the electronic fingerprinting pursuant to this section. Such contracts must ensure that the owners and personnel of the vendor performing the electronic fingerprinting are qualified and will ensure the integrity and security of all personal information.

(d) An agency may require by rule that fingerprints submitted pursuant to this section must be submitted electronically to the Department of Law Enforcement on a date earlier than July 1, 2012.

(e) Vendors who submit fingerprints on behalf of employers must:

1. Meet the requirements of s. 943.053; and

2. Have the ability to communicate electronically with the state agency accepting screening results from the Department of Law Enforcement and provide the applicant's full first name, middle initial, and last name; social security number or individual taxpayer identification number; date of birth; mailing address; sex; and race.

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:

(a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

(b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

(c) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.

(d) Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.

- (e) Section 782.04, relating to murder.
- (f) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- (g) Section 782.071, relating to vehicular homicide.
- (h) Section 782.09, relating to killing of an unborn child by injury to the mother.
- (i) Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- (j) Section 784.011, relating to assault, if the victim of the offense was a minor.
- (k) Section 784.03, relating to battery, if the victim of the offense was a minor.
- (l) Section 787.01, relating to kidnapping.
- (m) Section 787.02, relating to false imprisonment.
- (n) Section 787.025, relating to luring or enticing a child.
- (o) Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- (p) Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- (q) Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- (r) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- (s) Section 794.011, relating to sexual battery.
- (t) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- (u) Section 794.05, relating to unlawful sexual activity with certain minors.
- (v) Chapter 796, relating to prostitution.
- (w) Section 798.02, relating to lewd and lascivious behavior.
- (x) Chapter 800, relating to lewdness and indecent exposure.
- (y) Section 806.01, relating to arson.
- (z) Section 810.02, relating to burglary.
- (aa) Section 810.14, relating to voyeurism, if the offense is a felony.
- (bb) Section 810.145, relating to video voyeurism, if the offense is a felony.
- (cc) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- (dd) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- (ee) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- (ff) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- (gg) Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- (hh) Section 826.04, relating to incest.
- (ii) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- (jj) Section 827.04, relating to contributing to the delinquency or dependency of a child.
- (kk) Former s. 827.05, relating to negligent treatment of children.
- (ll) Section 827.071, relating to sexual performance by a child.
- (mm) Section 843.01, relating to resisting arrest with violence.
- (nn) Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- (oo) Section 843.12, relating to aiding in an escape.
- (pp) Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
- (qq) Chapter 847, relating to obscene literature.
- (rr) Section 874.05, relating to encouraging or recruiting another to join a criminal gang.
- (ss) Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- (tt) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- (uu) Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- (vv) Section 944.40, relating to escape.

- (ww) Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.
- (xx) Section 944.47, relating to introduction of contraband into a correctional facility.
- (yy) Section 985.701, relating to sexual misconduct in juvenile justice programs.
- (zz) Section 985.711, relating to contraband introduced into detention facilities.

(3) The security background investigations under this section must ensure that no person subject to this section has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense that constitutes domestic violence as defined in s. 741.28, whether such act was committed in this state or in another jurisdiction.

History.—s. 47, ch. 95-228; s. 16, ch. 96-268; s. 22, ch. 96-322; s. 4, ch. 98-417; s. 5, ch. 99-284; s. 88, ch. 2000-153; s. 7, ch. 2001-125; s. 5, ch. 2004-267; s. 4, ch. 2005-119; s. 111, ch. 2006-120; s. 90, ch. 2006-197; s. 110, ch. 2007-5; s. 3, ch. 2007-112; s. 66, ch. 2009-223; s. 6, ch. 2010-31; s. 38, ch. 2010-114; s. 10, ch. 2012-73; s. 4, ch. 2013-80; s. 6, ch. 2014-84; s. 4, ch. 2014-194; s. 3, **ch. 2016-162.**

435.06 Exclusion from employment.—

(1) If an employer or agency has reasonable cause to believe that grounds exist for the denial or termination of employment of any employee as a result of background screening, it shall notify the employee in writing, stating the specific record that indicates noncompliance with the standards in this chapter. It is the responsibility of the affected employee to contest his or her disqualification or to request exemption from disqualification. The only basis for contesting the disqualification is proof of mistaken identity.

(2)(a) An employer may not hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment. If the screening process shows any grounds for the denial or termination of employment, the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for the disqualification by the agency as provided under s. 435.07.

(b) If an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person that places the employee in a role that requires background screening until the arrest is resolved in a way that the employer determines that the employee is still eligible for employment under this chapter.

(c) The employer must terminate the employment of any of its personnel found to be in noncompliance with the minimum standards of this chapter or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to s. 435.07.

(d) An employer may hire an employee to a position that requires background screening before the employee completes the screening process for training and orientation purposes. However, the employee may not have direct contact with vulnerable persons until the screening process is completed and the employee demonstrates that he or she exhibits no behaviors that warrant the denial or termination of employment.

(3) Any employee who refuses to cooperate in such screening or refuses to timely submit the information necessary to complete the screening, including fingerprints if required, must be disqualified for employment in such position or, if employed, must be dismissed.

(4) There is no reemployment assistance or other monetary liability on the part of, and no cause of action for damages against, an employer that, upon notice of a conviction or arrest for a disqualifying offense listed under this chapter, terminates the person against whom the report was issued or who was arrested, regardless of whether or not that person has filed for an exemption pursuant to this chapter.

History.—s. 47, ch. 95-228; s. 40, ch. 2010-114; s. 65, ch. 2012-30; s. 11, ch. 2012-73.

VPK Assessment Requirements

During the 2015-2016 school year, Voluntary Prekindergarten Education Program (VPK) Schools were required to administer both the VPK Assessment **AND** “Teaching Strategies GOLD”® (TSG). However, funding for TSG was not included in the state’s budget approved during the 2016 session. The TSG assessment was thus dropped as a requirement for the 2016-2017 school year. The VPK assessment remains in place.

According to the Office of Early Learning (OEL), the VPK Assessment was developed by the Florida Center for Reading Research in collaboration with the Department of Education. The purpose is to provide teachers with valid and reliable feedback regarding children's progress in attaining the skills from the official "Standards for Four-Year-Olds" (2011 edition).

The content used for three early literacy measures was developed based upon predictors of later reading success. The assessment includes items for print knowledge, phonological awareness, and oral language/vocabulary as predictors for conventional early reading ability. The early mathematics portion was based upon predictors of later mathematics success such as "number sense." VPK providers operating during a 540 hour school-year program (e.g., August-April/ May) have three assessment periods available as follows with the first and third periods being mandatory and the second one being optional:

- Assessment Period (AP) 1 – the month of September;
- Assessment Period (AP) 2 – the month of January; and,
- Assessment Period (AP) 3 – the month of April/ May (i.e. end of program year).

Kindergarten Readiness Screening

The "Florida Kindergarten Readiness Screener" or FLKRS is the umbrella term for a series of instruments the state has used over the years to determine whether five-year olds were deemed ready for school. The FLKRS is taken by kindergarten students during the first 30 days of a given school year. From the 2010-2011 to 2014-2015 school years, FLKRS was set up to include the following two parts:

- The Work Sampling System (WSS); and,
- The Kindergarten Florida Assessments for Instruction in Reading Aligned to the Florida Standards (FAIR-FS).

The WSS is a portfolio-based measure. It includes teacher observations, samples of a student's work and indicators of the social, emotional and physical development of students. The three-part scoring determines the categories of "not yet," "in process" or "proficient." The FAIR-FS includes sections for letter sounds, phonological awareness, following directions, vocabulary pairs, sentence comprehension and listening comprehension.

Against this backdrop, it is important to note the problems that occurred since the state went to an electronic format with the FAIR-FS in the fall of 2014. Public and nonpublic schools reported widespread issues with the assessment. Students and teachers had to wear headphones and work together to complete the electronic FAIR-FS. This impacted classroom instruction as aides or substitutes often had to cover lessons during the testing period. Issues were also experienced with the state's online system to upload data.

For these reasons, the FAIR-FS was dropped as a requirement during the past two school years. The WSS was therefore the only measure left in place to determine kindergarten readiness rates.

For public schools, the state requires each district to administer FLKRS during the first 30 days of each school year. State law also allows – but does not require – nonpublic schools to administer the screening to each student in the school who was previously enrolled in the VPK Program.

This being noted, the law requires parents who enroll their children in VPK to "submit the child for the statewide kindergarten screening, regardless of whether the child is admitted to kindergarten in a public or nonpublic school." Each district is required to "designate sites to administer the statewide kindergarten screening for children admitted to kindergarten in a nonpublic school."

The law also authorizes the Office of Early Learning to publish kindergarten readiness rates by VPK provider. An argument could be made that the screening with just the WSS left in place is not a valid and reliable indicator of how ready students are for school. Results in Escambia County for example have

shown that 90 percent or more of the children taking the WSS were deemed ready. Furthermore, the current screening may not be a helpful measure to help parents in determining which VPK providers are doing the best job in getting students ready for kindergarten.

In light of these challenges, state policymakers will continue to grapple with how to determine “quality” in early childhood education. The vacuum left by the current situation could lead to momentum for advocates of the “Quality Rating System” or QRS which would be new and unfamiliar to most of our schools and a very undesirable addition to the program. The QRS approach would give more authority to Early Learning Coalitions as they develop four-part ratings based on factors such as “strength of curriculum” and teachers having credentials and professional development beyond the minimum state requirements. Another likely factor would be administering assessments beyond the minimum requirements. An example would be having students take the no longer state funded but time-consuming TSG to help a provider get a higher rating (i.e. three or four stars).

Many nonpublic schools as a service/convenience to parents have been offering the FLKRS every year. Districts do not always seem to have a designated place for our VPK students to take the FLKRS. Even if they did, students would probably do better having the instrument administered at the familiar location of their own school’s campus. It can be difficult for our schools to log in to submit FLKRS data because the system has been primarily set up to serve public schools.

Health and Safety Inspections

House Bill 7053 by the House Education Committee revised School Readiness Program requirements to provide alignment with federal provisions under the Federal Child Care and Development Block Grant (CCDBG) Act of 2014. Florida’s program was already in compliance with many CCDBG requirements. One area of difference is in how Florida allows faith-based providers of child care as well as nonpublic schools to meet health and safety requirements by posting a checklist adopted by the Office of Early Learning (OEL).

All providers receiving **School Readiness Program** funds will now be required to be inspected each year for compliance with health, safety and fire standards. The OEL will enter into an agreement with the Department of Children and Families and local licensing agencies to inspect providers and determine compliance. The final bill analysis of the Florida House of Representatives, dated April 18, 2016, provided the following additional information:

“DCF, or the local licensing agency, as applicable, will conduct inspections to determine compliance with the school readiness program provider standards through exercise of their discretionary power to enforce compliance with the laws. The authority to inspect includes access to facilities, personnel and records. A school readiness program provider that refuses entry or inspection shall have its provider contract terminated. School readiness providers must:

- *Provide more information to the public to promote informed child care choices.*
- *Provide training on child care development research and best practices and cardiopulmonary resuscitation training.*
- *Provide an appropriate group size as well as an appropriate staff-to-child ratio.*

Employ child care personnel who have satisfied the screening requirements of chapter 402 and fulfilled the training requirements of OEL.”

Step-Up for Students Scholarship or officially the Florida Tax Credit Program

The following link will provide interesting action as to the legal actions taking place or having been modified. <http://www.sunshinestatenews.com/story/voucher-foes-bank-heavily-2006-ruling>

On August 16, a panel of three judges unanimously dismissed the lawsuit McCall v. Scott, which was originally filed in 2014. The suit alleges that the Florida Tax Credit (FTC) Scholarship Program violates the Florida Constitution.

Declaring, “Indeed, Appellants failed to allege any concrete harm whatsoever,” the 1st District Court of Appeal upheld an earlier decision by the Circuit Court that found the Florida Education Association and other plaintiffs

lacked standing in the case. Additionally, the plaintiffs could not show that the program harms public school funding or quality of education.

Through FTC scholarships, economically disadvantaged families and children have access to educational choices that would otherwise be unattainable. Since enacted by the Florida Legislature in 2001, the FTC Scholarship Program has been providing hope and opportunity to thousands of students from low-income households. The number of students on the program as recently tabulated is 85,539.

The Florida Education Finance Program (FEFP) was set at \$7,178.49 per-child. The Florida Tax Credit Scholarship Program amount for 2016-2017 will be 82 percent of FEFP due a previous legislative expansion of the scholarship program bring forth a basic FTC scholarship amount for the 2016-2017 school year of \$5,886 per student.

McKay Scholarship Expansion

House Bill 837 relating to the John M. McKay Scholarships for Students with Disabilities Program was signed into law by Gov. Scott on Mar. 25, 2016. The following is an excerpt from the March 24, 2016 Newsletter of the Coalition of McKay Scholarship Schools.

“The legislation allows for the following changes to the McKay Scholarship Program:

- *“Foster children will be exempt from the requirement to be enrolled in the public school for a year before being eligible for the McKay Scholarship.*
- *A Transition-To-Work Program for students on the McKay Scholarship, ages 17 – 22 years of age, may be developed by schools participating in the McKay Scholarship and offered to their students. Previous to this, the attendance policy did not allow for this type of program. This will allow wonderful opportunities for our students who require a more hands-on approach to employment training.*
- *The deductions from the McKay Scholarships of students taking FLVS courses have been removed, beginning July 1st. McKay students may take 2 courses from FLVS each year and their scholarship will not be affected.”*

Personal Learning Scholarship Account (PLSA) Program was renamed to: “The Gardiner Scholarship Program”

Senate Bill 672 regarding the expansion of the Personal Learning Scholarship Account (PLSA) Program was signed into law on January 21, 2016 by Gov. Scott. From a nonpublic school perspective, the following benefits of the expansion are most noteworthy:

- Job coaching/ transitioning services are now included as an allowable use of program funds.
- Eligibility for children diagnosed with Autism Spectrum Disorder and muscular dystrophy will be included under law going forward instead of just proviso language that was set to expire by the summer of 2016. This gives parents and schools more certainty that a child eligible this year can continue under a Gardiner Scholarship in future school years.
- The annual, recurring funds would be increased from \$53.4 million to \$71.2 million. At present, nearly 3,900 students benefit from PLSAs. This funding boost should help the program grow to serve a total of approximately 5,000 students next year.

Dual Enrollment Program Changes

House Bill 837 included language to make incremental progress in restoring free Dual Enrollment Program access to private school students. Contrary to the opinion of many it did not fix the problem that allows colleges and universities to in some cases invoice private schools for courses taken by students (such as

is happening in Duval & Leon Counties). However, it does allow the Florida Department of Education to gather data about articulation agreements.

The supposed unavailable data during the session has been found by the FDOE which shows the negative impact of the 2013 change and FDOE Technical Assistance Paper that has caused so much confusion and improper interpretation which has set the stage for passing on the fees to the private school.

The obvious practice for the current school year will be much the same as was in 2015-2016. Some public colleges and universities will see it as a benefit to allow private school students to in effect check out their institutions without any charge to the student **OR** his or her private school. Others will offer the courses for “free” to the student but will require the private school to reimburse the cost of the standard tuition rate. And some institutions will contract with a qualified private school and qualified academic staff to teach the courses on the private school campus as an adjunct professor thus eliminating the tuition costs.

There is discussion underway with legislators that have agreed to pick up this cause and restore the original intent and thus cease to discriminate against the private sector student and their tax-paying parents. Once all the dust from the elections has settled there should be progress on the matter and bills drafted for submission in the 2017 Legislative Session.

FHSAA Has Full Membership or Joining by Sport Opportunity

The final language included in an education omnibus bill (House Bill 7029) was summarized by the Florida High School Athletics Association in a seven-page PDF. The first page of the PDF has the overview while the remaining pages show the wording of actual changes in law. A link to the resources is provided for your review. Further there are two FHSAA pdf Acrobat Reader files being placed on the FACCS web site for your reading and action if your school is a member of the FHSAA relating to Code of Conduct relating to the mandate and their information also included here:

http://www.fhsaa.org/sites/default/files/attachments/2016/03/24/node-24270/2016_legislation.pdf.

Convenience-Fee Access

House Bill 145 regarding financial transactions exempts private schools (as defined under a cross-reference in statute) from a prohibition against charging certain convenience fees to a family paying tuition, fees, or other student account charges by credit card. The bill also included a number of other provisions about open-end mortgages and alignment between federal and state requirements for electronic fund transfers. The bill unanimously passed both the House and the Senate and was signed into law by Gov. Scott on Mar. 10, 2016 and became effective July 1, 2016.

The following is the cross-reference language for the definition of private school:

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 meet the intent of s. 1003.01(13) or that gives preemployment or supplementary training in technology or in fields of 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. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. This definition does not include home education programs conducted in accordance with s. 1002.41.

Epinephrine Auto-Injector Requirements:

Key changes have been made to the state law which allows public and nonpublic schools to maintain epinephrine auto-injector supplies on campuses. House Bill 1305 removed the requirement that such

supplies be kept in a locked location. Instead the exact wording of the law now calls for a “secure location” as broadly described below:

“The epinephrine auto-injectors must be maintained in a secure location on the private school’s premises.”

The Florida Department of Education has a contact person for questions: Dianne Mennitt, MS, APRN, NCSN, School Health Nurse Consultant. Bureau of Exceptional Education and Student Services with the contact phone: [\(850\) 245-7851](tel:8502457851); Email: dmennitt@usf.edu

FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act (29 USC & 201 et seq.) becomes effective December 1, 2016. There are a number of resources that will offer Questions and Answers from the General Information Overtime Webinars that every school leader needs to review and be in proper posture with. Here are key resources. Questions about the new law should be addressed with your CPA or legal counsel.

<https://www.dol.gov/whd/overtime/final2016/webinarfaq.htm>; or
https://www.dol.gov/whd/overtime/fs17c_administrative.pdf; or
<https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.pdf>; or
https://www.dol.gov/whd/overtime/fs17a_overtime.htm

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