

STATE BOARD OF EDUCATION
Consent Item
September 29, 2014

SUBJECT: Approval of New Rule 6M-9.400, Early Learning Coalition Anti-Fraud Plans

PROPOSED BOARD ACTION

For Approval

AUTHORITY FOR STATE BOARD ACTION

Section 1001.213(2), Florida Statutes

EXECUTIVE SUMMARY

The Office of Early Learning (OEL) administers federal and state child care funds and partners with 30 local early learning coalitions (ELCs) to deliver comprehensive early learning services statewide. The office oversees three programs—the School Readiness Program, the Voluntary Prekindergarten Education Program, and Child Care Resource and Referral services. OEL is required to submit its proposed rules to the State Board of Education for approval.

The statutes related to the roles and responsibilities of ELCs were substantially revised with the passage of House Bill 7165 in 2013. Section 1002.91(8), Florida Statutes requires each ELC to adopt an anti-fraud plan, to be approved by OEL. The criteria for the anti-fraud plans is described in Rule 6M-9.400, FAC.

The rule requires ELCs to create procedures for detecting and investigation possible acts of fraud, abuse or overpayment and procedures to ensure due process for recipients. It also requires training on the detection and prevention of fraud, abuse and overpayment including an annual self-assessment of the ELC's internal controls, policies and procedures. The first ELC Anti-Fraud Plans are due to OEL November 30, 2014.

Supporting Documentation Included: Rule 6M-9.400, Early Learning Coalition Anti-Fraud Plans; Sections 1001.213(2) and 1002.91(4)&(8), Florida Statutes and OEL, Office of Inspector General, Fraud Status Report – August 2014.

Facilitator/Presenter: Shan Goff, Executive Director, Office of Early Learning

6M-9.400 Early Learning Coalition Anti-Fraud Plans.

(1) Definitions. As used in this rule,

(a) “Recipient” is the parent or legal guardian whose child was determined eligible for School Readiness or Voluntary Prekindergarten Education Program benefits.

(b) “Fraud” is an intentional deception, omission, or misrepresentation made by a person with knowledge that the deception, omission, or misrepresentation may result in unauthorized benefit to that person or another person, or any aiding and abetting of the commission of such an act. The term includes any act that constitutes fraud under applicable federal or state law.

(2) Anti-fraud plan approval. Each early learning coalition (coalition) shall adopt an anti-fraud plan addressing the detection and prevention of overpayments, abuse, and fraud relating to the provision of and payment for School Readiness program and Voluntary Prekindergarten Education Program services and submit the plan to the office for approval. The anti-fraud plan must be approved by the coalition board prior to submission to the Office of Early Learning. The plan must be sent to the Office of Early Learning’s Office of Inspector General no later than June 30 of each year. Submission may be electronic or through the mail. The Office of Early Learning will process the plan no later than September 1 of each year and shall notify the coalition in writing of approval or disapproval and the reasons for disapproval. If disapproved, a corrected plan shall be submitted no later than November 1 of each year. For the 2014-2015 fiscal year, the plan must be sent to the Office of Early Learning’s Office of Inspector General no later than November 30, 2014. The Office of Early Learning will process the plan no later than January 1, 2015 and shall notify the coalition in writing of approval or disapproval and the reasons for disapproval.

(3) Criteria for approval of anti-fraud plan. Each coalition’s anti-fraud plan shall include:

(a) A description or chart outlining the organizational structure of the plan’s personnel who are responsible for the investigation and reporting of possible overpayment, abuse, or fraud. This shall include the name and contact information of the primary coalition position responsible for implementing the early learning coalition’s anti-fraud activities.

(b) A description of the plan’s procedures for detecting and investigating possible acts of fraud, abuse, or overpayment. This shall include a review of data quality reports generated from the Office of Early Learning, documented verification of child care referrals from other organizations, a process for electronic monthly reporting to the Office of Early Learning the recipients and providers terminated for fraud, and a description of any fraud hotlines in place and how this information is shared with parents, providers, employees and the public.

(c) A description of the plan’s procedures for the mandatory reporting of possible abuse or fraud, including the possible overpayment associated with the abuse or fraud, to the Office of Early Learning’s Office of Inspector General. This shall include the name and contact information of the coalition position serving as the coalition administrator for the Office of Early Learning Fraud Referral System.

(d) A description of the plan’s program and procedures for education and training personnel on how to detect and prevent fraud, abuse, and overpayment including an annual self-assessment of the coalition’s internal controls, policies and procedures.

(e) A description of the plan's procedures, including the appropriate due process provisions for suspending or terminating from the School Readiness program or the Voluntary Prekindergarten Education Program a recipient who the coalition concludes has committed fraud. Due process provisions must include all elements set forth in subsection (4) below.

(4) Due process requirements for recipients. The early learning coalition anti-fraud plan shall include the following elements establishing due process:

(a) A clear policy of the right of the recipient to appeal suspension or termination of benefits based on information that leads the coalition to conclude that School Readiness or Voluntary Prekindergarten Education program benefits have been obtained or used fraudulently.

(b) The coalition shall provide written advance notice of the intended action to suspend or terminate benefits to the recipient to be affected and it must clearly advise of the allegations, the basis of the allegations, the intended action and the date the action is to be imposed. The coalition shall send the written advance notice at least fourteen (14) calendar days before the intended action. The written advance notice should be translated into the recipient's native language if the coalition's other communications with the recipient have been translated. The written advance notice shall include following:

1. The procedure for the recipient to follow to attempt to appeal the decision.
2. A statement, in bold print, that the failure to file a timely appeal waives the right to an appeal.
3. Notice of the potential for repayment of improper benefits if the conclusion of fraud is upheld, including any benefits received after the receipt of the written advance notice.
4. The procedure for the recipient to obtain a copy of his or her file.
5. The amount of overpayment to be recovered, if applicable.
6. The length of time for which the recipient's benefits are suspended or the date of the termination of benefits, if applicable. This length of time shall be proportionate to the alleged offense committed, consistent with suspensions or terminations issued to other recipients who allegedly committed comparable offenses, and may also consider prior offenses, as appropriate.

(c) A suspension or termination shall not be applied against recipients with a valid at-risk referral.

(d) If the recipient believes that the conclusion of fraud was made in error, the recipient should first seek to resolve the matter by contacting the coalition and providing the necessary documentation to resolve the issue. The executive director of the coalition shall not be involved in the pre-appeal resolution of the issue.

(e) If the recipient believes that the issue was not resolved by the coalition, the recipient may file a formal written appeal for review by the executive director of the coalition, using the following procedure:

1. Submit a written appeal to the executive director or other executive staff person as designated by the coalition board. The appeal must fully describe the nature of the error the recipient believes has been made and shall contain any documentation which supports the recipient's claim.
2. The appeal shall be postmarked or emailed before the date of the intended action. The recipient who fails to file a timely appeal waives the right of appeal.

3. If the recipient files a timely appeal, he or she will not be suspended or terminated from the program until the written decision of the executive director or the original date of the intended action, whichever is later.

4. The executive director of the coalition or other executive staff person designated by the coalition board must respond to the recipient, in writing, within thirty (30) days of receiving the appeal with a decision as to whether the suspension or termination will be upheld or modified.

5. The recipient who wishes to appeal the decision of the executive director of the coalition or other executive staff person designated by the coalition board may request further review by an appeals committee in accordance with subsection (e) of this rule. The request for further review by an appeals committee must be submitted to the coalition in writing within ten (10) calendar days of the date of the executive director or other executive staff person designated by the coalition board's written response to the recipient's formal written appeal.

(f)The recipient shall be given the opportunity to defend his or her position in an orderly proceeding of the appeals committee. When the meeting of the appeals committee is scheduled, the recipient shall be notified of the date of the appeals committee, informed that it is a public meeting, and informed that any information presented may be used by other state agencies.

1. The appeals committee shall be selected by the Chairman of the Board of the coalition and a chair of the appeals committee shall be named.

2. The appeals committee shall be convened within forty-five (45) calendar days of receipt of the recipient's request for an appeal.

3. The recipient shall be provided up to thirty (30) minutes to present their position and any information they wish the appeals committee to consider.

4. The coalition staff, excluding the executive director or other executive staff person designated by the coalition board, shall be available to provide any information requested by the committee.

5. The appeals committee will consider all statements, review all documents and may request any additional evidence or information from the parties if an appeals committee member believes it is necessary and relevant to the decision making. The required final determination letter will be tolled for the length of time given to provide the additional information.

6. The appeals committee shall select or appoint a member of the coalition, excluding the executive director the coalition or other executive staff person designated by the coalition board, to memorialize the events of the appeals committee proceeding and the final determination including the basis for the decision.

7. The appellant shall be notified in writing of the appeals committee's determination within ten (10) days of the date of the meeting.

8. The determination of the appeals committee shall be final.

(5) The due process procedures for providers will be provided for in the contract between the coalition and the provider, pursuant to Rule 6M-4.610, F.A.C.

Rulemaking Authority 1001.213(2), 1002.91(4),(8) FS. Law Implemented 1002.91(4),(8) FS. History–New

1001.213 Office of Early Learning.—

There is created within the Office of Independent Education and Parental Choice the Office of Early Learning, as required under s. 20.15, which shall be administered by an executive director. The office shall be fully accountable to the Commissioner of Education but shall:

(1) Independently exercise all powers, duties, and functions prescribed by law and shall not be construed as part of the K-20 education system.

(2) Adopt rules for the establishment and operation of the school readiness program and the Voluntary Prekindergarten Education Program. The office shall submit the rules to the State Board of Education for approval or disapproval. If the state board does not act on a rule within 60 days after receipt, the rule shall be filed immediately with the Department of State.

(3) In compliance with part VI of chapter 1002 and its powers and duties under s. 1002.82, administer the school readiness program at the state level for the state's eligible population described in s. 1002.87 and provide guidance to early learning coalitions in the implementation of the program.

(4) In compliance with parts V and VI of chapter 1002 and its powers and duties under s. 1002.75, administer the Voluntary Prekindergarten Education Program at the state level.

(5) Administer the operational requirements of the child care resource and referral network at the state level.

(6) Keep administrative staff to the minimum necessary to administer the duties of the office.

History.—s. 1, ch. 2013-252.

1002.91 Investigations of fraud or overpayment; penalties.—

(1) As used in this subsection, the term “fraud” means an intentional deception, omission, or misrepresentation made by a person with knowledge that the deception, omission, or misrepresentation may result in unauthorized benefit to that person or another person, or any aiding and abetting of the commission of such an act. The term includes any act that constitutes fraud under applicable federal or state law.

(2) To recover state, federal, and local matching funds, the office shall investigate early learning coalitions, recipients, and providers of the school readiness program and the Voluntary Prekindergarten Education Program to determine possible fraud or overpayment. If by its own inquiries, or as a result of a complaint, the office has reason to believe that a person, coalition, or provider has engaged in, or is engaging in, a fraudulent act, it shall investigate and determine whether any overpayment has occurred due to the fraudulent act. During the investigation, the office may examine all records, including electronic benefits transfer records, and make inquiry of all persons who may have knowledge as to any irregularity incidental to the disbursement of public moneys or other items or benefits authorizations to recipients.

(3) Based on the results of the investigation, the office may, in its discretion, refer the investigation to the Department of Financial Services for criminal investigation or refer the matter to the applicable coalition. Any suspected criminal violation identified by the office must be referred to the Department of Financial Services for criminal investigation.

(4) An early learning coalition may suspend or terminate a provider from participation in the school readiness program or the Voluntary Prekindergarten Education Program when it has reasonable cause to believe that the provider has committed fraud. The office shall adopt by rule appropriate due process procedures that the early learning coalition shall apply in suspending or terminating any provider, including the suspension or termination of payment. If suspended, the provider shall remain suspended until the completion of any investigation by the office, the Department of Financial Services, or any other state or federal agency, and any subsequent prosecution or other legal proceeding.

(5) If a school readiness program provider or a Voluntary Prekindergarten Education Program provider, or an owner, officer, or director thereof, is convicted of, found guilty of, or pleads guilty or nolo contendere to, regardless of adjudication, public assistance fraud pursuant to s. 414.39, or is acting as the beneficial owner for someone who has been convicted of, found guilty of, or pleads guilty or nolo contendere to, regardless of adjudication, public assistance fraud pursuant to s. 414.39, the early learning coalition shall refrain from contracting with, or using the services of, that provider for a period of 5 years. In addition, the coalition shall refrain from contracting with, or using the services of, any provider that shares an officer or director with a provider that is convicted of, found guilty of, or pleads guilty or nolo contendere to, regardless of adjudication, public assistance fraud pursuant to s. 414.39 for a period of 5 years.

(6) If the investigation is not confidential or otherwise exempt from disclosure by law, the results of the investigation may be reported by the office to the appropriate legislative committees, the Department of Children and Families, and such other persons as the office deems appropriate.

(7) The early learning coalition may not contract with a school readiness program provider or a Voluntary Prekindergarten Education Program provider who is on the United States Department of Agriculture National Disqualified List. In addition, the coalition may not contract with any provider that shares an officer or director with a provider that is on the United States Department of Agriculture National Disqualified List.

(8) Each early learning coalition shall adopt an anti-fraud plan addressing the detection and prevention of overpayments, abuse, and fraud relating to the provision of and payment for school readiness program and Voluntary Prekindergarten Education Program services and submit the plan to the office for approval. The office shall adopt rules establishing criteria for the anti-fraud plan, including appropriate due process provisions. The anti-fraud plan must include, at a minimum:

(a) A written description or chart outlining the organizational structure of the plan's personnel who are responsible for the investigation and reporting of possible overpayment, abuse, or fraud.

(b) A description of the plan's procedures for detecting and investigating possible acts of fraud, abuse, or overpayment.

(c) A description of the plan's procedures for the mandatory reporting of possible overpayment, abuse, or fraud to the Office of Inspector General within the office.

(d) A description of the plan's program and procedures for educating and training personnel on how to detect and prevent fraud, abuse, and overpayment.

(e) A description of the plan's procedures, including the appropriate due process provisions adopted by the office for suspending or terminating from the school readiness program or the Voluntary Prekindergarten Education Program a recipient or provider who the early learning coalition believes has committed fraud.

(9) A person who commits an act of fraud as defined in this section is subject to the penalties provided in s. 414.39(5)(a) and (b).

History.—s. 17, ch. 2013-252.



Careful Stewardship of Resources

The Office of Inspector General

About the Office of Inspector General

Investing in early learning is important for children, families and Florida. The inspector general’s job is to help ensure that our state’s investment is working—that Office of Early Learning (OEL) programs and operations are efficient, effective and reliable.

The team conducts independent objective audits, investigations and inspections and is also responsible for preventing and detecting mismanagement or waste in operations and programs at OEL and early learning programs across the state.

During the 2013 session, the Florida Legislature passed important early learning legislation designed to improve quality and bring more accountability and transparency to the state’s early learning programs, including the Voluntary Prekindergarten (VPK) Education and School Readiness programs. House Bill 7165 sets forth criteria for early learning coalitions to establish anti-fraud plans, including due process procedures for removing recipients

from the program. OEL’s inspector general is working closely with coalitions, providers and other early learning stakeholders in this effort.



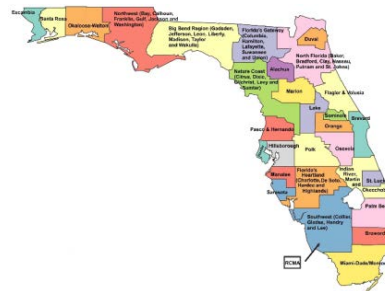
Individuals who may know that an employee, contractor, child care service provider, parent or other benefit recipient has done something wrong, such as falsifying records, committing fraud, or wasting or mismanaging state personnel, equipment or money, should submit information to Rodney MacKinnon, Inspector General, Office of Early Learning, 250 Marriott Drive, Tallahassee, FL 32399. The office will review the complaint and investigate or refer it to the appropriate office to handle.

Fraud Status Report – August 2014

To improve transparency and accountability and eliminate fraud in Florida’s early learning services, OEL provides monthly fraud status reports for early learning stakeholders and the public.

Current anti-fraud activities are focused in four main areas.

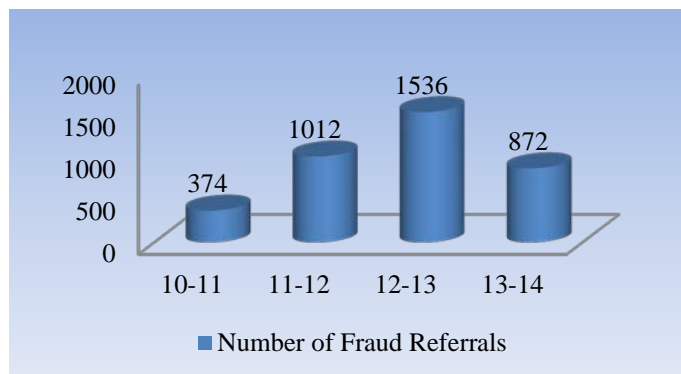
1. **Data anomaly analysis** – Reviews including providers with atypical attendance patterns like perfect attendance for all children in a month are identified for review.
2. **Cooperation with Child Care Food Program** – Working with Department of Health’s (DOH) Child Care Food Program, child care attendance reported to OEL is compared to child care attendance reported to DOH. Thirty-five providers have been placed on the Child Care Food Program Disqualified List since July 2013, leaving them ineligible to receive OEL reimbursement.
3. **Technical assistance** – The inspector general’s office provides technical assistance to early learning coalition staff to help investigate possible fraud.
4. **Data matches** – The inspector general’s office compares the records of parents receiving school readiness program benefits that require employment to the list of people receiving reemployment assistance benefits from the Department of Economic Opportunity’s Reemployment Assistance program.



Suspected Fraud Referrals from ELCs and OEL to DFS

Fraud referrals for August 2014	47
Fraud referrals year-to-date	83
Average monthly total – prior three years	95

Fraud Referrals, Historical



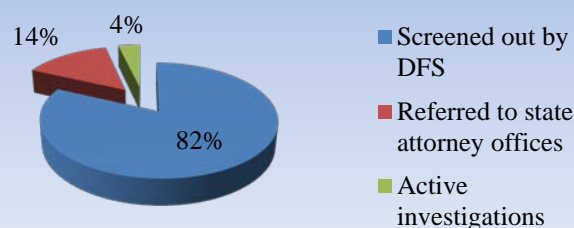
Restitution by Clients or Providers

Restitution orders year-to-date	22
Restitution collected year-to-date	\$77,098.48
Total restitution ordered year-to-date	\$179,638.03
*Restitution often not at full fraud value. Amount ordered and collected do not correlate, since collections occur retrospectively.	

Reemployment Assistance and School Readiness Cases Identified in 2011 Auditor General Report

Fraud referrals made by ELCs*	631
Cases screened out by Division of Financial Services (DFS)	517
Cases referred to state attorney offices	91
Active investigations	23
Restitution orders	38
Total restitution ordered	\$295,019.02**
*Based on reconciling fraud referral system and auditor general data.	
**Restitution often not at full fraud value.	

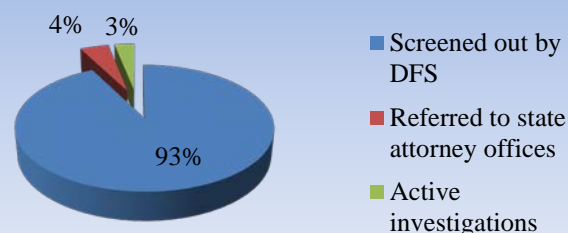
2011 Auditor General Report Cases



Reemployment Assistance (RA) and School Readiness Cases Identified in Data Matches*

Data matches	4,513
Fraud referrals made by ELCs	1,568
Cases screened out by DFS	1,450
Cases referred to state attorney offices	70
Active investigations	48
Restitution orders	21
Total restitution ordered	\$143,518.46
*Data matches began January 2013.	

RA Data Match Cases



Non-Data Match Cases*

Fraud referrals made by ELCs	744
Cases screened out by DFS	458
Cases referred to state attorney offices	92
Active investigations	194
Restitution orders	37
Total restitution ordered	\$312,982.42
*Data matches began January 2013.	

Non-Data Match Cases

