

Private School Application to Administer 2019–20 Florida Statewide Assessments

Attachment A: Sections 1002.385, 1002.395 and 1002.40, Florida Statutes

- Statutes regarding the Gardiner Scholarship Program, the Florida Tax Credit Scholarship Program, and the Hope Scholarship Program.
- Refer to statement number 2 in the 2019–20 application.
- Sign and return the signature page at the end of this attachment.

Title XLVIII
K-20 EDUCATION CODE
Chapter 1002
STUDENT AND PARENTAL RIGHTS AND EDUCATIONAL CHOICES

1002.385 The Gardiner Scholarship.—

- (1) ESTABLISHMENT OF PROGRAM.—The Gardiner Scholarship Program is established to provide the option for a parent to better meet the individual educational needs of his or her eligible child. All written explanatory materials, state websites, scholarship organization materials, letters to parents, scholarship agreements, and any other information describing this program to the public shall refer to a scholarship under the program as the “Gardiner Scholarship.”
- (2) DEFINITIONS.—As used in this section, the term:
- (a) “Approved provider” means a provider approved by the Agency for Persons with Disabilities, a health care practitioner as defined in s. [456.001](#)(4), or a provider approved by the department pursuant to s. [1002.66](#).
- (b) “Curriculum” means a complete course of study for a particular content area or grade level, including any required supplemental materials and associated online instruction.
- (c) “Department” means the Department of Education.
- (d) “Disability” means, for a 3- or 4-year-old child or for a student in kindergarten to grade 12, autism spectrum disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association; cerebral palsy, as defined in s. [393.063](#)(6); Down syndrome, as defined in s. [393.063](#)(15); an intellectual disability, as defined in s. [393.063](#)(24); Phelan-McDermid syndrome, as defined in s. [393.063](#)(28); Prader-Willi syndrome, as defined in s. [393.063](#)(29); spina bifida, as defined in s. [393.063](#)(40); being a high-risk child, as defined in s. [393.063](#)(23)(a); muscular dystrophy; Williams syndrome; rare diseases which affect patient populations of fewer than 200,000 individuals in the United States, as defined by the National Organization for Rare Disorders; anaphylaxis; deaf; visually impaired; traumatic brain injured; hospital or homebound; or identification as dual sensory impaired, as defined by rules of the State Board of Education and evidenced by reports from local school districts. The term “hospital or homebound” includes a student who has a medically diagnosed physical or psychiatric condition or illness, as defined by the state board in rule, and who is confined to the home or hospital for more than 6 months.
- ¹(e) “Eligible nonprofit scholarship-funding organization” or “organization” means a nonprofit scholarship-funding organization that is approved pursuant to s. [1002.395](#)(15).
- (f) “Eligible postsecondary educational institution” means a Florida College System institution; a state university; a school district technical center; a school district adult general education center; an independent college or university that is eligible to participate in the William L. Boyd, IV, ²Effective Access to Student Education Grant Program under s. [1009.89](#); or an accredited independent postsecondary educational institution, as defined in s. [1005.02](#), which is licensed to operate in the state pursuant to requirements specified in part III of chapter 1005.
- (g) “Eligible private school” means a private school, as defined in s. [1002.01](#), which is located in this state, which offers an education to students in any grade from kindergarten to grade 12, and which meets the requirements of:
1. Sections [1002.42](#) and [1002.421](#); and
 2. A scholarship program under s. [1002.39](#) or s. [1002.395](#), as applicable, if the private school participates in a scholarship program under s. [1002.39](#) or s. [1002.395](#).
- (h) “IEP” means individual education plan, regardless of whether the plan has been reviewed or revised within the last 12 months.
- (i) “Inactive” means that no eligible expenditures have been made from an account funded pursuant to paragraph (13)(d).

(j) “Parent” means a resident of this state who is a parent, as defined in s. [1000.21](#).

(k) “Program” means the Gardiner Scholarship Program established in this section.

(3) PROGRAM ELIGIBILITY.—A parent of a student with a disability may request and receive from the state a Gardiner Scholarship for the purposes specified in subsection (5) if:

(a) The student:

1. Is a resident of this state;
2. Is 3 or 4 years of age on or before September 1 of the year in which the student applies for program participation, or is eligible to enroll in kindergarten through grade 12 in a public school in this state;
3. Has a disability as defined in paragraph (2)(d); and
4. Is the subject of an IEP written in accordance with rules of the State Board of Education or with the applicable rules of another state or has received a diagnosis of a disability from a physician who is licensed under chapter 458 or chapter 459, a psychologist who is licensed under chapter 490, or a physician who holds an active license issued by another state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) The parent has applied to an eligible nonprofit scholarship-funding organization to participate in the program by February 1 before the school year in which the student will participate or an alternative date as set by the organization for any vacant, funded slots. The request must be communicated directly to the organization in a manner that creates a written or electronic record of the request and the date of receipt of the request. In addition to the application and any documentation required by the organization or by State Board of Education rule, the parent may submit a final verification document pursuant to this paragraph to receive scholarship funds in the student’s account before the department confirms program eligibility pursuant to paragraph (9)(e). The final verification document must consist of one of the following items applicable to the student:

1. A completed withdrawal form from the school district, if the student was enrolled in a public school before the determination of program eligibility.
2. A letter of admission or enrollment from an eligible private school for the fiscal year in which the student wishes to participate and, if applicable, a copy of the notification from the private school that the student has withdrawn from the John M. McKay Scholarships for Students with Disabilities Program or the Florida Tax Credit Scholarship Program.
3. A copy of the notice of the parent’s intent to establish and maintain a home education program required by s. [1002.41](#)(1)(a) or the annual educational evaluation of the student in a home education program, which is required by s. [1002.41](#)(2).

(4) PROGRAM PROHIBITIONS.—A student is not eligible for the program if he or she is:

(a) Enrolled in a public school, including, but not limited to, the Florida School for the Deaf and the Blind; the Florida Virtual School; the College-Preparatory Boarding Academy; a developmental research school authorized under s. [1002.32](#); a charter school authorized under s. [1002.33](#), s. [1002.331](#), or s. [1002.332](#); or a virtual education program authorized under s. [1002.45](#). For purposes of this paragraph, a 3- or 4-year-old child who receives services funded through the Florida Education Finance Program is considered to be a student enrolled in a public school. Funding provided under this section for a child eligible for enrollment in the Voluntary Prekindergarten Education Program shall constitute funding for the child under part V of this chapter, and no additional funding shall be provided for the child under part V.

(b) Enrolled in a school operating for the purpose of providing educational services to youth in the Department of Juvenile Justice commitment programs.

(c) Receiving a scholarship pursuant to the Florida Tax Credit Scholarship Program under s. [1002.395](#) or the John M. McKay Scholarships for Students with Disabilities Program under s. [1002.39](#).

- (d) Receiving any other educational scholarship pursuant to this chapter.
 - (e) Enrolled in the Florida School for the Deaf and the Blind.
- (5) **AUTHORIZED USES OF PROGRAM FUNDS.**—Program funds must be used to meet the individual educational needs of an eligible student and may be spent for the following purposes:
- (a) Instructional materials, including digital devices, digital periphery devices, and assistive technology devices that allow a student to access instruction or instructional content and training on the use of and maintenance agreements for these devices.
 - (b) Curriculum as defined in paragraph (2)(b).
 - (c) Specialized services by approved providers or by a hospital in this state which are selected by the parent. These specialized services may include, but are not limited to:
 1. Applied behavior analysis services as provided in ss. [627.6686](#) and [641.31098](#).
 2. Services provided by speech-language pathologists as defined in s. [468.1125](#).
 3. Occupational therapy services as defined in s. [468.203](#).
 4. Services provided by physical therapists as defined in s. [486.021](#).
 5. Services provided by listening and spoken language specialists and an appropriate acoustical environment for a child who is deaf or hard of hearing and who has received an implant or assistive hearing device.
 - ¹(d) Tuition or fees associated with full-time or part-time enrollment in a home education program, an eligible private school, an eligible postsecondary educational institution or a program offered by the postsecondary institution, a private tutoring program authorized under s. [1002.43](#), a virtual program offered by a department-approved private online provider that meets the provider qualifications specified in s. [1002.45](#)(2)(a), the Florida Virtual School as a private paying student, or an approved online course offered pursuant to s. [1003.499](#) or s. [1004.0961](#).
 - (e) Fees for nationally standardized, norm-referenced achievement tests, Advanced Placement Examinations, industry certification examinations, assessments related to postsecondary education, or other assessments.
 - (f) Contributions to the Stanley G. Tate Florida Prepaid College Program pursuant to s. [1009.98](#) or the Florida College Savings Program pursuant to s. [1009.981](#), for the benefit of the eligible student.
 - (g) Contracted services provided by a public school or school district, including classes. A student who receives services under a contract under this paragraph is not considered enrolled in a public school for eligibility purposes as specified in subsection (4).
 - ¹(h) Tuition and fees for part-time tutoring services provided by a person who holds a valid Florida educator’s certificate pursuant to s. [1012.56](#); a person who holds an adjunct teaching certificate pursuant to s. [1012.57](#); a person who has a bachelor’s degree or a graduate degree in the subject area in which instruction is given; or a person who has demonstrated a mastery of subject area knowledge pursuant to s. [1012.56](#)(5). As used in this paragraph, the term “part-time tutoring services” does not qualify as regular school attendance as defined in s. [1003.01](#)(13)(e).
 - (i) Fees for specialized summer education programs.
 - (j) Fees for specialized after-school education programs.
 - (k) Transition services provided by job coaches.
 - (l) Fees for an annual evaluation of educational progress by a state-certified teacher under s. [1002.41](#)(1)(f), if this option is chosen for a home education student.
 - (m) Tuition and fees associated with programs offered by Voluntary Prekindergarten Education Program providers approved pursuant to s. [1002.55](#) and school readiness providers approved pursuant to s. [1002.88](#).

(n) Fees for services provided at a center that is a member of the Professional Association of Therapeutic Horsemanship International.

(o) Fees for services provided by a therapist who is certified by the Certification Board for Music Therapists or credentialed by the Art Therapy Credentials Board, Inc.

¹(p) Tuition or fees associated with enrollment in a nationally or internationally recognized research-based training program for a child with a neurological disorder or brain damage.

A provider of any services receiving payments pursuant to this subsection may not share, refund, or rebate any moneys from the Gardiner Scholarship with the parent or participating student in any manner. A parent, student, or provider of any services may not bill an insurance company, Medicaid, or any other agency for the same services that are paid for using Gardiner Scholarship funds.

(6) TERM OF THE PROGRAM.—For purposes of continuity of educational choice and program integrity:

(a)1. Program payments made by the state to an organization for a Gardiner Scholarship under this section shall continue until:

- a. The parent does not renew program eligibility;
- b. The organization determines that the student is not eligible for program renewal;
- c. The Commissioner of Education suspends or revokes program participation or use of funds;
- d. The student's parent has forfeited participation in the program for failure to comply with subsection (11);
- e. The student enrolls in a public school; or
- f. The student graduates from high school or attains 22 years of age, whichever occurs first.

2. Reimbursements for program expenditures may continue until the account balance is expended or the account is closed pursuant to paragraph (b).

(b)1. A student's scholarship account must be closed and any remaining funds, including, but not limited to, contributions made to the Stanley G. Tate Florida Prepaid College Program or earnings from or contributions made to the Florida College Savings Program using program funds pursuant to paragraph (5)(f), shall revert to the state after:

- a. Denial or revocation of program eligibility by the commissioner for fraud or abuse, including, but not limited to, the student or student's parent accepting any payment, refund, or rebate, in any manner, from a provider of any services received pursuant to subsection (5);
- b. Any period of 3 consecutive years after high school completion or graduation during which the student has not been enrolled in an eligible postsecondary educational institution or a program offered by the institution; or
- c. Three consecutive fiscal years in which an account has been inactive.

2. The commissioner must notify the parent and the organization when a Gardiner Scholarship account is closed and program funds revert to the state.

(7) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—

(a)1. The parent of a student with a disability who does not have an IEP in accordance with subparagraph (3)(a)4. or who seeks a reevaluation of an existing IEP may request an IEP meeting and evaluation from the school district in order to obtain or revise a matrix of services. The school district shall notify a parent who has made a request for an IEP that the district is required to complete the IEP and matrix of services within 30 days after receiving notice of the parent's request. The school district shall conduct a meeting and develop an IEP and a matrix of services within 30 days after receipt of the parent's request in accordance with State Board of Education rules. The school district must complete a matrix that assigns the student to one of the levels of service as they existed before the 2000-2001 school year.

- 2.a. The school district must provide the student’s parent and the department with the student’s matrix level within 10 calendar days after its completion.
- b. The department shall notify the parent and the organization of the amount of the funds awarded within 10 days after receiving the school district’s notification of the student’s matrix level.
- c. A school district may change a matrix of services only if the change is a result of an IEP reevaluation or to correct a technical, typographical, or calculation error.
- (b) For each student participating in the program who chooses to participate in statewide, standardized assessments under s. [1008.22](#) or the Florida Alternate Assessment, the school district in which the student resides must notify the student and his or her parent about the locations and times to take all statewide, standardized assessments.

¹(8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An eligible private school may be sectarian or nonsectarian and shall:

- (a) Comply with all requirements for private schools participating in state school choice scholarship programs pursuant to s. [1002.421](#).
- (b)1. Annually administer or make provision for students participating in the program in grades 3 through 10 to take one of the nationally norm-referenced tests identified by the Department of Education or the statewide assessments pursuant to s. [1008.22](#). Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement. A participating private school shall report a student’s scores to the parent.
- 2. Administer the statewide assessments pursuant to s. [1008.22](#) if a private school chooses to offer the statewide assessments. A participating private school may choose to offer and administer the statewide assessments to all students who attend the private school in grades 3 through 10 and must submit a request in writing to the Department of Education by March 1 of each year in order to administer the statewide assessments in the subsequent school year.

If a private school fails to meet the requirements of this subsection or s. [1002.421](#), the commissioner may determine that the private school is ineligible to participate in the scholarship program.

(9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The department shall:

- (a) Maintain on its website a list of approved providers as required in s. [1002.66](#), eligible postsecondary educational institutions, eligible private schools, and organizations and may identify or provide links to lists of other approved providers.
- (b) Require each organization to verify eligible expenditures before the distribution of funds for any expenditures made pursuant to paragraphs (5)(a) and (b). Review of expenditures made for services specified in paragraphs (5)(c)-(m) may be completed after the purchase is made.

¹(c) Investigate any written complaint of a violation of this section by a parent, a student, a private school, a public school or a school district, an organization, a provider, or another appropriate party in accordance with the process established by s. [1002.421](#).

(d) Require quarterly reports by an organization, which must, at a minimum, include the number of students participating in the program; the demographics of program participants; the disability category of program participants; the matrix level of services, if known; the program award amount per student; the total expenditures for the purposes specified in subsection (5); the types of providers of services to students; and any other information deemed necessary by the department.

(e) Compare the list of students participating in the program with the public school student enrollment lists, Voluntary Prekindergarten Education Program enrollment lists, and the list of students participating in school choice scholarship programs established pursuant to this chapter before each scholarship award is provided to the organization, and subsequently throughout the school year, to avoid duplicate payments and confirm program eligibility. A parent who files a final verification pursuant to paragraph (3)(b) shall receive scholarship funds before the department confirms program eligibility.

(10) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—

¹(a) The Commissioner of Education:

1. May suspend or revoke program participation or use of program funds by the student or participation or eligibility of an organization, eligible postsecondary educational institution, approved provider, or other party for a violation of this section.
2. May determine the length of, and conditions for lifting, a suspension or revocation specified in this subsection.
3. May recover unexpended program funds or withhold payment of an equal amount of program funds to recover program funds that were not authorized for use.
4. Shall deny or terminate program participation upon a parent's forfeiture of a Gardiner Scholarship pursuant to subsection (11).

(b) In determining whether to suspend or revoke participation or lift a suspension or revocation in accordance with this subsection, the commissioner may consider factors that include, but are not limited to, acts or omissions that led to a previous suspension or revocation of participation in a state or federal program or an education scholarship program; failure to reimburse the organization for funds improperly received or retained; failure to reimburse government funds improperly received or retained; imposition of a prior criminal sanction related to the person or entity or its officers or employees; imposition of a civil fine or administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation related to a person's or entity's management or operation; or other types of criminal proceedings in which the person or entity or its officers or employees were found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense involving fraud, deceit, dishonesty, or moral turpitude.

(11) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM PARTICIPATION.—A parent who applies for program participation under this section is exercising his or her parental option to determine the appropriate placement or the services that best meet the needs of his or her child. The scholarship award for a student is based on a matrix that assigns the student to support Level III services. If a parent receives an IEP and a matrix of services from the school district pursuant to subsection (7), the amount of the payment shall be adjusted as needed, when the school district completes the matrix.

¹(a) To satisfy or maintain program eligibility, including eligibility to receive and spend program payments, the parent must sign an agreement with the organization and annually submit a notarized, sworn compliance statement to the organization to:

1. Affirm that the student is enrolled in a program that meets regular school attendance requirements as provided in s. [1003.01\(13\)\(b\)-\(d\)](#).
 2. Affirm that the program funds are used only for authorized purposes serving the student's educational needs, as described in subsection (5).
 3. Affirm that the parent is responsible for the education of his or her student by, as applicable:
 - a. Requiring the student to take an assessment in accordance with paragraph (8)(b);
 - b. Providing an annual evaluation in accordance with s. [1002.41\(1\)\(f\)](#); or
 - c. Requiring the child to take any preassessments and postassessments selected by the provider if the child is 4 years of age and is enrolled in a program provided by an eligible Voluntary Prekindergarten Education Program provider. A student with disabilities for whom a preassessment and postassessment is not appropriate is exempt from this requirement. A participating provider shall report a student's scores to the parent.
 4. Affirm that the student remains in good standing with the provider or school if those options are selected by the parent.
- (b) The parent must file an application for initial program participation with an organization by the dates established pursuant to this section.
- (c) The parent must notify the school district that the student is participating in the Gardiner Scholarship Program if the parent chooses to enroll the student in a home education program as provided in s. [1002.41](#). This notification is not in lieu of

the required notification a parent must submit to the district when establishing a home education program pursuant to s. [1002.41](#)(1)(a).

(d) The parent must enroll his or her child in a program from a Voluntary Prekindergarten Education Program provider authorized under s. [1002.55](#), a school readiness provider authorized under s. [1002.88](#), or an eligible private school if either option is selected by the parent.

(e) The parent must annually renew participation in the program. Notwithstanding any changes to the student's IEP, a student who was previously eligible for participation in the program shall remain eligible to apply for renewal. However, for a high-risk child to continue to participate in the program in the school year after he or she reaches 6 years of age, the child's application for renewal of program participation must contain documentation that the child has a disability defined in paragraph (2)(d) other than high-risk status.

(f) The parent is responsible for procuring the services necessary to educate the student. If a parent does not procure the necessary educational services for the student and the student's account has been inactive for 2 consecutive fiscal years, the student is ineligible for additional scholarship payments until the scholarship funding organization verifies that expenditures from the account have occurred. When the student receives a Gardiner Scholarship, the district school board is not obligated to provide the student with a free appropriate public education. For purposes of s. [1003.57](#) and the Individuals with Disabilities in Education Act, a participating student has only those rights that apply to all other unilaterally parentally placed students, except that, when requested by the parent, school district personnel must develop an individual education plan or matrix level of services.

(g) The parent is responsible for all eligible expenses in excess of the amount of the Gardiner Scholarship.

(h) The parent may not transfer any prepaid college plan or college savings plan funds contributed pursuant to paragraph (5)(f) to another beneficiary while the plan contains funds contributed pursuant to this section.

(i) The parent may not receive a payment, refund, or rebate from an approved provider of any services under this program.

A parent who fails to comply with this subsection forfeits the Gardiner Scholarship.

(12) OBLIGATIONS OF SCHOLARSHIP-FUNDING ORGANIZATIONS.—An organization may establish Gardiner Scholarships for eligible students by:

(a) Receiving applications and determining student eligibility in accordance with the requirements of this section. When an application is approved, the organization must provide the department with information on the student to enable the department to determine student funding in accordance with subsection (13).

(b) Notifying parents of their receipt of a scholarship on a first-come, first-served basis, based upon the funds provided.

(c) Establishing a date pursuant to paragraph (3)(b) by which a parent must confirm initial or continuing participation in the program.

(d) Reviewing applications and awarding scholarship funds to approved applicants using the following priorities:

1. Renewing students from the previous school year;
2. Students retained on the previous school year's wait list;
3. Newly approved applicants; and
4. Late-filed applicants.

An approved student who does not receive a scholarship must be placed on the wait list in the order in which his or her application is approved. The students on the wait list or subsequent late-filing applicants may be allowed to participate in the program during the fiscal year, within the amount of funds provided. A student who does not receive a scholarship within the fiscal year shall be retained on the wait list for the subsequent year.

- (e) Establishing and maintaining separate accounts for each eligible student. For each account, the organization must maintain a record of accrued interest that is retained in the student's account and available only for authorized program expenditures.
- (f) Verifying qualifying educational expenditures pursuant to the requirements of paragraph (9)(b).
- (g) Returning any remaining program funds to the department pursuant to paragraph (6)(b).
- (h) Notifying the parent about the availability of, and the requirements associated with requesting, an initial IEP or IEP reevaluation every 3 years for each student participating in the program.
- (i) Notifying the department of any violation of this section.
- (j) Documenting each scholarship student's eligibility for a fiscal year before granting a scholarship for that fiscal year pursuant to paragraph (3)(b). A student is ineligible for ³a scholarship if the student's account has been inactive for 2 consecutive fiscal years. However, once an eligible expenditure is made pursuant to paragraph (11)(f), the student ⁴is eligible for a scholarship based on available funds.

(13) FUNDING AND PAYMENT.—

(a)1. The maximum funding amount granted for an eligible student with a disability, pursuant to subsection (3), shall be equivalent to the base student allocation in the Florida Education Finance Program multiplied by the appropriate cost factor for the educational program that would have been provided for the student in the district school to which he or she would have been assigned, multiplied by the district cost differential.

2. In addition, an amount equivalent to a share of the guaranteed allocation for exceptional students in the Florida Education Finance Program shall be determined and added to the amount in subparagraph 1. The calculation shall be based on the methodology and the data used to calculate the guaranteed allocation for exceptional students for each district in chapter 2000-166, Laws of Florida. Except as provided in subparagraph 3., the calculation shall be based on the student's grade, the matrix level of services, and the difference between the 2000-2001 basic program and the appropriate level of services cost factor, multiplied by the 2000-2001 base student allocation and the 2000-2001 district cost differential for the sending district. The calculated amount must also include an amount equivalent to the per-student share of supplemental academic instruction funds, instructional materials funds, technology funds, and other categorical funds as provided in the General Appropriations Act.

3. Beginning with the 2017-2018 fiscal year and each fiscal year thereafter, the calculation for a new student entering the program shall be based on the student's matrix level of services. The funding for a student without a matrix of services shall be based on the matrix that assigns the student to support Level III of services. If a parent chooses to request and receive a matrix of services from the school district, when the school district completes the matrix, the amount of the payment shall be adjusted as needed.

(b) The amount of the awarded funds shall be 90 percent of the calculated amount. One hundred percent of the funds appropriated for the program shall be released to the department at the beginning of the first quarter of each fiscal year.

(c) Upon notification from the organization that a parent has filed a final verification document pursuant to paragraph (3)(b) or upon notification from the organization that a 3- or 4-year-old child's application has been approved for the program, the department shall release the student's scholarship funds to the organization to be deposited into the student's account.

(d) For initial eligibility for the program, students determined eligible by the organization for a Gardiner Scholarship by:

1. September 1 shall receive 100 percent of the total awarded funds.
2. November 1 shall receive 75 percent of the total awarded funds.
3. February 1 shall receive 50 percent of the total awarded funds.
4. April 1 shall receive 25 percent of the total awarded funds.

(e) Accrued interest in the student’s account is in addition to, and not part of, the awarded funds. Program funds include both the awarded funds and accrued interest.

(f) The organization may develop a system for payment of benefits by funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of payment that the department deems to be commercially viable or cost-effective. A student’s scholarship award may not be reduced for debit card or electronic payment fees. Commodities or services related to the development of such a system shall be procured by competitive solicitation unless they are purchased from a state term contract pursuant to s. [287.056](#).

(g) In addition to funds appropriated for scholarship awards and subject to a separate, specific legislative appropriation, an organization may receive an amount equivalent to not more than 3 percent of the amount of each scholarship award from state funds for administrative expenses if the organization has operated as a nonprofit entity for at least the preceding 3 fiscal years and did not have any findings of material weakness or material noncompliance in its most recent audit under s. [1002.395](#)(6)(m). Such administrative expenses must be reasonable and necessary for the organization’s management and distribution of scholarships under this section. Funds authorized under this paragraph may not be used for lobbying or political activity or expenses related to lobbying or political activity. An organization may not charge an application fee for a scholarship. Administrative expenses may not be deducted from funds appropriated for scholarship awards.

(h) Moneys received pursuant to this section do not constitute taxable income to the qualified student or parent of the qualified student.

(14) OBLIGATIONS OF THE AUDITOR GENERAL.—

(a) The Auditor General shall conduct an annual operational audit of accounts and records of each organization that participates in the program. As part of this audit, the Auditor General shall verify, at a minimum, the total number of students served and the eligibility of reimbursements made by the organization and transmit that information to the department. The Auditor General shall provide the commissioner with a copy of each annual operational audit performed pursuant to this subsection within 10 days after the audit is finalized.

(b) The Auditor General shall notify the department of any organization that fails to comply with a request for information.

(15) OBLIGATIONS RELATED TO APPROVED PROVIDERS.—The Department of Health, the Agency for Persons with Disabilities, and the Department of Education shall work with an organization for easy or automated access to lists of licensed providers of services specified in paragraph (5)(c) to ensure efficient administration of the program.

(16) LIABILITY.—The state is not liable for the award or any use of awarded funds under this section.

(17) SCOPE OF AUTHORITY.—This section does not expand the regulatory authority of this state, its officers, or any school district to impose additional regulation on participating private schools, independent postsecondary educational institutions, and private providers beyond those reasonably necessary to enforce requirements expressly set forth in this section.

(18) RULES.—The State Board of Education shall adopt rules pursuant to ss. [120.536](#)(1) and [120.54](#) to administer this section.

History.—s. 16, ch. 2014-184; ss. 5, 9, ch. 2015-222; s. 5, ch. 2016-2; s. 33, ch. 2016-65; s. 12, ch. 2016-140; s. 52, ch. 2017-3; s. 48, ch. 2017-116; s. 1, ch. 2017-166; s. 25, ch. 2018-4; s. 13, ch. 2018-6; s. 5, ch. 2018-134.

¹**Note.**—Section 49, ch. 2018-6, provides that:

“(1) The Department of Revenue is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of administering the provisions of this act.

“(2) Notwithstanding any other provision of law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

“(3) This section shall take effect upon this act becoming a law and shall expire January 1, 2022.”

²**Note.**—Section 25, ch. 2018-4, directs the Division of Law Revision and Information “to substitute the term ‘Effective Access to Student Education Grant Program’ for ‘Florida Resident Access Grant Program’ and the term ‘Effective Access to Student Education grant’ for ‘Florida resident access grant’ wherever those terms appear in the Florida Statutes.”

³**Note.**—As amended by s. 48, ch. 2017-116. The amendment by s. 1, ch. 2017-166, used the words “scholarship funding” instead of the words “a scholarship.”

⁴**Note.**—As amended by s. 48, ch. 2017-116. The amendment by s. 1, ch. 2017-166, used the words “may resume scholarship funding,” instead of the words “is eligible for a scholarship.”

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K-20 EDUCATION CODE
Chapter 1002

STUDENT AND PARENTAL RIGHTS AND EDUCATIONAL CHOICES

1002.395 Florida Tax Credit Scholarship Program.—

(1) FINDINGS AND PURPOSE.—

(a) The Legislature finds that:

1. It has the inherent power to determine subjects of taxation for general or particular public purposes.
2. Expanding educational opportunities and improving the quality of educational services within the state are valid public purposes that the Legislature may promote using its sovereign power to determine subjects of taxation and exemptions from taxation.
3. Ensuring that all parents, regardless of means, may exercise and enjoy their basic right to educate their children as they see fit is a valid public purpose that the Legislature may promote using its sovereign power to determine subjects of taxation and exemptions from taxation.
4. Expanding educational opportunities and the healthy competition they promote are critical to improving the quality of education in the state and to ensuring that all children receive the high-quality education to which they are entitled.

(b) The purpose of this section is to:

1. Enable taxpayers to make private, voluntary contributions to nonprofit scholarship-funding organizations in order to promote the general welfare.
2. Provide taxpayers who wish to help parents with limited resources exercise their basic right to educate their children as they see fit with a means to do so.
3. Promote the general welfare by expanding educational opportunities for children of families that have limited financial resources.
4. Enable children in this state to achieve a greater level of excellence in their education.
5. Improve the quality of education in this state, both by expanding educational opportunities for children and by creating incentives for schools to achieve excellence.

(c) The purpose of this section is not to prescribe the standards or curriculum for private schools. A private school retains the authority to determine its own standards and curriculum.

(2) DEFINITIONS.—As used in this section, the term:

- (a) “Annual tax credit amount” means, for any state fiscal year, the sum of the amount of tax credits approved under paragraph (5)(b), including tax credits to be taken under s. [220.1875](#) or s. [624.51055](#), which are approved for a taxpayer whose taxable year begins on or after January 1 of the calendar year preceding the start of the applicable state fiscal year.
- (b) “Department” means the Department of Revenue.
- (c) “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 by the Department of Children and Families.
- (d) “Division” means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(e) “Eligible contribution” means a monetary contribution from a taxpayer, subject to the restrictions provided in this section, to an eligible nonprofit scholarship-funding organization. The taxpayer making the contribution may not designate a specific child as the beneficiary of the contribution.

¹(f) “Eligible nonprofit scholarship-funding organization” means a state university; or an independent college or university that is eligible to participate in the William L. Boyd, IV,²Effective Access to Student Education Grant Program, located and chartered in this state, is not for profit, and is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools; or is a charitable organization that:

1. Is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code;
2. Is a Florida entity formed under chapter 605, chapter 607, or chapter 617 and whose principal office is located in the state; and
3. Complies with subsections (6) and (15).

(g) “Eligible private school” means a private school, as defined in s. [1002.01\(2\)](#), located in Florida which offers an education to students in any grades K-12 and that meets the requirements in subsection (8).

(h) “Household income” has the same meaning as the term “income” as defined in the Income Eligibility Guidelines for free and reduced price meals under the National School Lunch Program in 7 C.F.R. part 210 as published in the Federal Register by the United States Department of Agriculture.

(i) “Owner or operator” includes:

1. An owner, president, officer, or director of an eligible nonprofit scholarship-funding organization or a person with equivalent decisionmaking authority over an eligible nonprofit scholarship-funding organization.
2. An owner, operator, superintendent, or principal of an eligible private school or a person with equivalent decisionmaking authority over an eligible private school.

¹(j) “Tax credit cap amount” means the maximum annual tax credit amount that the department may approve for a state fiscal year.

(k) “Unweighted FTE funding amount” means the statewide average total funds per unweighted full-time equivalent funding amount that is incorporated by reference in the General Appropriations Act, or any subsequent special appropriations act, for the applicable state fiscal year.

(3) PROGRAM; SCHOLARSHIP ELIGIBILITY.—

(a) The Florida Tax Credit Scholarship Program is established.

(b) A student is eligible for a Florida tax credit scholarship under this section if the student meets one or more of the following criteria:

1. 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; or
2. The student is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care as defined in s. [39.01](#).
3. 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.

A student who initially receives a scholarship based on eligibility under subparagraph (b)2. remains eligible to participate until the student graduates from high school or attains the age of 21 years, whichever occurs first, regardless of the student’s household income level. A sibling of a student who is participating in the scholarship program under this subsection is eligible for a scholarship if the student resides in the same household as the sibling.

(4) SCHOLARSHIP PROHIBITIONS.—A student is not eligible for a scholarship while he or she is:

- (a) Enrolled in a school operating for the purpose of providing educational services to youth in Department of Juvenile Justice commitment programs;
- (b) Receiving a scholarship from another eligible nonprofit scholarship-funding organization under this section;
- (c) Receiving an educational scholarship pursuant to chapter 1002;
- (d) Participating in a home education program as defined in s. [1002.01\(1\)](#);
- (e) Participating in a private tutoring program pursuant to s. [1002.43](#);
- (f) Participating in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student's participation unless the participation is limited to no more than two courses per school year; or
- (g) Enrolled in the Florida School for the Deaf and the Blind.

(5) SCHOLARSHIP FUNDING TAX CREDITS; LIMITATIONS.—

(a)1. The tax credit cap amount is \$229 million in the 2012-2013 state fiscal year.

2. In the 2013-2014 state fiscal year 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. The Department of Education and Department of Revenue shall publish on their websites information identifying the tax credit cap amount when it is increased pursuant to this subparagraph.

¹(b) A taxpayer may submit an application to the department for a tax credit or credits under one or more of s. [211.0251](#), s. [212.1831](#), s. [220.1875](#), s. [561.1211](#), or s. [624.51055](#).

1. The taxpayer shall specify in the application each tax for which the taxpayer requests a credit and the applicable taxable year for a credit under s. [220.1875](#) or s. [624.51055](#) or the applicable state fiscal year for a credit under s. [211.0251](#), s. [212.1831](#), or s. [561.1211](#). For purposes of s. [220.1875](#), a taxpayer may apply for a credit to be used for a prior taxable year before the date the taxpayer is required to file a return for that year pursuant to s. [220.222](#). The department shall approve tax credits on a first-come, first-served basis and must obtain the division's approval before approving a tax credit under s. [561.1211](#).

2. Within 10 days after approving or denying an application, the department shall provide a copy of its approval or denial letter to the eligible nonprofit scholarship-funding organization specified by the taxpayer in the application.

¹(c) If a tax credit approved under paragraph (b) is not fully used within the specified state fiscal year for credits under s. [211.0251](#), s. [212.1831](#), or s. [561.1211](#) or against taxes due for the specified taxable year for credits under s. [220.1875](#) or s. [624.51055](#) because of insufficient tax liability on the part of the taxpayer, the unused amount shall be carried forward for a period not to exceed 10 years. For purposes of s. [220.1875](#), a credit carried forward may be used in a subsequent year after applying the other credits and unused carryovers in the order provided in s. [220.02\(8\)](#).

(d) A taxpayer may not convey, assign, or transfer an approved tax credit or a carryforward tax credit to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction. However, a tax credit under s. [211.0251](#), s. [212.1831](#), s. [220.1875](#), s. [561.1211](#), or s. [624.51055](#) may be conveyed, transferred, or assigned between members of an affiliated group of corporations if the type of tax credit under s. [211.0251](#), s. [212.1831](#), s. [220.1875](#), s. [561.1211](#), or s. [624.51055](#) remains the same. A taxpayer shall notify the department of its intent to convey, transfer, or assign a tax credit to another member within an affiliated group of corporations. The amount conveyed, transferred, or assigned is available to another member of the affiliated group of corporations upon approval by the department. The department shall obtain the division's approval before approving a conveyance, transfer, or assignment of a tax credit under s. [561.1211](#).

(e) Within any state fiscal year, a taxpayer may rescind all or part of a tax credit approved under paragraph (b). The amount rescinded shall become available for that state fiscal year to another eligible taxpayer as approved by the department if the taxpayer receives notice from the department that the rescindment has been accepted by the department. The department must

obtain the division's approval prior to accepting the rescindment of a tax credit under s. [561.1211](#). Any amount rescinded under this paragraph shall become available to an eligible taxpayer on a first-come, first-served basis based on tax credit applications received after the date the rescindment is accepted by the department.

¹(f) Within 10 days after approving or denying the conveyance, transfer, or assignment of a tax credit under paragraph (d), or the rescindment of a tax credit under paragraph (e), the department shall provide a copy of its approval or denial letter to the eligible nonprofit scholarship-funding organization specified by the taxpayer. The department shall also include the eligible nonprofit scholarship-funding organization specified by the taxpayer on all letters or correspondence of acknowledgment for tax credits under s. [212.1831](#).

¹(g) For purposes of calculating the underpayment of estimated corporate income taxes pursuant to s. [220.34](#) and tax installment payments for taxes on insurance premiums or assessments under s. [624.5092](#), the final amount due is the amount after credits earned under s. [220.1875](#) or s. [624.51055](#) for contributions to eligible nonprofit scholarship-funding organizations are deducted.

1. For purposes of determining if a penalty or interest shall be imposed for underpayment of estimated corporate income tax pursuant to s. [220.34\(2\)\(d\)1.](#), a taxpayer may, after earning a credit under s. [220.1875](#), reduce any estimated payment in that taxable year by the amount of the credit. This subparagraph applies to contributions made on or after July 1, 2014.

2. For purposes of determining if a penalty under s. [624.5092](#) shall be imposed, an insurer may, after earning a credit under s. [624.51055](#), reduce the following installment payment of 27 percent of the amount of the net tax due as reported on the return for the preceding year under s. [624.5092\(2\)\(b\)](#) by the amount of the credit. This subparagraph applies to contributions made on or after July 1, 2014.

(6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS.—An eligible nonprofit scholarship-funding organization:

(a) Must comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d.

(b) Must comply with the following background check requirements:

1. All owners and operators as defined in subparagraph (2)(i)1. are, before employment or engagement to provide services, subject to level 2 background screening as provided under chapter 435. The fingerprints for the background screening must be electronically submitted to the Department of Law Enforcement and can be taken by an authorized law enforcement agency or by an employee of the eligible nonprofit scholarship-funding organization or a private company who is trained to take fingerprints. However, the complete set of fingerprints of an owner or operator may not be taken by the owner or operator. The results of the state and national criminal history check shall be provided to the Department of Education for screening under chapter 435. The cost of the background screening may be borne by the eligible nonprofit scholarship-funding organization or the owner or operator.

2. Every 5 years following employment or engagement to provide services or association with an eligible nonprofit scholarship-funding organization, each owner or operator must meet level 2 screening standards as described in s. [435.04](#), at which time the nonprofit scholarship-funding organization shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for level 2 screening. If the fingerprints of an owner or operator are not retained by the Department of Law Enforcement under subparagraph 3., the owner or operator must electronically file a complete set of fingerprints with the Department of Law Enforcement. Upon submission of fingerprints for this purpose, the eligible nonprofit scholarship-funding organization shall request that the Department of Law Enforcement forward the fingerprints to the Federal Bureau of Investigation for level 2 screening, and the fingerprints shall be retained by the Department of Law Enforcement under subparagraph 3.

3. Fingerprints submitted to the Department of Law Enforcement as required by this paragraph must be retained by the Department of Law Enforcement in a manner approved by rule and entered in the statewide automated biometric identification system authorized by s. [943.05\(2\)\(b\)](#). The fingerprints must thereafter be available for all purposes and uses authorized for arrest fingerprints entered in the statewide automated biometric identification system pursuant to s. [943.051](#).

4. The Department of Law Enforcement shall search all arrest fingerprints received under s. [943.051](#) against the fingerprints retained in the statewide automated biometric identification system under subparagraph 3. Any arrest record that is identified with an owner's or operator's fingerprints must be reported to the Department of Education. The Department of Education shall participate in this search process by paying an annual fee to the Department of Law Enforcement and by informing the Department of Law Enforcement of any change in the employment, engagement, or association status of the owners or operators whose fingerprints are retained under subparagraph 3. The Department of Law Enforcement shall adopt a rule setting the amount of the annual fee to be imposed upon the Department of Education for performing these services and establishing the procedures for the retention of owner and operator fingerprints and the dissemination of search results. The fee may be borne by the owner or operator of the nonprofit scholarship-funding organization.

5. A nonprofit scholarship-funding organization whose owner or operator fails the level 2 background screening is not eligible to provide scholarships under this section.

6. A nonprofit scholarship-funding organization whose owner or operator in the last 7 years has filed for personal bankruptcy or corporate bankruptcy in a corporation of which he or she owned more than 20 percent shall not be eligible to provide scholarships under this section.

7. In addition to the offenses listed in s. [435.04](#), a person required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, and must not have been adjudicated delinquent, and the record must not have been sealed or expunged for, any of the following offenses or any similar offense of another jurisdiction:

- a. Any authorizing statutes, if the offense was a felony.
 - b. This chapter, if the offense was a felony.
 - c. Section [409.920](#), relating to Medicaid provider fraud.
 - d. Section [409.9201](#), relating to Medicaid fraud.
 - e. Section [741.28](#), relating to domestic violence.
 - f. Section [817.034](#), relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
 - g. Section [817.234](#), relating to false and fraudulent insurance claims.
 - h. Section [817.505](#), relating to patient brokering.
 - i. Section [817.568](#), relating to criminal use of personal identification information.
 - j. Section [817.60](#), relating to obtaining a credit card through fraudulent means.
 - k. Section [817.61](#), relating to fraudulent use of credit cards, if the offense was a felony.
 - l. Section [831.01](#), relating to forgery.
 - m. Section [831.02](#), relating to uttering forged instruments.
 - n. Section [831.07](#), relating to forging bank bills, checks, drafts, or promissory notes.
 - o. Section [831.09](#), relating to uttering forged bank bills, checks, drafts, or promissory notes.
 - p. Section [831.30](#), relating to fraud in obtaining medicinal drugs.
 - q. Section [831.31](#), relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.
- (c) Must not have an owner or operator who owns or operates an eligible private school that is participating in the scholarship program.
- (d) Must provide scholarships, from eligible contributions, to eligible students for the cost of:

1. Tuition and fees for an eligible private school; or
2. Transportation to a Florida public school that is located outside the district in which the student resides or to a lab school as defined in s. [1002.32](#).
 - (e) Must give first priority to eligible students who received a scholarship from an eligible nonprofit scholarship-funding organization or from the State of Florida during the previous school year. Beginning in the 2016-2017 school year, an eligible nonprofit scholarship-funding organization shall 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.
 - (f) Must provide a scholarship to an eligible student on a first-come, first-served basis unless the student qualifies for priority pursuant to paragraph (e).
 - (g) May not restrict or reserve scholarships for use at a particular private school or provide scholarships to a child of an owner or operator.
 - (h) Must allow a student in foster care or out-of-home care or a dependent child of a parent who is a member of the United States Armed Forces to apply for a scholarship at any time.
 - (i) Must allow an eligible student to attend any eligible private school and must allow a parent to transfer a scholarship during a school year to any other eligible private school of the parent's choice.
 - (j)1. May use up to 3 percent of eligible contributions received during the state fiscal year in which such contributions are collected for administrative expenses if the organization has operated as an eligible nonprofit scholarship-funding organization for at least the preceding 3 fiscal years and did not have any findings of material weakness or material noncompliance in its most recent audit under paragraph (m). Such administrative expenses must be reasonable and necessary for the organization's management and distribution of eligible contributions under this section. No funds authorized under this subparagraph shall be used for lobbying or political activity or expenses related to lobbying or political activity. Up to one-third of the funds authorized for administrative expenses under this subparagraph may be used for expenses related to the recruitment of contributions from taxpayers. An eligible nonprofit scholarship-funding organization may not charge an application fee.
2. Must 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 such net eligible contributions may be carried forward to the following state fiscal year. All amounts carried forward, for audit purposes, must be specifically identified for particular students, by student name and the name of the school to which the student is admitted, subject to the requirements of ss. [1002.22](#) and [1002.221](#) and 20 U.S.C. s. 1232g, and the applicable rules and regulations issued pursuant thereto. Any amounts carried forward shall be expended for annual or partial-year scholarships in the following state fiscal year. Net eligible contributions remaining on June 30 of each year that are in excess of the 25 percent that may be carried forward shall be transferred to other eligible nonprofit scholarship-funding organizations to provide scholarships for eligible students. All transferred funds must be deposited by each eligible nonprofit scholarship-funding organization receiving such funds into its scholarship account. All transferred amounts received by any eligible nonprofit scholarship-funding organization must be separately disclosed in the annual financial audit required under paragraph (m).
3. Must, before granting a scholarship for an academic year, document each scholarship student's eligibility for that academic year. A scholarship-funding organization may not grant multiyear scholarships in one approval process.
 - (k) Must maintain separate accounts for scholarship funds and operating funds.
 - (l) With the prior approval of the Department of Education, may transfer funds to another eligible nonprofit scholarship-funding organization if additional funds are required to meet scholarship demand at the receiving nonprofit scholarship-funding organization. A transfer is limited to the greater of \$500,000 or 20 percent of the total contributions received by the nonprofit scholarship-funding organization making the transfer. All transferred funds must be deposited by the receiving nonprofit scholarship-funding organization into its scholarship accounts. All transferred amounts received by any nonprofit

scholarship-funding organization must be separately disclosed in the annual financial and compliance audit required in this section.

(m) Must provide to the Auditor General and the Department of Education a report on the results of an annual financial audit of its accounts and records conducted by an independent certified public accountant in accordance with auditing standards generally accepted in the United States, government auditing standards, and rules promulgated by the Auditor General. The audit report must include a report on financial statements presented in accordance with generally accepted accounting principles. Audit reports must be provided to the Auditor General and the Department of Education within 180 days after completion of the eligible nonprofit scholarship-funding organization's fiscal year. The Auditor General shall review all audit reports submitted pursuant to this paragraph. The Auditor General shall request any significant items that were omitted in violation of a rule adopted by the Auditor General. The items must be provided within 45 days after the date of the request. If the scholarship-funding organization does not comply with the Auditor General's request, the Auditor General shall notify the Legislative Auditing Committee.

¹(n) Must prepare and submit quarterly reports to the Department of Education pursuant to paragraph (9)(i). In addition, an eligible nonprofit scholarship-funding organization must submit in a timely manner any information requested by the Department of Education relating to the scholarship program.

¹(o)1.a. Must participate in the joint development of agreed-upon procedures during the 2009-2010 state fiscal year. The agreed-upon procedures must uniformly apply to all private schools and must determine, at a minimum, whether the private school has been verified as eligible by the Department of Education under s. [1002.421](#); 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. During the development of the procedures, the participating scholarship-funding organizations shall specify guidelines governing the materiality of exceptions that may be found during the accountant's performance of the procedures. The procedures and guidelines shall be provided to private schools and the Commissioner of Education by March 15, 2011.

b. Must participate in a joint review of the agreed-upon procedures and guidelines developed under sub-subparagraph a., by February of each biennium, if the scholarship-funding organization provided more than \$250,000 in scholarship funds to an eligible private school under this chapter during the state fiscal year preceding the biennial review. If the procedures and guidelines are revised, the revisions must be provided to private schools and the Commissioner of Education by March 15 of the year in which the revisions were completed. The revised agreed-upon procedures shall take effect the subsequent school year. For the 2018-2019 school year only, the joint review of the agreed-upon procedures must be completed and the revisions submitted to the commissioner no later than September 15, 2018. The revised procedures are applicable to the 2018-2019 school year.

c. Must monitor the compliance of a private school with s. [1002.421](#)(1)(q) if the scholarship-funding organization provided the majority of the scholarship funding to the school. For each private school subject to s. [1002.421](#)(1)(q), the appropriate scholarship-funding organization shall annually notify the Commissioner of Education by October 30 of:

- (I) A private school's failure to submit a report required under s. [1002.421](#)(1)(q); or
- (II) Any material exceptions set forth in the report required under s. [1002.421](#)(1)(q).

2. Must seek input from the accrediting associations that are members of the Florida Association of Academic Nonpublic Schools and the Department of Education when jointly developing the agreed-upon procedures and guidelines under sub-subparagraph 1.a. and conducting a review of those procedures and guidelines under sub-subparagraph 1.b.

¹(p) Must maintain the surety bond or letter of credit required by subsection (15). The amount of the surety bond or letter of credit may be adjusted quarterly to equal the actual amount of undisbursed funds based upon submission by the organization of a statement from a certified public accountant verifying the amount of undisbursed funds. The requirements of this paragraph are waived if the cost of acquiring a surety bond or letter of credit exceeds the average 10-year cost of acquiring a surety bond or letter of credit by 200 percent. The requirements of this paragraph are waived for a state university; or an independent college or university which is eligible to participate in the William L. Boyd, IV, ²Effective Access to Student

Education Grant Program, located and chartered in this state, is not for profit, and is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.

(q) Must provide to the Auditor General any information or documentation requested in connection with an operational audit of a scholarship funding organization conducted pursuant to s. [11.45](#).

Information and documentation provided to the Department of Education and the Auditor General relating to the identity of a taxpayer that provides an eligible contribution under this section shall remain confidential at all times in accordance with s. [213.053](#).

(7) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM PARTICIPATION.—

(a) The parent must select an eligible private school and apply for the admission of his or her child.

(b) The parent must inform the child's school district when the parent withdraws his or her child to attend an eligible private school.

(c) Any student participating in the scholarship program must remain in attendance throughout the school year unless excused by the school for illness or other good cause.

(d) Each parent and each student has an obligation to the private school to comply with the private school's published policies.

(e) The parent shall ensure that the student participating in the scholarship program takes the norm-referenced assessment offered by the private school. The parent may also choose to have the student participate in the statewide assessments pursuant to s. [1008.22](#). If the parent requests that the student participating in the scholarship program take statewide assessments pursuant to s. [1008.22](#) and the private school has not chosen to offer and administer the statewide assessments, the parent is responsible for transporting the student to the assessment site designated by the school district.

(f) Upon receipt of a scholarship warrant from the eligible nonprofit scholarship-funding organization, the parent to whom the warrant is made must restrictively endorse the warrant to the private school for deposit into the account of the private school. If payments are made by funds transfer, the parent must approve each payment before the scholarship funds may be deposited. The parent may not designate any entity or individual associated with the participating private school as the parent's attorney in fact to endorse a scholarship warrant or approve a funds transfer. A participant who fails to comply with this paragraph forfeits the scholarship.

(g) The parent shall authorize the nonprofit scholarship-funding organization to access information needed for income eligibility determination and verification held by other state or federal agencies, including the Department of Revenue, the Department of Children and Families, the Department of Education, the Department of Economic Opportunity, and the Agency for Health Care Administration.

¹(8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An eligible private school may be sectarian or nonsectarian and must:

(a) Comply with all requirements for private schools participating in state school choice scholarship programs pursuant to s. [1002.421](#).

(b)1. Annually administer or make provision for students participating in the scholarship program in grades 3 through 10 to take one of the nationally norm-referenced tests identified by the Department of Education or the statewide assessments pursuant to s. [1008.22](#). Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement. A participating private school must report a student's scores to the parent. A participating private school must annually report by August 15 the scores of all participating students to a state university described in paragraph (9)(f).

2. Administer the statewide assessments pursuant to s. [1008.22](#) if a private school chooses to offer the statewide assessments. A participating private school may choose to offer and administer the statewide assessments to all students who attend the private school in grades 3 through 10 and must submit a request in writing to the Department of Education by March 1 of each year in order to administer the statewide assessments in the subsequent school year.

If a private school fails to meet the requirements of this subsection or s. [1002.421](#), the commissioner may determine that the private school is ineligible to participate in the scholarship program.

¹(9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of Education shall:

- (a) Annually submit to the department and division, by March 15, a list of eligible nonprofit scholarship-funding organizations that meet the requirements of paragraph (2)(f).
- (b) Annually verify the eligibility of nonprofit scholarship-funding organizations that meet the requirements of paragraph (2)(f).
- (c) Annually verify the eligibility of expenditures as provided in paragraph (6)(d) using the audit required by paragraph (6)(m) and s. [11.45](#)(2)(l).
- (d) Cross-check the list of participating scholarship students with the public school enrollment lists to avoid duplication.
- (e) Maintain a list of nationally norm-referenced tests identified for purposes of satisfying the testing requirement in subparagraph (8)(b)1. The tests must meet industry standards of quality in accordance with State Board of Education rule.
- (f) Issue a project grant award to a state university, to which participating private schools must report the scores of participating students on the nationally norm-referenced tests or the statewide assessments administered by the private school in grades 3 through 10. The project term is 2 years, and the amount of the project is up to \$250,000 per year. The project grant award must be reissued in 2-year intervals in accordance with this paragraph.
 1. The state university must annually report to the Department of Education on the student performance of participating students:
 - a. On a statewide basis. The report shall also include, to the extent possible, a comparison of scholarship students' performance to the statewide student performance of public school students with socioeconomic backgrounds similar to those of students participating in the scholarship program. To minimize costs and reduce time required for the state university's analysis and evaluation, the Department of Education shall coordinate with the state university to provide data to the state university in order to conduct analyses of matched students from public school assessment data and calculate control group student performance using an agreed-upon methodology with the state university; and
 - b. On an individual school basis. The annual report must include student performance for each participating private school in which at least 51 percent of the total enrolled students in the private school participated in the Florida Tax Credit Scholarship Program in the prior school year. The report shall be according to each participating private school, and for participating students, in which there are at least 30 participating students who have scores for tests administered. If the state university determines that the 30-participating-student cell size may be reduced without disclosing personally identifiable information, as described in 34 C.F.R. s. 99.12, of a participating student, the state university may reduce the participating-student cell size, but the cell size must not be reduced to less than 10 participating students. The department shall provide each private school's prior school year's student enrollment information to the state university no later than June 15 of each year, or as requested by the state university.
 2. The sharing and reporting of student performance data under this paragraph must be in accordance with requirements of ss. [1002.22](#) and [1002.221](#) and 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act, and the applicable rules and regulations issued pursuant thereto, and shall be for the sole purpose of creating the annual report required by subparagraph 1. All parties must preserve the confidentiality of such information as required by law. The annual report must not disaggregate data to a level that will identify individual participating schools, except as required under sub-subparagraph 1.b., or disclose the academic level of individual students.
 3. The annual report required by subparagraph 1. shall be published by the Department of Education on its website.
- (g) Notify an eligible nonprofit scholarship-funding organization of any of the organization's identified students who are receiving educational scholarships pursuant to chapter 1002.
- (h) Notify an eligible nonprofit scholarship-funding organization of any of the organization's identified students who are receiving tax credit scholarships from other eligible nonprofit scholarship-funding organizations.

(i) Require quarterly reports by an eligible nonprofit scholarship-funding organization regarding the number of students participating in the scholarship program, the private schools at which the students are enrolled, and other information deemed necessary by the Department of Education.

(j) Provide a process to match the direct certification list with the scholarship application data submitted by any nonprofit scholarship-funding organization eligible to receive the 3-percent administrative allowance under paragraph (6)(j).

(10) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—

(a) Upon the request of any eligible nonprofit scholarship-funding organization, a school district shall inform all households within the district receiving free or reduced-priced meals under the National School Lunch Act of their eligibility to apply for a tax credit scholarship. The form of such notice shall be provided by the eligible nonprofit scholarship-funding organization, and the district shall include the provided form, if requested by the organization, in any normal correspondence with eligible households. If an eligible nonprofit scholarship-funding organization requests a special communication to be issued to households within the district receiving free or reduced-price meals under the National School Lunch Act, the organization shall reimburse the district for the cost of postage. Such notice is limited to once a year.

(b) Upon the request of the Department of Education, a school district shall coordinate with the department to provide to a participating private school the statewide assessments administered under s. [1008.22](#) and any related materials for administering the assessments. A school district is responsible for implementing test administrations at a participating private school, including the:

1. Provision of training for private school staff on test security and assessment administration procedures;
2. Distribution of testing materials to a private school;
3. Retrieval of testing materials from a private school;
4. Provision of the required format for a private school to submit information to the district for test administration and enrollment purposes; and
5. Provision of any required assistance, monitoring, or investigation at a private school.

(11) SCHOLARSHIP AMOUNT AND PAYMENT.—

(a) Except as provided in subparagraph 2., the scholarship amount provided to any student for any single school year by an eligible nonprofit scholarship-funding organization from eligible contributions shall be for total costs authorized under paragraph (6)(d), not to exceed annual limits, which shall be determined as follows:

1.a. The base amount awarded to a student enrolled in an eligible private school shall be determined as a percentage of the unweighted FTE funding amount for that state fiscal year and thereafter as follows:

- (I) Eighty-eight percent for a student enrolled in kindergarten through grade 5.
- (II) Ninety-two percent for a student enrolled in grade 6 through grade 8.
- (III) Ninety-six percent for a student enrolled in grade 9 through grade 12.

b. The scholarship amount awarded to a student enrolled in a Florida public school that is located outside the district in which the student resides or in a lab school as defined in s. [1002.32](#), is limited to \$750.

2. The annual limit for a scholarship under sub-subparagraph 1.a. shall be reduced by:

- a. 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.
- b. 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.
- c. 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.

d. 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.

(b) Payment of the scholarship by the eligible nonprofit scholarship-funding organization shall be by individual warrant made payable to the student's parent or by funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of payment that the department deems to be commercially viable or cost-effective. If the payment is made by warrant, the warrant must be delivered by the eligible nonprofit scholarship-funding organization to the private school of the parent's choice, and the parent shall restrictively endorse the warrant to the private school. An eligible nonprofit scholarship-funding organization shall ensure that the parent to whom the warrant is made restrictively endorsed the warrant to the private school for deposit into the account of the private school or that the parent has approved a funds transfer before any scholarship funds are deposited.

(c) An eligible nonprofit scholarship-funding organization shall obtain verification from the private school of a student's continued attendance at the school for each period covered by a scholarship payment.

(d) Payment of the scholarship shall be made by the eligible nonprofit scholarship-funding organization no less frequently than on a quarterly basis.

(12) ADMINISTRATION; RULES.—

(a) The department, the division, and the Department of Education shall develop a cooperative agreement to assist in the administration of this section.

(b) The department shall adopt rules necessary to administer this section and ss. [211.0251](#), [212.1831](#), [220.1875](#), [561.1211](#), and [624.51055](#), including rules establishing application forms, procedures governing the approval of tax credits and carryforward tax credits under subsection (5), and procedures to be followed by taxpayers when claiming approved tax credits on their returns.

(c) The division shall adopt rules necessary to administer its responsibilities under this section and s. [561.1211](#).

(d) The State Board of Education shall adopt rules to administer the responsibilities of the Department of Education and the Commissioner of Education under this section.

(13) DEPOSITS OF ELIGIBLE CONTRIBUTIONS.—All eligible contributions received by an eligible nonprofit scholarship-funding organization shall be deposited in a manner consistent with s. [17.57\(2\)](#).

(14) PRESERVATION OF CREDIT.—If any provision or portion of this section, s. [211.0251](#), s. [212.1831](#), s. [220.1875](#), s. [561.1211](#), or s. [624.51055](#) or the application thereof to any person or circumstance is held unconstitutional by any court or is otherwise declared invalid, the unconstitutionality or invalidity shall not affect any credit earned under s. [211.0251](#), s. [212.1831](#), s. [220.1875](#), s. [561.1211](#), or s. [624.51055](#) by any taxpayer with respect to any contribution paid to an eligible nonprofit scholarship-funding organization before the date of a determination of unconstitutionality or invalidity. Such credit shall be allowed at such time and in such a manner as if a determination of unconstitutionality or invalidity had not been made, provided that nothing in this subsection by itself or in combination with any other provision of law shall result in the allowance of any credit to any taxpayer in excess of one dollar of credit for each dollar paid to an eligible nonprofit scholarship-funding organization.

(15) NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS; APPLICATION.—In order to participate in the scholarship program created under this section, a charitable organization that seeks to be a nonprofit scholarship-funding organization must submit an application for initial approval or renewal to the Office of Independent Education and Parental Choice no later than September 1 of each year before the school year for which the organization intends to offer scholarships.

(a) An application for initial approval must include:

1. A copy of the organization's incorporation documents and registration with the Division of Corporations of the Department of State.

2. A copy of the organization's Internal Revenue Service determination letter as a s. 501(c)(3) not-for-profit organization.

3. A description of the organization's financial plan that demonstrates sufficient funds to operate throughout the school year.
4. A description of the geographic region that the organization intends to serve and an analysis of the demand and unmet need for eligible students in that area.
5. The organization's organizational chart.
6. A description of the criteria and methodology that the organization will use to evaluate scholarship eligibility.
7. A description of the application process, including deadlines and any associated fees.
8. A description of the deadlines for attendance verification and scholarship payments.
9. A copy of the organization's policies on conflict of interest and whistleblowers.
10. A copy of a surety bond or letter of credit to secure the faithful performance of the obligations of the eligible nonprofit scholarship-funding organization in accordance with this section in an amount equal to 25 percent of the scholarship funds anticipated for each school year or \$100,000, whichever is greater. The surety bond or letter of credit must specify that any claim against the bond or letter of credit may be made only by an eligible nonprofit scholarship-funding organization to provide scholarships to and on behalf of students who would have had scholarships funded if it were not for the diversion of funds giving rise to the claim against the bond or letter of credit.

(b) In addition to the information required by subparagraphs (a)1.-9., an application for renewal must include:

1. A surety bond or letter of credit to secure the faithful performance of the obligations of the eligible nonprofit scholarship-funding organization in accordance with this section equal to the amount of undisbursed donations held by the organization based on the annual report submitted pursuant to paragraph (6)(m). The amount of the surety bond or letter of credit must be at least \$100,000, but not more than \$25 million. The surety bond or letter of credit must specify that any claim against the bond or letter of credit may be made only by an eligible nonprofit scholarship-funding organization to provide scholarships to and on behalf of students who would have had scholarships funded if it were not for the diversion of funds giving rise to the claim against the bond or letter of credit.
2. The organization's completed Internal Revenue Service Form 990 submitted no later than November 30 of the year before the school year that the organization intends to offer the scholarships, notwithstanding the September 1 application deadline.
3. A copy of the statutorily required audit to the Department of Education and Auditor General.
4. An annual report that includes:
 - a. The number of students who completed applications, by county and by grade.
 - b. The number of students who were approved for scholarships, by county and by grade.
 - c. The number of students who received funding for scholarships within each funding category, by county and by grade.
 - d. The amount of funds received, the amount of funds distributed in scholarships, and an accounting of remaining funds and the obligation of those funds.
 - e. A detailed accounting of how the organization spent the administrative funds allowable under paragraph (6)(j).

(c) In consultation with the Department of Revenue and the Chief Financial Officer, the Office of Independent Education and Parental Choice shall review the application. The Department of Education shall notify the organization in writing of any deficiencies within 30 days after receipt of the application and allow the organization 30 days to correct any deficiencies.

(d) Within 30 days after receipt of the finalized application by the Office of Independent Education and Parental Choice, the Commissioner of Education shall recommend approval or disapproval of the application to the State Board of Education. The State Board of Education shall consider the application and recommendation at the next scheduled meeting, adhering to appropriate meeting notice requirements. If the State Board of Education disapproves the organization's application, it shall

provide the organization with a written explanation of that determination. The State Board of Education's action is not subject to chapter 120.

(e) If the State Board of Education disapproves the renewal of a nonprofit scholarship-funding organization, the organization must notify the affected eligible students and parents of the decision within 15 days after disapproval. An eligible student affected by the disapproval of an organization's participation remains eligible under this section until the end of the school year in which the organization was disapproved. The student must apply and be accepted by another eligible nonprofit scholarship-funding organization for the upcoming school year. The student shall be given priority in accordance with paragraph (6)(f).

(f) All remaining funds held by a nonprofit scholarship-funding organization that is disapproved for participation must be transferred to other eligible nonprofit scholarship-funding organizations to provide scholarships for eligible students. All transferred funds must be deposited by each eligible nonprofit scholarship-funding organization receiving such funds into its scholarship account. All transferred amounts received by any eligible nonprofit scholarship-funding organization must be separately disclosed in the annual financial audit required under subsection (6).

(g) A nonprofit scholarship-funding organization is a renewing organization if it maintains continuous approval and participation in the program. An organization that chooses not to participate for 1 year or more or is disapproved to participate for 1 year or more must submit an application for initial approval in order to participate in the program again.

(h) The State Board of Education shall adopt rules providing guidelines for receiving, reviewing, and approving applications for new and renewing nonprofit scholarship-funding organizations. The rules must include a process for compiling input and recommendations from the Chief Financial Officer, the Department of Revenue, and the Department of Education. The rules must also require that the nonprofit scholarship-funding organization make a brief presentation to assist the State Board of Education in its decision.

(i) A state university; or an independent college or university which is eligible to participate in the William L. Boyd, IV, ²Effective Access to Student Education Grant Program, located and chartered in this state, is not for profit, and is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, is exempt from the initial or renewal application process, but must file a registration notice with the Department of Education to be an eligible nonprofit scholarship-funding organization. The State Board of Education shall adopt rules that identify the procedure for filing the registration notice with the department. The rules must identify appropriate reporting requirements for fiscal, programmatic, and performance accountability purposes consistent with this section, but shall not exceed the requirements for eligible nonprofit scholarship-funding organizations for charitable organizations. A nonprofit scholarship-funding organization that becomes eligible pursuant to this paragraph may begin providing scholarships to participating students in the 2015-2016 school year.

History.—s. 5, ch. 2001-225; s. 42, ch. 2002-218; s. 258, ch. 2003-261; s. 9, ch. 2003-391; s. 16, ch. 2004-5; s. 2, ch. 2006-75; s. 2, ch. 2008-142; s. 2, ch. 2008-235; s. 1, ch. 2008-241; s. 2, ch. 2009-108; s. 4, ch. 2009-239; s. 1, ch. 2010-24; s. 4, ch. 2010-209; s. 3, ch. 2011-123; s. 1, ch. 2012-22; s. 67, ch. 2013-116; s. 364, ch. 2014-19; s. 17, ch. 2014-184; s. 106, ch. 2015-2; s. 37, ch. 2015-148; ss. 6, 9, ch. 2015-222; s. 6, ch. 2016-2; s. 2, ch. 2017-166; s. 25, ch. 2018-4; s. 20, ch. 2018-5; s. 15, ch. 2018-6.

¹**Note.**—

A. Section 48, ch. 2018-6, provides that “[t]he amendments made by this act to ss. 220.13, 220.1875, and 1002.395, Florida Statutes, apply to taxable years beginning on or after January 1, 2018.”

B. Section 49, ch. 2018-6, provides that:

“(1) The Department of Revenue is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of administering the provisions of this act.

“(2) Notwithstanding any other provision of law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

“(3) This section shall take effect upon this act becoming a law and shall expire January 1, 2022.”

²**Note.**—Section 25, ch. 2018-4, directs the Division of Law Revision and Information “to substitute the term ‘Effective Access to Student Education Grant Program’ for ‘Florida Resident Access Grant Program’ and the term ‘Effective Access to Student Education grant’ for ‘Florida resident access grant’ wherever those terms appear in the Florida Statutes.”

Note.—Former s. 220.187.

Title XLVIII
K-20 EDUCATION CODE
Chapter 1002

STUDENT AND PARENTAL RIGHTS AND EDUCATIONAL CHOICES

1002.40 The Hope Scholarship Program.—

- (1) **PURPOSE.**—The Hope Scholarship Program is established to provide the parent of a public school student who was subjected to an incident listed in subsection (3) an opportunity to transfer the student to another public school or to request a scholarship for the student to enroll in and attend an eligible private school.
- (2) **DEFINITIONS.**—As used in this section, the term:
- (a) “Dealer” has the same meaning as provided in s. [212.06](#).
- (b) “Department” means the Department of Education.
- (c) “Designated agent” has the same meaning as provided in s. [212.06](#)(10).
- (d) “Eligible contribution” or “contribution” means a monetary contribution from a person purchasing a motor vehicle, subject to the restrictions provided in this section, to an eligible nonprofit scholarship-funding organization. The person making the contribution may not designate a specific student as the beneficiary of the contribution.
- (e) “Eligible nonprofit scholarship-funding organization” or “organization” has the same meaning as provided in s. [1002.395](#)(2)(f).
- (f) “Eligible private school” has the same meaning as provided in s. [1002.395](#)(2)(g).
- (g) “Motor vehicle” has the same meaning as provided in s. [320.01](#)(1)(a), but does not include a heavy truck, truck tractor, trailer, or motorcycle.
- (h) “Parent” means a resident of this state who is a parent, as defined in s. [1000.21](#), and whose student reported an incident in accordance with subsection (6).
- (i) “Program” means the Hope Scholarship Program.
- (j) “School” means any educational program or activity conducted by a public K-12 educational institution, any school-related or school-sponsored program or activity, and riding on a school bus, as defined in s. [1006.25](#)(1), including waiting at a school bus stop.
- (k) “Unweighted FTE funding amount” means the statewide average total funds per unweighted full-time equivalent funding amount that is incorporated by reference in the General Appropriations Act, or by a subsequent special appropriations act, for the applicable state fiscal year.
- (3) **PROGRAM ELIGIBILITY.**—Beginning with the 2018-2019 school year, contingent upon available funds, and on a first-come, first-served basis, a student enrolled in a Florida public school in kindergarten through grade 12 is eligible for a scholarship under this program if the student reported an incident in accordance with subsection (6). For purposes of this section, the term “incident” means battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses, harassment, assault, or battery; threat or intimidation; or fighting at school, as defined by the department in accordance with s. [1006.09](#)(6).
- (4) **PROGRAM PROHIBITIONS.**—Payment of a scholarship to a student enrolled in a private school may not be made if a student is:
- (a) Enrolled in a public school, including, but not limited to, the Florida School for the Deaf and the Blind; the College-Preparatory Boarding Academy; a developmental research school authorized under s. [1002.32](#); or a charter school authorized under s. [1002.33](#), s. [1002.331](#), or s. [1002.332](#);
- (b) Enrolled in a school operating for the purpose of providing educational services to youth in the Department of Juvenile Justice commitment programs;
- (c) Participating in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student’s participation unless the participation is limited to no more than two courses per school year; or

(d) Receiving any other educational scholarship pursuant to this chapter.

(5) **TERM OF HOPE SCHOLARSHIP.**—For purposes of continuity of educational choice, a Hope scholarship shall remain in force until the student returns to public school or graduates from high school, whichever occurs first. A scholarship student who enrolls in a public school or public school program is considered to have returned to a public school for the purpose of determining the end of the scholarship’s term.

(6) **SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.**—

(a) Upon receipt of a report of an incident, the school principal, or his or her designee, shall provide a copy of the report to the parent and investigate the incident to determine if the incident must be reported as required by s. [1006.09](#)(6). Within 24 hours after receipt of the report, the principal or his or her designee shall provide a copy of the report to the parent of the alleged offender and to the superintendent. Upon conclusion of the investigation or within 15 days after the incident was reported, whichever occurs first, the school district shall notify the parent of the program and offer the parent an opportunity to enroll his or her student in another public school that has capacity or to request and receive a scholarship to attend an eligible private school, subject to available funding. A parent who chooses to enroll his or her student in a public school located outside the district in which the student resides pursuant to s. [1002.31](#) shall be eligible for a scholarship to transport the student as provided in paragraph (11)(b).

(b) For each student participating in the program in an eligible private school who chooses to participate in the statewide assessments under s. [1008.22](#) or the Florida Alternate Assessment, the school district in which the student resides must notify the student and his or her parent about the locations and times to take all statewide assessments.

(7) **PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.**—An eligible private school may be sectarian or nonsectarian and shall:

(a) Comply with all requirements for private schools participating in state school choice scholarship programs pursuant to this section and s. [1002.421](#).

(b)1. Annually administer or make provision for students participating in the program in grades 3 through 10 to take one of the nationally norm-referenced tests identified by the department or the statewide assessments pursuant to s. [1008.22](#). Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement. A participating private school shall report a student’s scores to his or her parent.

2. Administer the statewide assessments pursuant to s. [1008.22](#) if a private school chooses to offer the statewide assessments. A participating private school may choose to offer and administer the statewide assessments to all students who attend the private school in grades 3 through 10 and must submit a request in writing to the department by March 1 of each year in order to administer the statewide assessments in the subsequent school year.

If a private school fails to meet the requirements of this subsection or s. [1002.421](#), the commissioner may determine that the private school is ineligible to participate in the program.

(8) **DEPARTMENT OF EDUCATION OBLIGATIONS.**—The department shall:

(a) Cross-check the list of participating scholarship students with the public school enrollment lists to avoid duplication.

(b) Maintain a list of nationally norm-referenced tests identified for purposes of satisfying the testing requirement in paragraph (9)(f). The tests must meet industry standards of quality in accordance with State Board of Education rule.

(c) Require quarterly reports by an eligible nonprofit scholarship-funding organization regarding the number of students participating in the program, the private schools in which the students are enrolled, and other information deemed necessary by the department.

(d) Contract with an independent entity to provide an annual evaluation of the program by:

1. Reviewing the school bullying prevention education program, climate, and code of student conduct of each public school from which 10 or more students transferred to another public school or private school using the Hope scholarship to determine areas in the school or school district procedures involving reporting, investigating, and communicating a parent’s and student’s rights that are in need of improvement. At a minimum, the review must include:

a. An assessment of the investigation time and quality of the response of the school and the school district.

- b. An assessment of the effectiveness of communication procedures with the students involved in an incident, the students' parents, and the school and school district personnel.
 - c. An analysis of school incident and discipline data.
 - d. The challenges and obstacles relating to implementing recommendations from the review.
2. Reviewing the school bullying prevention education program, climate, and code of student conduct of each public school to which a student transferred if the student was from a school identified in subparagraph 1. in order to identify best practices and make recommendations to a public school at which the incidents occurred.
 3. Reviewing the performance of participating students enrolled in a private school in which at least 51 percent of the total enrolled students in the prior school year participated in the program and in which there are at least 10 participating students who have scores for tests administered.
 4. Surveying the parents of participating students to determine academic, safety, and school climate satisfaction and to identify any challenges to or obstacles in addressing the incident or relating to the use of the scholarship.
- (9) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM PARTICIPATION.—A parent who applies for a Hope scholarship is exercising his or her parental option to place his or her student in an eligible private school.
- (a) The parent must select an eligible private school and apply for the admission of his or her student.
 - (b) The parent must inform the student's school district when the parent withdraws his or her student to attend an eligible private school.
 - (c) Any student participating in the program must remain in attendance throughout the school year unless excused by the school for illness or other good cause.
 - (d) Each parent and each student has an obligation to the private school to comply with such school's published policies.
 - (e) Upon reasonable notice to the department and the school district, the parent may remove the student from the private school and place the student in a public school in accordance with this section.
 - (f) The parent must ensure that the student participating in the program takes the norm-referenced assessment offered by the private school. The parent may also choose to have the student participate in the statewide assessments pursuant to s. [1008.22](#). If the parent requests that the student take the statewide assessments pursuant to s. [1008.22](#) and the private school has not chosen to offer and administer the statewide assessments, the parent is responsible for transporting the student to the assessment site designated by the school district.
 - (g) Upon receipt of a scholarship warrant, the parent to whom the warrant is made must restrictively endorse the warrant to the private school for deposit into the account of such school. If payment is made by funds transfer in accordance with paragraph (11)(d), the parent must approve each payment before the scholarship funds may be deposited. The parent may not designate any entity or individual associated with the participating private school as the parent's attorney in fact to endorse a scholarship warrant or approve a funds transfer. A parent who fails to comply with this paragraph forfeits the scholarship.
- (10) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS.—An eligible nonprofit scholarship-funding organization may establish scholarships for eligible students by:
- (a) Receiving applications and determining student eligibility in accordance with the requirements of this section.
 - (b) Notifying parents of their receipt of a scholarship on a first-come, first-served basis, based upon available funds.
 - (c) Establishing a date by which the parent of a participating student must confirm continuing participation in the program.
 - (d) Awarding scholarship funds to eligible students, giving priority to renewing students from the previous year.
 - (e) Preparing and submitting quarterly reports to the department pursuant to paragraph (8)(c). In addition, an eligible nonprofit scholarship-funding organization must submit in a timely manner any information requested by the department relating to the program.
 - (f) Notifying the department of any violation of this section.
- (11) FUNDING AND PAYMENT.—
- (a) The maximum amount awarded to a student enrolled in an eligible private school shall be determined as a percentage of the unweighted FTE funding amount for that state fiscal year and thereafter as follows:

1. Eighty-eight percent for a student enrolled in kindergarten through grade 5.
 2. Ninety-two percent for a student enrolled in grade 6 through grade 8.
 3. Ninety-six percent for a student enrolled in grade 9 through grade 12.
- (b) The maximum amount awarded to a student enrolled in a public school located outside of the district in which the student resides shall be \$750.
- (c) When a student enters the program, the eligible nonprofit scholarship-funding organization must receive all documentation required for the student's participation, including a copy of the report of the incident received pursuant to subsection (6) and the private school's and student's fee schedules. The initial payment shall be made after verification of admission acceptance, and subsequent payments shall be made upon verification of continued enrollment and attendance at the private school.
- (d) Payment of the scholarship by the eligible nonprofit scholarship-funding organization may be by individual warrant made payable to the student's parent or by funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of payment that the department deems to be commercially viable or cost-effective. If payment is made by warrant, the warrant must be delivered by the eligible nonprofit scholarship-funding organization to the private school of the parent's choice, and the parent shall restrictively endorse the warrant to the private school. If payments are made by funds transfer, the parent must approve each payment before the scholarship funds may be deposited. The parent may not designate any entity or individual associated with the participating private school as the parent's attorney in fact to endorse a scholarship warrant or approve a funds transfer.
- (e) An eligible nonprofit scholarship-funding organization shall obtain verification from the private school of a student's continued attendance at the school for each period covered by a scholarship payment.
- (f) Payment of the scholarship shall be made by the eligible nonprofit scholarship-funding organization no less frequently than on a quarterly basis.
- (g) An eligible nonprofit scholarship-funding organization may use up to 3 percent of eligible contributions received during the state fiscal year in which such contributions are collected for administrative expenses if the organization has operated as an eligible nonprofit scholarship-funding organization for at least the preceding 3 fiscal years and did not have any findings of material weakness or material noncompliance in its most recent audit under s. [1002.395\(6\)\(m\)](#). Such administrative expenses must be reasonable and necessary for the organization's management and distribution of eligible contributions under this section. Funds authorized under this paragraph may not be used for lobbying or political activity or expenses related to lobbying or political activity. Up to one-third of the funds authorized for administrative expenses under this paragraph may be used for expenses related to the recruitment of contributions. An eligible nonprofit scholarship-funding organization may not charge an application fee.
- (h) Moneys received pursuant to this section do not constitute taxable income to the qualified student or his or her parent.

(12) OBLIGATIONS OF THE AUDITOR GENERAL.—

- (a) The Auditor General shall conduct an annual operational audit of accounts and records of each organization that participates in the program. As part of this audit, the Auditor General shall verify, at a minimum, the total number of students served and transmit that information to the department. The Auditor General shall provide the commissioner with a copy of each annual operational audit performed pursuant to this paragraph within 10 days after the audit is finalized.
- (b) The Auditor General shall notify the department of any organization that fails to comply with a request for information.

(13) SCHOLARSHIP FUNDING TAX CREDITS.—

- (a) A tax credit is available under s. [212.1832\(1\)](#) for use by a person that makes an eligible contribution. Each eligible contribution is limited to a single payment of \$105 per motor vehicle purchased at the time of purchase of a motor vehicle or a single payment of \$105 per motor vehicle purchased at the time of registration of a motor vehicle that was not purchased from a dealer, except that a contribution may not exceed the state tax imposed under chapter 212 that would otherwise be collected from the purchaser by a dealer, designated agent, or private tag agent. Payments of contributions shall be made to a dealer at the time of purchase of a motor vehicle or to a designated agent or private tag agent at the time of registration of a motor vehicle that was not purchased from a dealer. An eligible contribution shall be accompanied by a contribution election form provided by the Department of Revenue. The form shall include, at a minimum, the following brief description of the Hope Scholarship Program: "THE HOPE SCHOLARSHIP PROGRAM PROVIDES A PUBLIC SCHOOL STUDENT

WHO WAS SUBJECTED TO AN INCIDENT OF VIOLENCE OR BULLYING AT SCHOOL THE OPPORTUNITY TO APPLY FOR A SCHOLARSHIP TO ATTEND AN ELIGIBLE PRIVATE SCHOOL RATHER THAN REMAIN IN AN UNSAFE SCHOOL ENVIRONMENT.” The form shall also include, at a minimum, a section allowing the consumer to designate, from all participating scholarship funding organizations, which organization will receive his or her donation. For purposes of this subsection, the term “purchase” does not include the lease or rental of a motor vehicle.

(b) A dealer, designated agent, or private tag agent shall:

1. Provide the purchaser the contribution election form, as provided by the Department of Revenue, at the time of purchase of a motor vehicle or at the time of registration of a motor vehicle that was not purchased from a dealer.
2. Collect eligible contributions.
3. Using a form provided by the Department of Revenue, which shall include the dealer’s or agent’s federal employer identification number, remit to an organization no later than the date the return filed pursuant to s. [212.11](#) is due the total amount of contributions made to that organization and collected during the preceding reporting period. Using the same form, the dealer or agent shall also report this information to the Department of Revenue no later than the date the return filed pursuant to s. [212.11](#) is due.
4. Report to the Department of Revenue on each return filed pursuant to s. [212.11](#) the total amount of credits granted under s. [212.1832](#) for the preceding reporting period.

(c) An organization shall report to the Department of Revenue, on or before the 20th day of each month, the total amount of contributions received pursuant to paragraph (b) in the preceding calendar month on a form provided by the Department of Revenue. Such report shall include:

1. The federal employer identification number of each designated agent, private tag agent, or dealer who remitted contributions to the organization during that reporting period.
2. The amount of contributions received from each designated agent, private tag agent, or dealer during that reporting period.

(d) A person who, with the intent to unlawfully deprive or defraud the program of its moneys or the use or benefit thereof, fails to remit a contribution collected under this section is guilty of theft, punishable as follows:

1. If the total amount stolen is less than \$300, the offense is a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#). Upon a second conviction, the offender is guilty of a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#). Upon a third or subsequent conviction, the offender is guilty of a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).
2. If the total amount stolen is \$300 or more, but less than \$20,000, the offense is a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).
3. If the total amount stolen is \$20,000 or more, but less than \$100,000, the offense is a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).
4. If the total amount stolen is \$100,000 or more, the offense is a felony of the first degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(e) A person convicted of an offense under paragraph (d) shall be ordered by the sentencing judge to make restitution to the organization in the amount that was stolen from the program.

(f) Upon a finding that a dealer failed to remit a contribution under subparagraph (b)3. for which the dealer claimed a credit pursuant to s. [212.1832](#)(2), the Department of Revenue shall notify the affected organizations of the dealer’s name, address, federal employer identification number, and information related to differences between credits taken by the dealer pursuant to s. [212.1832](#)(2) and amounts remitted to the eligible nonprofit scholarship-funding organization under subparagraph (b)3.

(g) Any dealer, designated agent, private tag agent, or organization that fails to timely submit reports to the Department of Revenue as required in paragraphs (b) and (c) is subject to a penalty of \$1,000 for every month, or part thereof, the report is not provided, up to a maximum amount of \$10,000. Such penalty shall be collected by the Department of Revenue and shall be transferred into the General Revenue Fund. Such penalty must be settled or compromised if it is determined by the Department of Revenue that the noncompliance is due to reasonable cause and not due to willful negligence, willful neglect, or fraud.

(14) **LIABILITY.**—The state is not liable for the award of or any use of awarded funds under this section.

(15) **SCOPE OF AUTHORITY.**—This section does not expand the regulatory authority of this state, its officers, or any school district to impose additional regulation on participating private schools beyond those reasonably necessary to enforce requirements expressly set forth in this section.

(16) **RULES.**—The State Board of Education shall adopt rules to administer this section, except the Department of Revenue shall adopt rules to administer subsection (13).

History.—s. 16, ch. 2018-6.

¹**Note.**—Section 49, ch. 2018-6, provides that:

“(1) The Department of Revenue is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of administering the provisions of this act.

“(2) Notwithstanding any other provision of law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

“(3) This section shall take effect upon this act becoming a law and shall expire January 1, 2022.”

**Private School Application to Administer
2019–20 Florida Statewide Assessments**

Attachment A: Sections 1002.385, 1002.395, and 1002.40, Florida Statutes

SIGNATURE PAGE

I hereby confirm that I have read and will abide by Attachment A: Sections 1002.385, 1002.395, and 1002.40, Florida Statutes.

Signature

Name – Please Print

Position

Date