

STATE BOARD OF EDUCATION
Consent Item
June 17, 2014

SUBJECT: Approval of Repeal of Rule 6M-4.503, Misrepresentation or Fraud Regarding Reimbursement

PROPOSED BOARD ACTION

For Approval

AUTHORITY FOR STATE BOARD ACTION

Section 1001.231(2), Florida Statutes

EXECUTIVE SUMMARY

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

This rule permanently bars an early learning coalition from contracting with a provider for school readiness services if the provider fraudulently misrepresented attendance or enrollment. The statutes related to the School Readiness program were substantially revised with the passage of House Bill 7165 in 2013. Section 1002.91(5), Florida Statutes, now establishes a five year prohibition on program participation if a provider or owner or director is convicted of, found guilty of, or pleads guilty or nolo contendere to public assistance fraud. Subsection (8) of that statute also directs coalitions to have an approved anti-fraud plan that addresses the suspension or termination of program participation. Because the term of denial is now addressed in statute, and the rule is in conflict with the enacted law, the rule requires repeal.

Supporting Documentation Included: Rule 6M-4.503, Misrepresentation or Fraud Regarding Reimbursement; Sections 1001.231(2), 1002.91(5) and (8), Florida Statutes

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

6M-4.503 Misrepresentation or Fraud Regarding Reimbursement.

~~If a school readiness provider, after investigation and adjudication by a court of competent jurisdiction, has fraudulently misrepresented enrollment or attendance for funds related to the school readiness programs. The coalition shall permanently disengage services of that provider. This applies to either contracted reimbursement or voucher reimbursement.~~

Rulemaking Authority 411.01(4)(e)FS. Law Implemented 411.01(5)(d)4.a. FS. History-New 2-2-05, Formerly 60BB-4.503, Repealed

1001.213 Office of Early Learning.—

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

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

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

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

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

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

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

History.—s. 1, ch. 2013-252.

1002.91 Investigations of fraud or overpayment; penalties.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History.—s. 17, ch. 2013-252.