

**PRIVATE SCHOOL APPLICATION TO ADMINISTER
FCAT 2.0 AND EOC ASSESSMENTS IN 2013-14**

Attachment A: Section 1002.395, Florida Statutes

- Outlines the requirements for participation.
- See question #1 in the application.

The 2012 Florida Statutes

[Title XLVIII](#)

K-20 EDUCATION CODE

[Chapter 1002](#)

STUDENT AND PARENTAL RIGHTS AND EDUCATIONAL CHOICES

[View Entire Chapter](#)

¹1002.395 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.

(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 Family Services.

(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.

(f) "Eligible nonprofit scholarship-funding organization" means 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 607, chapter 608, or chapter 617 and whose principal office is located in the state; and
3. Complies with the provisions of subsection (6).

(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) "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.

(i) "Tax credit cap amount" means the maximum annual tax credit amount that the department may approve in a state fiscal year.

(j) "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) Contingent upon available funds, 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 qualifies for free or reduced-price school lunches under the National School Lunch Act or is on the direct certification list and:

a. Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;

b. Received a scholarship from an eligible nonprofit scholarship-funding organization or from the State of Florida during the previous school year; or

c. Is eligible to enter kindergarten through fifth grade.

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

3. The student continues in the scholarship program as long as the student's household income level does not exceed 230 percent of the federal poverty level.

4. The student, who is a first-time tax credit scholarship recipient, is a sibling of a student who is continuing in the scholarship program and who resides in the same household as the student if the sibling meets one or more of the criteria specified in subparagraphs 1. and 2. and as long as the student's and sibling's household income level does not exceed 230 percent of the federal poverty level.

(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 shall publish on its website information identifying the tax credit cap amount when it is increased pursuant to this subparagraph.

(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](#). 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](#). The department shall approve tax credits on a first-come, first-served basis and must obtain the division's approval prior to approving a tax credit under s. [561.1211](#).

(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 may be carried forward for a period not to exceed 5 years. However, any taxpayer that seeks to carry forward an unused amount of tax credit must submit an application to the department for approval of the carryforward tax credit in the year that the taxpayer intends to use the carryforward. The department must obtain the division's approval prior to approving the carryforward of a tax credit under s. [561.1211](#).

(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.

(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.

(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)(h)1. are, upon 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. Beginning July 1, 2007, all 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 fingerprint identification system authorized by s. [943.05\(2\)\(b\)](#). The fingerprints must thereafter be available for all purposes and uses authorized for arrest fingerprint cards entered in the statewide automated fingerprint identification system pursuant to s. [943.051](#).

4. Beginning July 1, 2007, the Department of Law Enforcement shall search all arrest fingerprint cards received under s. [943.051](#) against the fingerprints retained in the statewide automated fingerprint 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 shall not be 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.

(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 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.

(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 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.

(i)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 under this section for at least 3 state fiscal years and did not have any negative financial findings in its most recent audit under paragraph (l). Such administrative expenses must be reasonable and necessary for the organization's management and distribution of eligible contributions under this section. No more than 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.

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. 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 returned to the State Treasury for deposit in the General Revenue Fund.

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.

(j) Must maintain separate accounts for scholarship funds and operating funds.

(k) 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 shall be 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.

(l) Must provide to the Auditor General and the Department of Education an annual financial and compliance audit of its accounts and records conducted by an independent certified public accountant and in accordance with rules adopted by the Auditor General. The audit must be conducted in compliance with generally accepted auditing standards and must include a report on financial statements presented in accordance with generally accepted accounting principles set forth by the American Institute of Certified Public Accountants for not-for-profit organizations and a determination of compliance with the statutory eligibility and expenditure requirements set forth in this section. Audits 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.

(m) Must prepare and submit quarterly reports to the Department of Education pursuant to paragraph (9)(m). 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.

(n)1.a. Must participate in the joint development of agreed-upon procedures to be performed by an independent certified public accountant as required under paragraph (8)(e) if the scholarship-funding organization provided more than \$250,000 in scholarship funds to an eligible private school under this section 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 paragraph (9)(c); 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 2013 and biennially thereafter, if the scholarship-funding organization provided more than \$250,000 in scholarship funds to an eligible private school under this section 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, 2013, and biennially thereafter.

c. Must monitor the compliance of a private school with paragraph (8)(e) if the scholarship-funding organization provided the majority of the scholarship funding to the school. For each private school subject to paragraph (8)(e), the appropriate scholarship-funding organization shall notify the Commissioner of Education by October 30, 2011, and annually thereafter of:

- (I) A private school's failure to submit a report required under paragraph (8)(e); or
- (II) Any material exceptions set forth in the report required under paragraph (8)(e).

2. Must seek input from the accrediting associations that are members of the Florida Association of Academic Nonpublic Schools 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.

Any and all 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. 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. A participant who fails to comply with this paragraph forfeits the scholarship.

(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) Provide to the eligible nonprofit scholarship-funding organization, upon request, all documentation required for the student's participation, including the private school's and student's fee schedules.

(c) Be academically accountable to the parent for meeting the educational needs of the student by:

1. At a minimum, annually providing to the parent a written explanation of the student's progress.
2. Annually administering or making 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 the independent research organization described in paragraph (9)(j).

3. Cooperating with the scholarship student whose parent chooses to have the student participate in the statewide assessments pursuant to s. [1008.22](#) or, if a private school chooses to offer the statewide assessments, administering the assessments at the school.

- a. 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.

- b. A participating private school 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.

(d) Employ or contract with teachers who have regular and direct contact with each student receiving a scholarship under this section at the school's physical location.

(e) Annually contract with an independent certified public accountant to perform the agreed-upon procedures developed under paragraph (6)(n) and produce a report of the results if the private school receives more than \$250,000 in funds from scholarships awarded under this section in the 2010-2011

state fiscal year or a state fiscal year thereafter. A private school subject to this paragraph must submit the report by September 15, 2011, and annually thereafter to the scholarship-funding organization that awarded the majority of the school's scholarship funds. The agreed-upon procedures must be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

The inability of a private school to meet the requirements of this subsection shall constitute a basis for the ineligibility of the private school to participate in the scholarship program as determined by the Department of Education.

(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 private schools that meet the requirements of subsection (8).

(d) Annually verify the eligibility of expenditures as provided in paragraph (6)(d) using the audit required by paragraph (6)(l).

(e) Establish a toll-free hotline that provides parents and private schools with information on participation in the scholarship program.

(f) Establish a process by which individuals may notify the Department of Education of any violation by a parent, private school, or school district of state laws relating to program participation. The Department of Education shall conduct an inquiry of any written complaint of a violation of this section, or make a referral to the appropriate agency for an investigation, if the complaint is signed by the complainant and is legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show that a violation of this section or any rule adopted by the State Board of Education has occurred. In order to determine legal sufficiency, the Department of Education may require supporting information or documentation from the complainant. A department inquiry is not subject to the requirements of chapter 120.

(g) Require an annual, notarized, sworn compliance statement by participating private schools certifying compliance with state laws and shall retain such records.

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

(i) Maintain a list of nationally norm-referenced tests identified for purposes of satisfying the testing requirement in subparagraph (8)(c)2. The tests must meet industry standards of quality in accordance with State Board of Education rule.

(j) Select an independent research organization, which may be a public or private entity or 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.

1. The independent research organization must annually report to the Department of Education on the year-to-year learning gains of participating students:

a. On a statewide basis. The report shall also include, to the extent possible, a comparison of these learning gains to the statewide learning gains 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 independent research organization's analysis and evaluation, the Department of Education shall conduct analyses of matched students from public school assessment data and calculate control group learning gains using an agreed-upon methodology outlined in the contract with the independent research organization; and

b. According to each participating private school in which there are at least 30 participating students who have scores for tests administered during or after the 2009-2010 school year for 2 consecutive years at that private school.

2. The sharing and reporting of student learning gain data under this paragraph must be in accordance with requirements of 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act, 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.

(k) Notify an eligible nonprofit scholarship-funding organization of any of the organization's identified students who are receiving educational scholarships pursuant to chapter 1002.

(l) 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.

(m) 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.

(n)1. Conduct site visits to private schools participating in the Florida Tax Credit Scholarship Program. The purpose of the site visits is solely to verify the information reported by the schools concerning the enrollment and attendance of students, the credentials of teachers, background

screening of teachers, and teachers' fingerprinting results. The Department of Education may not make more than seven site visits each year; however, the department may make additional site visits at any time to any school that has received a notice of noncompliance or a notice of proposed action within the previous 2 years.

2. Annually, by December 15, report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the Department of Education's actions with respect to implementing accountability in the scholarship program under this section and s. [1002.421](#), any substantiated allegations or violations of law or rule by an eligible private school under this program concerning the enrollment and attendance of students, the credentials of teachers, background screening of teachers, and teachers' fingerprinting results and the corrective action taken by the Department of Education.

(o) 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)(i).

(p) Upon the request of a participating private school, provide at no cost to the school the statewide assessments administered under s. [1008.22](#) and any related materials for administering the assessments. Students at a private school may be assessed using the statewide assessments if the addition of those students and the school does not cause the state to exceed its contractual caps for the number of students tested and the number of testing sites. The state shall provide the same materials and support to a private school that it provides to a public school. A private school that chooses to administer statewide assessments under s. [1008.22](#) shall follow the requirements set forth in ss. [1008.22](#) and [1008.24](#), rules adopted by the State Board of Education to implement those sections, and district-level testing policies established by the district school board.

(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) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—

(a)1. The Commissioner of Education shall deny, suspend, or revoke a private school's participation in the scholarship program if it is determined that the private school has failed to comply with the provisions of this section. However, in instances in which the noncompliance is correctable within a reasonable amount of time and in which the health, safety, or welfare of the students is not threatened, the commissioner may issue a notice of noncompliance that shall provide the private school with a timeframe within which to provide evidence of compliance prior to taking action to suspend or revoke the private school's participation in the scholarship program.

2. The Commissioner of Education may deny, suspend, or revoke a private school's participation in the scholarship program if the commissioner determines that:

- a. An owner or operator of a private school has exhibited a previous pattern of failure to comply with this section or s. [1002.421](#); or
- b. An owner or operator of the private school is operating or has operated an educational institution in this state or another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public.

In making the determination under this subparagraph, the commissioner may consider factors that include, but are not limited to, acts or omissions by an owner or operator that led to a previous denial or revocation of participation in an education scholarship program; an owner's or operator's failure to reimburse the Department of Education or a nonprofit scholarship-funding organization for scholarship funds improperly received or retained by a school; imposition of a prior criminal sanction, civil fine, administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation related to an owner's or operator's management or operation of an educational institution; or other types of criminal proceedings in which the owner or operator was 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.

(b) The commissioner's determination is subject to the following:

1. If the commissioner intends to deny, suspend, or revoke a private school's participation in the scholarship program, the Department of Education shall notify the private school of such proposed action in writing by certified mail and regular mail to the private school's address of record with the Department of Education. The notification shall include the reasons for the proposed action and notice of the timelines and procedures set forth in this paragraph.

2. The private school that is adversely affected by the proposed action shall have 15 days from receipt of the notice of proposed action to file with the Department of Education's agency clerk a request for a proceeding pursuant to ss. [120.569](#) and [120.57](#). If the private school is entitled to a hearing under s. [120.57](#)(1), the Department of Education shall forward the request to the Division of Administrative Hearings.

3. Upon receipt of a request referred pursuant to this paragraph, the director of the Division of Administrative Hearings shall expedite the hearing and assign an administrative law judge who shall commence a hearing within 30 days after the receipt of the formal written request by the division and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript, whichever is later. Each party shall be allowed 10 days in which to submit written exceptions to the recommended order. A final order shall be entered by the agency within 30 days after the entry of a recommended order. The provisions of this subparagraph may be waived upon stipulation by all parties.

(c) The commissioner may immediately suspend payment of scholarship funds if it is determined that there is probable cause to believe that there is:

1. An imminent threat to the health, safety, and welfare of the students;
2. A previous pattern of failure to comply with this section or s. [1002.421](#); or
3. Fraudulent activity on the part of the private school. Notwithstanding s. [1002.22](#), in incidents of alleged fraudulent activity pursuant to this section, the Department of Education's Office of Inspector General is authorized to release personally identifiable records or reports of students to the following persons or organizations:

- a. A court of competent jurisdiction in compliance with an order of that court or the attorney of record in accordance with a lawfully issued subpoena, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

- b. A person or entity authorized by a court of competent jurisdiction in compliance with an order of that court or the attorney of record pursuant to a lawfully issued subpoena, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

- c. Any person, entity, or authority issuing a subpoena for law enforcement purposes when the court or other issuing agency has ordered that the existence or the contents of the subpoena or the

information furnished in response to the subpoena not be disclosed, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and 34 C.F.R. s. 99.31.

The commissioner's order suspending payment pursuant to this paragraph may be appealed pursuant to the same procedures and timelines as the notice of proposed action set forth in paragraph (b).

(12) SCHOLARSHIP AMOUNT AND PAYMENT.—

(a)1. Except as provided in subparagraph 2., the amount of a scholarship 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:

a. For a scholarship awarded to a student enrolled in an eligible private school:

(I) For the 2009-2010 state fiscal year, the limit shall be \$3,950.

(II) For the 2010-2011 state fiscal year, the limit shall be 60 percent of the unweighted FTE funding amount for that year.

(III) For the 2011-2012 state fiscal year and thereafter, the limit shall be determined by multiplying the unweighted FTE funding amount in that state fiscal year by the percentage used to determine the limit in the prior state fiscal year. However, in each state fiscal year that the tax credit cap amount increases pursuant to subparagraph (5)(a)2., the prior year percentage shall be increased by 4 percentage points and the increased percentage shall be used to determine the limit for that state fiscal year. If the percentage so calculated reaches 80 percent in a state fiscal year, no further increase in the percentage is allowed and the limit shall be 80 percent of the unweighted FTE funding amount for that state fiscal year and thereafter.

b. For a scholarship 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](#), the limit shall be \$500.

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

a. Twenty-five percent if the student's household income level is equal to or greater than 200 percent, but less than 215 percent, of the federal poverty level.

b. Fifty percent if the student's household income level is equal to or greater than 215 percent, but equal to or less than 230 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. If the parent chooses that his or her child attend an eligible private school, 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.

(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.

(13) 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.

(14) 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).

(15) 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.

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.

¹**Note.**—Section 20, ch. 2010-24, provides that “[t]he Department of Revenue is authorized and all conditions are deemed met, to adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer the

provisions of this act. The emergency rules shall remain in effect for 6 months after the rules are adopted and the rules may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.”

Note.—Former s. 220.187.

**PRIVATE SCHOOL APPLICATION TO ADMINISTER
FCAT 2.0 AND EOC ASSESSMENTS IN 2013-14**

Attachment A: Section 1002.395, Florida Statutes

SIGNATURE PAGE

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

Signature

Name - Please Print

Position

Date