

STATE BOARD OF EDUCATION
Action Item
June 22, 2016

SUBJECT: Approval of Amendment to Rule 6A-6.0961, The Florida Personal Learning Scholarship Accounts Program

PROPOSED BOARD ACTION

For Approval

AUTHORITY FOR STATE BOARD ACTION

Section 1002.385, Florida Statutes

EXECUTIVE SUMMARY

The purpose of this rule amendment is to make technical and process changes based on new statutory language as well as amend the rule name to The Gardiner Scholarship Program. These changes will further strengthen school choice options and the Department's implementation of the program.

Supporting Documentation Included: Proposed Rule 6A-6.0961, F.A.C.

Facilitator/Presenter: Adam Miller, Executive Director, Office of Independent Education and Parental Choice

6A-6.0961 Gardiner Florida Personal Learning Scholarship Accounts Program.

The Gardiner Florida Personal Learning Scholarship Accounts Program will be implemented as required by Section 1002.385, F.S., to allow nonprofit scholarship-funding organizations to provide the option for a parent to better meet the individual educational needs of his or her eligible child by establishing an account for the funding of eligible expenditures.

(1) Eligibility of nonprofit scholarship-funding organizations.

~~(a) An eligible nonprofit scholarship-funding organization that is approved pursuant to participates in the Florida Tax Credit Scholarship Program under Section 1002.395, F.S., may establish Gardiner Scholarship personal learning scholarship accounts for eligible students.~~

~~(b) If, at any point during the school year, a nonprofit scholarship funding organization no longer meets the eligibility requirements for nonprofit scholarship funding organizations, the Commissioner shall:~~

~~1. Issue a notice of noncompliance that gives the nonprofit scholarship funding organization a reasonable time to meet the requirements; or,~~

~~2. Issue a notice of proposed action to suspend the nonprofit scholarship funding organization or to remove the nonprofit scholarship funding organization from the list of eligible nonprofit scholarship funding organizations where the health, safety, or welfare of students is involved or the nonprofit scholarship funding organization has failed to meet requirements specified in a notice of noncompliance pursuant to this paragraph.~~

~~(c) Nonprofit scholarship funding organizations suspended or removed pursuant to subsection (9) of this rule shall have fifteen (15) days from receipt of the notice of proposed action to file with the Department's agency clerk a request for a proceeding pursuant to Sections 120.569 and 120.57, F.S. All resulting proceedings shall be conducted in accordance with Chapter 120, F.S.~~

(2) Nonprofit scholarship-funding organization requirements. Eligible nonprofit scholarship-funding organizations shall:

(a) Receive applications and determine eligibility of students in accordance with the requirements of Section 1002.385(3)~~(a)~~, F.S.;

(b) Verify eligible expenditures before the distribution of funds for any expenditures made pursuant to Section 1002.385(5)(a) and (b), F.S. By March 1 before the school year in which students will participate, submit in a format

~~to be specified by the Department an electronic list of all scholarship students that have applied to receive scholarship funds. The list shall include the following information:~~

~~1. Information for each student, including name, date of birth, grade level, and address, including county of residence;~~

~~2. Eligible disability;~~

~~3. Matrix funding level for the student;~~

~~4. Status of eligibility determination; and,~~

~~5. Whether student is current participant in program.~~

~~(3) Nothing in this rule shall limit the Department's authority to request any other information related to the scholarship program.~~

(3) (4) Eligible students. Applications for a Gardiner Florida Personal Learning Scholarship Account shall be made by parents directly through an eligible nonprofit scholarship-funding organization. The nonprofit scholarship-funding organization shall verify the eligibility of students pursuant to the criteria established in Section 1002.385, F.S., and award scholarships consistent with the requirements of Section 1002.385, F.S. The process used to identify eligible students and award scholarships is subject to the annual financial and operational audit required by Section 1002.395, F.S.

(4) (5) Scholarship payments. The following provisions relate to the distribution of funds from the Department of Education to an eligible nonprofit scholarship-funding organization.

(a) An eligible scholarship funding organization (a) may request a payment from the Department of Education for an eligible student ~~only~~ after it has confirmed that the student has met the eligibility criteria in Section 1002.385(3)(a), F.S. Using the Department's web-based system

(https://www.floridaschoolchoice.org/login/login_sfo.asp), the nonprofit scholarship-funding organization must:

1. Confirm the eligibility of each scholarship student;

2. Attest to the accuracy of each student's information being submitted ~~by the nonprofit scholarship funding organization~~, which must include the following:

a. Student name, date of birth, social security number, gender, race, grade level, and address including county of residence;

b. Matrix level of funding Category under which student is eligible, pursuant to Section 1002.385(2)(d), F.S.;

c. Eligible disability Matrix level of funding; and,

d. Whether a final verification document was submitted and what type; and

e. ~~d.~~ Date and time the nonprofit scholarship-funding organization confirmed eligibility.

3. Submit a signed invoice requesting request for payment which must ~~to~~ include the amount requested for each individual student as well as the total amount requested.

(b) Eligible nonprofit scholarship-funding organizations must set an annual deadline for renewing scholarship participation that is no later than September 1st, and must require participants that do not meet the deadline to re-establish initial eligibility in order to receive a scholarship.

~~(c) (b) The Department shall verify, prior to payment, that each eligible student for which the nonprofit scholarship funding organization is requesting payment is not enrolled in public school or receiving a scholarship under another program pursuant to Chapter 1002, F.S., and has not had participation suspended or revoked pursuant to Section 1002.385(10), F.S. Upon verification, the Department shall distribute funds to the nonprofit scholarship funding organization. The Department shall distribute funds on a first-come first-served basis, based upon the date and time the scholarship-funding organization confirmed eligibility pursuant to Section 1002.385(9)(e), F.S. subparagraph (5)(a)1. of this rule.~~

~~(d) (e)~~ Requests for payments by a nonprofit scholarship-funding organization must be submitted no later than May 1 for the fiscal year in which the student is eligible to receive a scholarship.

~~(e) (d)~~ The Commissioner may suspend a student's participation in the program and withhold a scholarship payment pursuant to Section 1002.385(10), F.S.

~~(f) (e)~~ Eligible nonprofit scholarship-funding organizations are responsible for the return of all scholarship funds to the Department that were received in error or associated with a scholarship account that has been closed pursuant to Section 1002.385(6)(b), F.S. If the Department identifies scholarship funds that must ~~should~~ be returned, it shall send a letter via both regular and certified mail requesting the return of the funds. The letter shall state the reason the funds are being requested, the student or students involved, instructions on returning the funds, and the procedure to be followed if the eligible nonprofit scholarship-funding organization believes that return of the funds is being requested in error or wishes to provide additional information related to the requested funds. The Department's letter may also require the eligible nonprofit scholarship-funding organization to provide an explanation for how the funds were erroneously obtained.

1. Eligible nonprofit scholarship-funding organizations shall respond to such letter within thirty (30) days by either returning the funds or detailing in writing why its retention of the funds is proper.

2. If the Department receives a letter detailing why the funds were properly retained, it shall determine whether the explanation is sufficient and thereafter alert the eligible nonprofit scholarship-funding organization of any funds still due and a timeframe for the return of those funds. ~~The response shall give the eligible nonprofit scholarship-funding organization at least twenty (20) additional days to repay the funds.~~

3. Failure to return the funds due to the Department, ~~or failure to provide a sufficient explanation for how the eligible nonprofit scholarship funding organization claimed funds that were erroneously obtained, within the time period allotted in subparagraphs (5)(e)1. and 2. of this rule,~~ shall result in the initiation of noncompliance procedures pursuant to the Commissioner's authority described in Section 1002.385(10), F.S., and this rule.

~~(f) All claims by eligible nonprofit scholarship funding organizations for missed scholarship payments must be made by May 1 of the fiscal year in which the scholarship payment was originally due.~~

(5) (6) Quarterly Reports: Four (4) times a year, no later than October 30, January 30, April 30, and ~~July~~ June 30 of each year, an eligible nonprofit scholarship-funding organization shall submit in a format to be specified by the Department an electronic list of all participating scholarship students, providers of services, and participating private schools. For purposes of the quarterly report, a participating scholarship student is one whose scholarship account has been funded in the current fiscal year.

(a) The list shall include the following information:

1. (a) Demographic information for each student, including name, date of birth, ~~social security number,~~ grade level, gender, race, and county of residence ~~parent's name, and address;~~

2. Disability category and matrix level for each student;

3. Program award amount for each student;

4. (b) Information on all providers of services, including ~~name, licensure information, and fee amounts received~~ for services;

~~(c) Information on the student's school of attendance, if applicable, including tuition, fees, and transportation amounts; and~~

~~(d) The cumulative amount of scholarship funds received for each student; and,~~

~~(e) The amount of scholarship funds remaining in each student's account.~~

5. Total year-to-date expenditures on behalf of participating students by purpose type as specified in Section 1002.385(5), F.S.

(b) No later than October 30 of each year, an eligible nonprofit scholarship-funding organization shall provide the department a report that indicates the status of participants who did not renew participation for the current fiscal year.

(c) Nothing in this rule shall limit the Department's authority to request any other information related to the scholarship program.

~~(6)~~ ~~(7)~~ Complaint process. The following process is established to allow individuals to notify the Department of any violation by parents, providers, private schools, eligible nonprofit scholarship-funding organizations, or school districts of laws or rules related to scholarship program participation.

(a) Persons interested in filing a complaint should contact the Department through the toll-free hotline (800)447-1636, established pursuant to Section 1002.395, F.S., or through the Department's website at www.floridaschoolchoice.org.

(b) An initial complaint shall include the complainant's name, phone number, address, and details of the situation.

(c) After receipt of the initial complaint, the Department shall offer to provide a formal complaint form to the complainant.

(d) To register a formal complaint, the complainant may complete the formal complaint form, or submit a written complaint that includes the information in paragraph (6)(b), sign it, and mail or fax it to the Department within thirty (30) days of making the initial complaint.

(e) Upon receipt of a formal complaint, the Department shall review the complaint ~~for legal sufficiency~~. If the complaint alleges a violation of applicable law or rule is legally sufficient, the Department shall conduct an inquiry, as described in subsection ~~(7)~~ ~~(8)~~ of this rule, or refer the matter to the appropriate agency for investigation. If the complaint does is not allege a violation of applicable law or rule legally sufficient, the Department may close the complaint.

(f) The Department shall notify the complainant of the final result of all ~~legally sufficient~~ formal complaints.

~~(7)~~ ~~(8)~~ Inquiry Process. If an inquiry is made as to the conduct of an individual or entity participating in the program:

(a) A letter of inquiry will be delivered using regular and certified mail that alerts the individual or entity to the inquiry and provides the opportunity to respond. The letter of inquiry shall detail any alleged violations of program rules or law, the response required, any documentation requested, and the deadline for responding to the department. A copy of the letter of inquiry shall be provided to the appropriate nonprofit scholarship-funding organization.

(b) If there is a failure to respond to a letter of inquiry within fifteen (15) days by:

1. A parent, then the Department shall notify the appropriate nonprofit scholarship-funding organization of the nature of the inquiry and the parent's ~~deemed admission of alleged violation due to a failure to respond to the letter of inquiry.~~ The nonprofit scholarship-funding organization may use that information to reconsider its determination of student eligibility. The Commissioner may take action as prescribed under subsection (8) ~~(9)~~ of this rule.

2. A private school, then the Commissioner shall proceed with the noncompliance procedures related to the Commissioner's authority established pursuant to Section 1002.385(10), F.S., and this rule.

3. A nonprofit scholarship-funding organization, then the Commissioner shall proceed with the noncompliance procedures related to the Commissioner's authority established pursuant to Section 1002.385(10), F.S., and this rule.

4. A school district, then the Commissioner shall take any actions allowable under law to compel school district compliance with program requirements and to ameliorate the effect of the violation as appropriate.

(c) The Department shall review the response to the letter of inquiry; and:

1. If satisfied that no violation of laws or rules related to scholarship program participation occurred, notify the eligible student, approved provider, nonprofit scholarship-funding organization, private school, or school district and complainant that the inquiry will be closed.

2. If more information is needed, request additional information related to the inquiry from the complainant, eligible student, approved provider, nonprofit scholarship-funding organization, private school, or school district.

3. If a violation of laws or rules related to scholarship program participation has been committed by:

a. A parent, then the Department shall notify the appropriate nonprofit scholarship-funding organization of the findings and shall initiate the process prescribed under subsection (8) ~~(9)~~ of this rule.

b. A private school, then the Commissioner shall proceed with the noncompliance procedures related to the Commissioner's authority established pursuant to Section 1002.385(10), F.S., and this rule.

c. A nonprofit scholarship-funding organization, then the Commissioner shall proceed with the noncompliance procedures related to the Commissioner's authority established pursuant to Section 1002.385(10), F.S., and this rule.

d. A school district, then the Commissioner shall take any actions allowable under law to compel school district compliance with program requirements and to ameliorate the effect of the violation as appropriate.

(d) The Department may at any point in the process set forth in this rule refer an inquiry to the Department's Office of Inspector General or another appropriate agency for investigation.

(e) Notwithstanding any other provisions of this rule, the Commissioner may at any point during the inquiry process exercise the authority given under Section 1002.385(10), F.S., and this rule.

~~(8) (9)~~ Commissioner's duties. The Commissioner may ~~deny~~, suspend, or revoke participation in the scholarship program ~~pursuant to Section 1002.385(10), F.S.~~

(a) If the Commissioner issues a notice of noncompliance:

1. Eligible students, nonprofit scholarship-funding organizations, and private schools shall be given no fewer than five (5) days from the date of the notice, as determined by the Commissioner, to demonstrate compliance;

2. The notice shall state the reasons for the noncompliance, provide instructions on how to demonstrate compliance, and give a deadline for demonstrating compliance to the Commissioner;

3. The eligible student, nonprofit scholarship-funding organization, or private school's participation status shall be unaffected by the above notice of noncompliance process; and,

4. A copy of the notice shall be provided to the appropriate nonprofit scholarship-funding organization.

(b) Upon issuance of a notice of noncompliance the Commissioner may suspend payments to the non-profit scholarship funding organization until the non-profit scholarship funding organization has demonstrated compliance.

(c) If the Commissioner issues a notice of proposed action ~~denying~~, suspending, or revoking an eligible student, nonprofit scholarship-funding organization, or private school's participation:

1. The notice shall state the reasons for the action and specify the eligible student, approved provider, nonprofit scholarship-funding organization, or private school's right to appeal;

2. The eligible student, approved provider, nonprofit scholarship-funding organization, or private school's participation status shall be unaffected until the proposed action becomes final and all relevant appeals have expired; and,

3. A copy of the notice shall be provided to the appropriate nonprofit scholarship-funding organization.

(d) If the Commissioner ~~denies~~, suspends, or revokes an authorized use of program funds:

1. The Commissioner shall issue a notice of agency action to the eligible student, nonprofit scholarship-funding organization, or private school;

2. The notice shall state the reasons for the action and the rights the eligible student, nonprofit scholarship-funding organization, or private school has to appeal;

3. The eligible student, nonprofit scholarship-funding organization, or private school participation status will be adjusted so that it will be unable to participate in the program; and,

4. A copy of the notice shall be provided to the appropriate nonprofit scholarship-funding organization.

Rulemaking Authority 1002.385(18) FS. Law Implemented 1002.385 FS. History—New 11-4-14, Amended