



## Prohibited Forms of Discrimination in the VPK Education Program

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### PURPOSE

To identify prohibited forms of discrimination in the VPK education program.

### REFERENCES:

[Section 1002.53\(6\), Florida Statutes \(F.S.\)](#)

[42 U.S.C. § 2000d](#)

[Americans with Disabilities Act](#)

### AUTHORITY

Reference to any laws, rules and regulations in this guidance document includes revisions to those laws and regulations made after the effective date of this guidance document.

### BACKGROUND

#### 1. Discrimination on the grounds of race, color, or national origin is prohibited.

[Section 1002.53\(6\), F.S.](#) provides as follows:

- (6)(a) *A parent may enroll his or her child with any private prekindergarten provider that is eligible to deliver the Voluntary Prekindergarten Education Program under this part; however, the provider may determine whether to admit any child. An early learning coalition may not limit the number of students admitted by any private prekindergarten provider for enrollment in the program. However, this paragraph does not authorize an early learning coalition to allow a provider to exceed any staff-to-children ratio, square footage per child, or other requirement imposed under ss. 402.301-402.319 as a result of admissions in the prekindergarten program.*
- (b) *A parent may enroll his or her child with any public school within the school district which is eligible to deliver the Voluntary Prekindergarten Education Program under this part, subject to available space. Each school district may limit the number of students admitted by any public school for enrollment in the school-year program; however, the school district must provide for the admission of every eligible child within the district whose parent enrolls the child in a summer prekindergarten program delivered by a public school under s. 1002.61.*
- (c) *Each private prekindergarten provider and public school must comply with the antidiscrimination requirements of [42 U.S.C. s. 2000d](#), regardless of whether the provider or school receives federal financial assistance. A private prekindergarten provider or public school may not discriminate against a parent or child, including the refusal to admit a child for enrollment in the Voluntary Prekindergarten Education Program, in violation of these antidiscrimination requirements.*

[42 U.S.C. § 2000d](#) reads:

*Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin*

*No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (Pub. L. 88-352, title VI, Sec. 601, July 2, 1964, 78 Stat. 252.)*

VPK law is silent on discrimination of other types or any references to types of discrimination added to [42 U.S.C. § 2000d](#) via executive order. If an entity receives federal funding, applicable federal statutes may place additional federal requirements on the entity not found in Florida’s VPK statutes.

## **2. All age-eligible children in Florida, including those with disabilities, may take part in the VPK Education Program\*.**

Private providers and public schools enrolling VPK children with disabilities should take note of requirements relating to public accommodation and the [Americans with Disabilities Act](#):

### **(a) Public schools.**

Public schools are prohibited from discriminating against children with disabilities under Title II ([42 U.S.C. §§ 12131- 12165](#)) of the federal Americans with Disabilities Act (ADA) and Section 504 of the federal Rehabilitation Act of 1973 ([29 U.S.C. § 794](#)).

### **(b) Private providers.**

1. Many private prekindergarten providers are also prohibited from discriminating against children with disabilities. Title III ([42 U.S.C. §§ 12181-12189](#)) of the ADA prohibits discrimination against a person because of a disability by any person who owns, leases, or operates a place of “public accommodation” ([42 U.S.C. § 12182](#)), which the ADA defines to include private schools, day care centers, and other places of education ([42 U.S.C. § 12181\(7\)\(J\) and \(K\)](#)).

#### **The ADA defines a “disability” as:**

- a. A physical or mental impairment that substantially limits one or more of the major life activities of a person;
  - b. A record of such an impairment; or
  - c. A person’s being regarded as having such an impairment ([42 U.S.C. § 12102\(2\)](#)).
2. Under the ADA, a public accommodation (e.g., private prekindergarten provider), among other things:
- a. May not use eligibility criteria that tend to screen out a person with a disability;
  - b. Must make reasonable modifications as may be necessary to serve a person with a disability, unless those modifications would fundamentally alter the nature of the services; and
  - c. Must provide auxiliary aids and services to a person with a disability when necessary to serve the individual, unless providing those auxiliary aids and services would fundamentally alter the nature of the services or result in an undue burden ([42 U.S.C. § 12182\(b\)\(2\)\(A\)](#)).
3. The ADA specifies that it does not require a public accommodation (e.g., private

prekindergarten provider) to permit a person to participate in or benefit from services if the individual poses a direct threat to the health or safety of others ([42 U.S.C. § 12182\(b\)\(3\)](#)). In addition, the ADA exempts from its requirements religious organizations or entities controlled by religious organizations, including places of worship ([42 U.S.C. § 12187](#)).

\*VPK age-eligible children who have a disability may qualify for either [VPK Specialized Instructional Services](#) or the [Gardiner Scholarship Program](#), and decide to take part in one of these programs instead of a traditional VPK program.

## **INSTRUCTIONS**

Whether through monitoring or by report, if an early learning coalition (monitoring private providers) or school district (monitoring public schools) finds non-compliance with VPK program requirements, results shall be included in appropriate monitoring reports. Corrective action and/or revocation of provider eligibility shall be issued and the situation resolved timely.

## **HISTORY**

Issued July 1, 2016. Reissued July 1, 2017. Reissued July 1, 2018. Reissued July 1, 2019.  
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