STATE OF FLORIDA
DEPARTMENT OF EDUCATION

IN RE: WAIVING STRICT ADHERENCE TO THE FLORIDA EDUCATION CODE, AS SPECIFIED HEREIN, PURSUANT TO EXECUTIVE ORDER NUMBER 20-52, MADE NECESSARY BY THE COVID-19 PUBLIC HEALTH EMERGENCY

DOE ORDER NO. 2021-EO-02

FILED AGENCY CLERK
2021 APR -9 AM 10:05
DEPT OF EDUCATION
TALLAHASSEE FLA

EMERGENCY ORDER

WHEREAS, the Governor of the State of Florida issued Executive Order No. 21-45, ratifying and reaffirming Executive Order No. 20-52, declaring a state of emergency in response to the COVID-19 Public Health Emergency; and,

WHEREAS, in Florida Division of Emergency Management Order No. 20-004, the State Coordinating Officer directed the Florida Department of Education, in coordination with educational providers, to take all appropriate action to promote the health, safety, welfare and education of Florida's students during the emergency; and,

WHEREAS, the Commissioner of Education issued DOE Order No. 2020-EO-07 to build on the successful reopening of all public schools to in-person instruction; to promote parental choice while ensuring that every student is making adequate academic progress; and to provide financial continuity to enable each school district to maintain the full panoply of services for the benefit of Florida students and families; and,

WHEREAS, thanks to Florida's courageous and dedicated educators and local school leaders, all 67 county school districts, all state university laboratory schools and the Florida School for the Deaf and the Blind opened for in-person instruction so that nearly 80 percent of Florida's public school students (greater than 2.2 million) are learning in-person; and,

WHEREAS, with disproportionate numbers of educationally disadvantaged students learning off-campus or not attending school at all, achievement gaps for these students may be exacerbated this school year. Moreover, many students who are not educationally disadvantaged are attending school virtually or in hybrid modalities for the first time, and may have achievement gaps that are atypical for the student; and,

WHEREAS, the testing that is required by state and federal law is now more critical than ever so that educators and parents can measure progress and identify gaps in learning in this atypical and challenging year. These measurements help to determine what additional services and

supports are needed to provide every student with the opportunity to succeed in school and in life beyond school; and,

WHEREAS, the Commissioner of Education issued DOE Order No. 2021-EO-01, expanding the statewide testing windows to ensure that every student can be safely tested. Even so, due to the pandemic, it is anticipated that the percentage of students that are able to be tested may be lower this year, at least in certain areas of the state. Lower percentages of students who participate in statewide testing can lower the reliability of the results at the school, district and state level; and,

WHEREAS, each student has individualized circumstances and challenges caused by the pandemic, including changes in learning modality, intermittent quarantine periods as required by local Department of Health officials, social isolation, and a host of other factors that students have experienced; and,

WHEREAS, local school districts, in consultation with parents, are in the best position to evaluate the academic progress of each student and then to make individualized decisions related to student progression and graduation in keeping with the best interest of each child.

NOW, THEREFORE, I, Richard Corcoran, Commissioner of the Florida Department of Education, pursuant to the authority granted by Executive Order 20-52 and Florida Division of Emergency Management Order No. 20-004, issue this Order to respond to and mitigate the impact of the emergency and to promote the health, safety and welfare of persons connected with Florida's educational system.

To mitigate the impacts of the emergency, the statutes from the following chapters and the associated rules are suspended to the extent required to give effect to this Order: Chapters 1002, 1003, 1008, and 1009. As more specifically set forth in the Order, the statutes that must be suspended to give effect to this Order include the following: 1002.33(9)(n) and (16)(a)2.; 1002.331; 1002.333(1)(c); 1002.61(2)(a); 1002.89(6); 1003.631; 1003.4282(3) and (6); 1003.4285; 1008.22; 1008.25(5); 1008.33(4); 1008.34; 1008.341; 1009.534(1)(e); 1009.535(1)(e); 1009.536(1)(e) and (2)(b); and 1011.62(1)(f) and (9), Fla. Stat. Any provision is suspended only to the extent necessary to give effect to this Order.

I. Graduating seniors

Florida law allows students entering grade nine to choose from one of five options to earn a standard high school diploma:

- 24-credit program
- 18-credit, Academically Challenging Curriculum to Enhance Learning (ACCEL) option
- Career and Technical Education (CTE) Pathway
- International Baccalaureate (IB) curriculum
- Advanced International Certificate of Education (AICE) curriculum

In addition to the five options available for students to earn a standard diploma listed above, Rule 6A-1.09963, Florida Administrative Code, *High School Graduation Requirements for Students with Disabilities*, outlines two additional options that students with disabilities may complete.

Graduation waivers. Currently enrolled students who are expected to graduate in the spring of 2021 are expected to pass the assessments to earn a standard high school diploma pursuant to s. 1003.4282, Fla. Stat. However, notwithstanding ss. 1003.4282(3) and (6) and 1008.22(3), Fla. Stat., and solely for students who are expected to graduate in the spring of 2021, a school district is authorized to waive the required state assessments for graduation, if the district determines on a case-by-case basis that the student's high school record establishes a comparable level of achievement. School districts must report these waivers to the Department on survey five.

Designation waivers. Additionally, school districts are authorized to waive the requirement to use assessments to earn standard high school diploma designations found in s. 1003.4285, Fla. Stat., solely for students expected to graduate in the spring of 2021. A school district is authorized to grant such waivers only where the district determines on a case-by-case basis that the student's high school record establishes a comparable level of achievement.

Application to charter schools. This section applies equally to charter schools. Charter school governing boards must use best efforts to maintain standards consistent with the school district. Either a school district or a charter school governing board may request assistance from the Department to resolve any disputes over whether a student's high school record establishes an equivalent level of achievement as passage of the state assessment. The Department will seek to resolve such disputes within three business days. The Department may withhold approval of any requests from the school district related to this Order until all such disputes, if any, have been resolved.

The use of alternative means to determine that a student has met the requirements for graduation in lieu of the results of statewide assessments is limited to the students expected to graduate in the spring of 2021.

II. Promotion and retention decisions

State EOC exams. Notwithstanding the requirements of ss. 1008.22, 1008.25 and 1003.4282, Fla. Stat., school districts and charter school governing boards are authorized to determine promotion and final course grades in classes with state end-of-course (EOC) exams, based solely on the student's performance in the course, including in instances where the student does not have a score from the EOC exam. This authorization only applies to courses students successfully completed in the 2020-21 school year.

Retention. Decisions about whether it is in the best interest of a child to repeat a grade solely for academic reasons must be determined at the local level by the school's principal, after a careful review of the student's academic record, with input from the parents, the student, teachers and

school leaders. Only academic performance, or provisions in a student's Individualized Education Program (IEP), can be considered when discussing a child repeating a grade.

Third grade promotion. Notwithstanding the requirements found in s. 1008.25(5), Fla. Stat., a student may be promoted to grade four, regardless of the absence of an English Language Arts (ELA) assessment score or the absence of a Level 2 or higher ELA score, if the district is able to determine that a student is performing at least at Level 2 on the ELA assessment through the good cause exemption process provided in s. 1008.25, Fla. Stat., or other means reasonably calculated to provide reliable evidence of a student's performance.

Extra support for struggling students. For students that are at risk of being retained, the school district and charter schools must provide extra supports in concert with those interventions required under DOE Order No. 2020-EO-07. While this Order provides authority for school districts to use alternative means to determine achievement for students expected to graduate in the spring of 2021, in order to ensure that students who are scheduled to graduate after this year meet the standards established in statute and rule, school districts must begin remediation efforts. Priority must be given to students at risk of being retained for summer learning programs. The district must use best efforts to assign these students, with priority to a highly effective teacher, and thereafter, if necessary, assign to an effective teacher.

III. Bright Futures

A. Florida Academic Scholars and Florida Medallion Scholars awards.

Volunteer hours. For currently enrolled students expected to graduate in the spring of 2021 only, ss. 1009.534(1) and 1009.535(1), Fla. Stat., and Rule 6A-20.028(3)(d), F.A.C., are suspended in part, to allow high school guidance counselors, or other persons approved by a district school board or the administrator of a nonpublic school, to submit transcript documentation to the Florida Department of Education to report compliance with the required number of volunteer service hours for scholarship eligibility if the student 1) completed the service hours; 2) had planned for, and intended to, complete the service hours prior to the student's high school graduation, but was unable to do so because the pandemic created a lack of access to volunteer opportunities; or 3) if, due to health concerns, the student fell short of the volunteer service hours. Such documentation shall be considered as evidence that a student has completed the required number of volunteer service hours for scholarship eligibility.

Extension of testing deadline. Rule 6A-20.028(3)(g)1.d., F.A.C., is suspended in part, to allow students graduating in the 2020-21 academic year, to earn at least the required minimum SAT and ACT scores as specified for each Bright Futures Scholarship award level in s. 1009.531(6), Fla. Stat., no later than December 1, 2021. Sections of the SAT or ACT from different test dates may continue to be used to meet the test criteria through December 1, 2021, but test types cannot be mixed.

B. Florida Gold Seal Vocational Scholars award.

Volunteer hours. For currently enrolled students expected to graduate in the spring of 2021 only, s. 1009.536(1)(e), Fla. Stat., is suspended in part, to allow high school guidance counselors, or other persons approved by a district school board or the administrator of a nonpublic school, to submit transcript documentation to the Florida Department of Education to report compliance with

the required number of volunteer service hours for scholarship eligibility if the student 1) completed the service hours; 2) had planned for, and intended to, complete the service hours prior to the student's high school graduation but was unable to do so because the pandemic created a lack of access to volunteer opportunities; or 3) if, due to health concerns, the student fell short of the volunteer service hours. Such documentation shall be considered as evidence that a student has completed the required number of volunteer service hours for scholarship eligibility.

Extension of testing deadline. Rule 6A-20.028(3)(g)2., F.A.C., is suspended in part, to allow students graduating in the 2020-21 academic year, to earn at least the minimum qualifying subtest scores from the Florida Postsecondary Education Readiness Test (PERT), SAT or ACT as specified in Rule 6A-10.0315, F.A.C., no later than December 1, 2021. Sections of the PERT, SAT or ACT from different test dates may continue to be used to meet the test criteria through December 1, 2021, but test types cannot be mixed.

C. Florida Gold Seal CAPE Scholars award.

Volunteer hours. For currently enrolled students expected to graduate in the spring of 2021 only, s. 1009.536(2)(b), Fla. Stat., is suspended in part, to allow high school guidance counselors, or other persons approved by a district school board or the administrator of a nonpublic school, to submit transcript documentation to the Florida Department of Education to report compliance with the required number of volunteer service hours for scholarship eligibility if the student 1) completed the service hours; 2) had planned for, and intended to, complete the service hours prior to the student's high school graduation but was unable to do so because the pandemic created a lack of access to volunteer opportunities; or 3) if, due to health concerns, the student fell short of the volunteer service hours. Such documentation shall be considered as evidence that a student has completed the required number of volunteer service hours for scholarship eligibility.

IV. Opting in to school grades and school improvement ratings

A. Grades, improvement ratings and VAM.

Except for districts and schools opting-in, as outlined in section IV.C. of this Order, in lieu of school grades and school improvement ratings under ss. 1008.34 and 1008.341, Fla. Stat., for the 2020-21 academic year, the Department will update its Know Your Schools federally compliant public reporting tool excluding summative district and school grades and school improvement ratings. The flexibility provided to school districts and charter schools is limited to the 2020-21 school year.

Rule 6A-5.0411, F.A.C., is suspended in part such that the three-year aggregate VAM scores will contain available teacher performance information from the 2017-18, 2018-19 and 2020-21 school years, meaning that the three year aggregate score will cover a four year span and will contain all available data during that time period. In order to provide maximum flexibility for use in the "performance of students" component of educator and administrator evaluations for districts that use this resource, single-year and two-year aggregate scores will also be calculated by the Department.

B. Schools retain pre-COVID statutory designations.

Except as provided in section IV.C. of this Order, all schools in Florida will retain their pre-COVID designations. Thus, schools designated as schools of excellence (s. 1003.631, Fla. Stat.), schools identified for school improvement (ss. 1008.33 and 1002.33(9)(n), Fla. Stat.), 300 lowest-performing schools (s. 1011.62(1)(f) and (9), Fla. Stat.), persistently low-performing schools (s. 1002.333(1)(c), Fla. Stat.), high-performing charter schools (s. 1002.331, Fla. Stat.), and the like, remain unchanged.

C. School districts or charter school governing boards may apply to the Department to opt in to have one or more 2020-21 school grades or school improvement ratings officially recorded and reported for purposes of all statutory purposes.

Except as provided in s. 1008.341(2), Fla. Stat., for any school that tests 90 percent or more of its eligible students, within 30 days after the release of all state testing data, any school district or charter school governing board may apply to the Department to opt in to have one or more 2020-21 school grades or school improvement ratings apply for all statutory purposes that are associated with a school grade or rating. Requests to opt in to less than all of the statutory purposes or consequences associated with a grade or rating will not be considered. The Department will review applications to ensure that the students tested are generally statistically representative of the entire student body eligible for testing. For any school that applies to opt-in and tests 95 percent or more of its eligible students, their applications shall be presumptively approved.

The Department will provide guidance related to the submission of such request. The guiding principle for requests from schools will be whether the Department finds that the 2020-21 school grades or school improvement ratings accurately and fairly reflect the performance of all the students enrolled at the school, including the performance of the students who were not tested.

For the 2020-2021 school year, the calculation of learning gains for school grades and school improvement ratings means the degree of student learning growth occurring from the 2018-2019 school year to the 2020-2021 school year as required by state board rule, and for the calculation of the required middle school acceleration component in school grades "prior year" means the 2018-2019 school year. Sections 1008.34(1)(b) and 1008.341(3), Fla. Stat., and Rule 6A-1.09981(4)(b)1, F.A.C., are suspended in part, as necessary, due to the cancellation of the Spring 2020 statewide assessments.

Similarly, consistent with how the Department has interpreted the impacts of an absence of a school grade for a school year, for purposes of establishing a high-performing charter school, the references in section 1002.331(1), Fla. Stat., to "previous," "most recent" or "consecutive" school years or school grades, refers only to the years that a grade was issued to the school. Thus, a charter school that earned an "A" in 2018-19 and then earns an "A" in its next graded school year, 2020-21 or 2021-22, as applicable, would qualify as a high-performing charter based on "at least two consecutive school grades of "A" in the most recent 2 school years."

V. School Readiness and Voluntary Prekindergarten Education Programs

A. School Readiness. In an effort to ensure that funds support providers and therefore support the families they serve, if there are funds that go unutilized, the requirements that School

Readiness Programs use no more than 5 percent for administrative costs and a total of 22 percent for a combination of administrative, quality and non-direct services in s. 1002.89(6), Fla. Stat., are suspended as long as the funds are used for the purposes of emergency recovery and direct support to providers through June 30, 2021.

B. Voluntary Prekindergarten Education Program. Due to the fact that many districts and programs are operating their Spring 2021 education programs into the middle and latter days of June and, therefore, meeting current law would be a physical impossibility, the provisions of s. 1002.61(2)(a), Fla. Stat., requiring a minimum of 300 hours of instruction is suspended for the 2021 Summer VPK program for public schools and private prekindergarten providers. The 2021 Summer VPK program shall constitute a minimum of 200 hours of instruction and the funding shall be prorated accordingly.

VI. Effective date

This Order is effective immediately.

DONE AND ORDERED this 9th day of April 2021, in Tallahassee, Leon County, Florida.



Richard Corcoran
Commissioner of Education

I HEREBY CERTIFY that the above EMERGENCY ORDER has been filed with the Agency Clerk of the Department of Education, on this 9th day of April 2021.



Agency Clerk