

Reforming the Structure of Florida's Accountability System

Policy Brief

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Executive Summary

The legal definition of Florida’s public education system includes its local public schools, charter schools, voucher schools, and schools contracted to provide special-education services. The constitutional mandate for a “uniform, efficient, safe, secure, and high-quality system of free public schools” suggests that the expectations of a high-quality education should be the same for all schools receiving aid from the state. Considering the recent controversy over the accountability of private schools given public funding—the voucher schools in the state’s four voucher programs—a scrutiny of Florida’s accountability system is timely. This review includes a comparison to the constitutional mandate and a description of how it applies to the different schools receiving direct and indirect aid from state policy.

This brief explains why accountability is a common public expectation today; it describes what is new in Florida’s accountability policies since 1999; and it compares those policies to the national mandates in the No Child Left Behind Act. The explicit value of Florida policies is described here; the state Department of Education’s implementation of the accountability policies is explicated, as is the applicability of the policies to different types of schools receiving direct and indirect aid from the state. The brief finds both benefits and areas of concern in the current accountability policy, when it is looked at as a set of structures.

Benefits

1. Florida policy sets positive expectations for children. Florida's official assessment and accountability policies affirm children's rights to a high-quality education.
2. Florida's accountability policy is an extension of adult experiences in education. Florida's official assessment and accountability policies dovetail with the experiences of adults in the state.
3. Florida has had a practical testing program since before 1999. The original (1995 and 1996) design of the FCAT would have allowed it to be a reliable guide to student achievement over the years—had it not been used as a basis for so many consequences.

Areas of Concern

1. Florida does not hold all publicly-aided schools to the same standards. Because all schools receiving financial aid are part of the “free public education” system under Florida's constitution, the existence of different rules for different types of schools constrains parents, and the state from making accurate and fair comparisons among tax-supported schools in Florida.
2. Florida has frequently-changing and obscure accountability rules. The standards for grading Florida's local public and charter schools have changed frequently and are not clear, or easily understandable, to either educators or the general public.

3. Florida relies on one set of measures for all accountability consequences.
Florida's accountability system relies on a snapshot of student performance for multiple purposes.
4. Florida keeps test items secret after the end of testing each year. Test security must be balanced against the need for transparency so that the public can ensure that tests, especially those carrying high stakes, are accurately scored—and that they validly measure what they purport to measure.

Recommendations

1. Create a uniform system of accountability that allows the accurate assessment of, and comparison among, all schools receiving direct or indirect financial aid from the state.
2. Redesign Florida's accountability regime so that the FCAT and other test results are used in a professionally-validated manner as described in the *Standards for Educational and Psychological Testing*, published jointly by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.
3. Release the test items on the FCAT test each year for public review (and comment).

Reforming the Structure of Florida's Accountability System

Section 1: The Issue

This brief discusses the application of Florida's accountability policies to all schools given direct and indirect aid by state policy. It analyzes the structure of written policies and compares existing policies to the constitutional requirement that Florida's state government provide a "uniform, efficient, ...high-quality," free public education system.¹ The focus of this paper is the comparison of accountability provisions among different types of schools receiving financial aid from state policies. This brief does not analyze the voucher program tied to local public school accountability, though it does discuss differences in accountability policies as applied to different schools given financial aid by the state. Nor does this brief discuss the effects of the accountability system on classroom teaching or compare the third-grade retention policy with the research base.

A few definitions are in order, first. *Assessment* refers to any collection of information on student performance or skills. While the most commonly known assessments are annual standardized tests, there are many types of useful assessments in schools. *Accountability* refers to any method of comparing what happens in schools to the accepted obligations of schools. Accountability can include the results of annual standardized tests, but it also refers to schools' responsibilities to be financially prudent, to look after the safety of students, and to be part of a democratic society.

The public education system, as outlined in the Florida state constitution, legally includes private schools that accept direct or indirect aid from the public. In *Bush v.*

Holmes, Florida’s First District Court of Appeals ruled that the constitutional requirement for “free public education” did not prohibit aid to private schools. The court ruled that the state could fulfill its obligation to the public through a system that included payments to private schools. Because the courts interpret the state constitution in this way, this brief treats all schools receiving direct or indirect aid from the state as part of the public education system in Florida.

The following terms refer to the different schools receiving financial aid from state policies: *local public schools*, *charter schools*, *voucher schools*, and *contract schools*. The vast majority of facilities are *local public schools*—county school boards oversee them and they rely on local property taxes, state aid, and federal grants to operate. *Charter schools* are schools that non-profit organizations run with public funding, though the operation of some charter schools in Florida has been contracted out to private “educational management organizations.” Charter schools operate under multi-year contracts with county boards of educations. *Voucher schools* accept direct or indirect state aid under one of the four voucher programs in Florida: the Opportunity Scholarship Program (also known as the failing-schools voucher), the McKay Scholarship voucher program for students with disabilities, the corporate tax-credit voucher program, and the K–8 virtual-school voucher program.² *Contract schools* accept individual students with disabilities through funding from a local public school—in rare cases—such as when a county cannot provide an appropriate education for individual students with very unusual needs.³

Section 2: Background

Why Accountability

There is broad agreement that public education should be accountable. There are a number of reasons for this consensus. A school is one of the local faces of government, and while Americans are willing to spend large sums on education, they want to be sure that schools fulfill their obligations.

Education is a much bigger political issue, at both the state level and at the national level, than it was before World War II, and the last three presidents have all claimed to be “education presidents.” States and the federal government have funded a much greater share of elementary and secondary education in the last forty years than at any other time in the nation’s history. In return, legislators and policymakers want some control over what schools do with the money.

As state and federal politicians have paid more attention to education, they have called on schools to help fight various enemies. Federal legislation since the 1950s has called on schools to help win the Cold War, to fight the War on Poverty, to battle racism, and to provide American companies with a well-educated workforce capable of competing in the world economy. Each of these “calls to action” for schools has built more pressure to make schools perform.⁴

In light of the history of education since World War II, it would be difficult to feign surprise at the call for accountability in education. However, Florida’s current accountability system is not the only model available. Accountability has not always been thought of as tax money given, or withheld, on the basis of test scores.

Assessment and Accountability in Florida

Florida's local public schools operate under strict accountability systems. State laws and regulations determine how local public schools can spend money, whom local public schools may hire, and what local public schools can teach. In addition, the state government requires annual standardized testing of all third- through tenth-grade students in local public schools and in charter schools. The Florida Comprehensive Assessment Tests (FCAT) includes all of these examinations. The FCAT is the heart of the state's system of assigning single letter grades to local public and charter schools.

Some of these assessment and accountability policies are old, but policies enacted since 1999 have increased emphasis on annual testing, the accountability provisions applicable to local public schools and charter schools, and the consequences for individual teachers and students. Since 1999, in order to increase accountability, legislators have begun requiring the public education system to

1. Test students annually from grades 3 through 10.
2. Classify local public schools and charter schools into five categories (the school grades, from A to F) based on test scores.
3. Tie payments to local public schools and charter schools to test scores.
4. Require county boards of education to create systems to pay local public school teachers bonuses based primarily on test scores.
5. Fail and retain third-graders, based on reading test scores.

Some of the new policies have been based on former practices, or actually represent an extension of older processes. Before 1999 there was some annual testing of students, there was a graduation test requirement, and there existed a system of

identification for under-performing schools. In 1995 and 1996, the Florida Board of Education approved a set of tests at the 4th, 5th, 8th, and 10th grades in reading, writing, and math. Each test had some components that demanded writing: in either the entire test (for Florida Writes, now called FCAT Writing), or in several test items (for reading and for math). These tests were to be aligned with newly developed curriculum standards, the Sunshine State Standards (approved in 1995). In addition, tenth-grade tests were to replace the High School Competency Test as the newest graduation requirement (since 1977, a mandatory graduation test has existed). In 1996, Florida's state government began using the new FCAT to identify under-performing schools, first called "critically low-performing schools."

In several ways, Florida's current policies may be viewed as an intensification of older policies: more tests (at additional grade levels) now exist—for example, third graders must take exams to get into fourth grade; new categories for schools are based on testing; and a harder set of tests is the gateway to a regular high school diploma.⁵

Florida's current assessment and accountability policies depart from past practices, however, in two important respects: money and application. State policy now gives out millions of dollars, contingent upon test scores. Schools can receive \$100 every year per student who either: earns a grade of A or improves (by a grade) in the state's accountability categories. State policy also requires that counties pay teachers bonuses based primarily on test scores.

Currently, Florida has a public education accountability policy that does not apply uniformly to all parts of the public education system—a system that includes charter schools, voucher schools, and contract schools, as well as local public schools. The Palm

Beach Post published a series of articles on the financial accountability of voucher schools in the second half of 2003; and as a result, debate has expanded to the question of how accountability policies should apply to all parts of public education in Florida.

Florida and the No Child Left Behind Act

Florida's state government created its extensive set of annual tests with high-stakes consequences several years before the passage of the federal No Child Left Behind Act (NCLB). The NCLB is the 2002 reauthorization of the Elementary and Secondary Education Act—the largest federal school-aid program—with established mandates for testing and accountability policies in each state. When President Bush signed the law, Florida's existing policies were closer than most states to the new federal assessment and accountability mandates. State obligations already included testing children annually in math and reading in grades 3-8, testing children at least once in high school, evaluating and labeling schools based on performance in at least math and reading, and enforcing some sanctions and rewards tied to statewide accountability. To Florida's existing policies, NCLB added a mandate to hold schools accountable for how students meet what the law terms Annual Yearly Progress goals in specific demographic categories (by race/ethnic groups and for students eligible for free and reduced lunches).⁶ Under the law, each state must write its own assessment and accountability plan, and all plans must be approved by the federal Department of Education.

Florida's plan relies on the Florida Comprehensive Assessment Test (FCAT) results for the NCLB definition of Annual Yearly Progress. However, Florida's Annual Yearly Progress goals for NCLB are substantially different from the school grading criteria, even though they both use the same test and even though they were defined by

the Florida Department of Education. The result has been a gap between the evaluation of schools by the state's grading criteria and the evaluation according to the state's NCLB criteria. Thus, in 2003, while 72 percent of Florida schools were graded A or B—87 percent of Florida schools failed to meet the goals that Florida had set for NCLB.⁷

Other state plans meet the No Child Left Behind mandate for annual progress in ways substantially different from Florida's plan. Some states plan to mix multiple-choice exams with more open-ended, written exams. Maine, New Hampshire, Rhode Island, and Vermont have created the New England Compact to develop such tests, and their plans were approved by the federal government. Several states, like Nebraska, rewrote their own accountability provisions to dovetail with federal requirements, instead of overlaying a new accountability system onto the state system, as Florida has done. Maine incorporates locally-determined tests in the state plan. Other states, such as Texas, have different thresholds for the minimum number of children in a demographic group (within a grade) for the assessments to be broken down for that group.⁸

Section 3: Data

Data Sources

The statutes, regulations, and rules that define Florida's system of educational accountability are available online. Recent debates about educational accountability in Florida are in the public record, in newspaper accounts, and in other publications over the past half-decade. The state's school grade reports since 1999 are available online, as are descriptions of the assessment and accountability programs. Federal policy and descriptions of other states' plans for the No Child Left Behind Act are also available online.⁹

Florida’s Assessment and Accountability Policies and the Public Education System

Explicit Values of Policies

Key advocates of Florida’s current system of assessment and accountability have set forth a series of goals and policies.

High Expectations for Students and Schools

Legislators and the governor have emphasized high academic standards for students, and the expectation that schools will meet the academic needs of students.¹⁰ Florida’s legislature and policymakers have been consistent over the years: children should be learning, and local public schools should be held accountable for what children learn in school.

Parallel Treatment of Students and Schools

Currently, Florida law requires grading of both students and local public schools. In the mid-1990s, Florida began labeling certain schools “low-performing,” as some other states like Texas and North Carolina have done. Since 1999, Florida has used a letter-grade system to label schools for their performances. Each summer since 1999, the state has labeled local public and charter schools with a grade, from A to F. Before 2002, a school had to meet a set of criteria for each tested subject to qualify for an A through a D grade. Beginning in 2002, the state gave points to schools depending on the percentage of students meeting various categories, based on test scores.

Sanctions and Rewards for Most Schools and Students

Specific penalties and rewards are attached to the accountability system in Florida. Schools receiving the top grade of A are given \$100 per student—to spend as

their staffs and advisory committees choose, within certain limits. Schools that improve between years (for example, between a C and a B) also receive reward money.¹¹

Florida's accountability system also creates consequences for students and teachers. For example, third-graders must pass the FCAT reading test to attend fourth grade, or teachers must compile an extensive portfolio to document the students' reading skills. Students must also pass the tenth-grade FCAT exams (in all subjects) to earn a regular diploma. State law requires that counties create merit systems to pay bonuses to local public school teachers based primarily on test scores.¹²

Monetization of Accountability

Two provisions of Florida law are rare in American public education: giving monetary rewards to schools based on grades, and requiring that teachers be given performance bonuses based primarily on test scores. Of the two policies, only the former is fully implemented: few teachers apply for the performance bonuses.¹³ The legislature first enacted a reward program in 1997, appropriating \$5.4 million in 1998. Initially the recognition program was based on several factors, with achievement test results used as a screening criterion but not as a final determinant of the award.¹⁴ Governor Bush and the legislature dramatically expanded the program in 1999, and linked the rewards to the school grades—based on tests. When legislators drafted a budget for 2003-04, which would have shifted the reward funds to other programs, Bush threatened a veto because he was committed to the monetization of school accountability.¹⁵ To its advocates, including Governor Bush, a financial reward gives a powerful incentive for school improvement in a way that no intangible recognition can provide. A standard argument in favor of monetized incentives for schools and teachers is that such incentives are

standard practice in private enterprise and that schools should operate more like private, for-profit businesses.¹⁶

Policy Implementation in Florida's State Bureaucracy

This subsection describes the implementation of Florida's assessment and accountability policies since 1999, and several related issues.

The Development of School Grading Criteria

The formula Florida uses to label each local public and charter school an A-F school has changed three times since 1999.¹⁷ It is also more complex than the (A-F) label implies. Since 2002, the criteria have been a system of points earned when students score on different levels in different subjects, separately for achievement in one year and improvement in a year, and separately for students whose reading scores were low the prior year. While the first priority is to give separate points for different categories, the administrative rules implementing the law allow mixing of categories. For example, the following passage explicates a way in which a school could earn points towards its cumulative grade in 2002 and 2003 (the first years that grades were decided by points and not by meeting criteria in different categories): The percentage of students who had been listed as being in the lowest quartile of reading scores the prior year, and who had improved one achievement level between the prior year and that year; students who had remained in the same achievement levels, as long as they were levels 3, 4, or 5; or students who had stayed in the same achievement level for both years, but who had met a certain cutoff score within the achievement level in the second spring, so as to qualify as having shown sufficient improvement over one year. If the school did not have 30 students in the lowest quartile (for the percentage of those students' scores to count), the

state counted instead the percentage of all students whose scores had improved an achievement level or who had stayed at the same level but had met the “annual learning gains” criterion to count as having improved.¹⁸

Test Security and Non-release of Individual Items

Florida statutes provide confidentiality for test items. Because Florida does not create enough test questions each year to release to the public, the state keeps exam items secret even when student access to education or a diploma is jeopardized as a result of performance on exams.¹⁹ (Many states have similar policies to the one laid out above, but some other states with high-stakes tests, like New York and Texas, release items after the test.²⁰) As a result, parents and students cannot check to see if inaccurate test results are barriers to grade promotion or to a standard diploma. This secrecy rule has led to lawsuits by parents seeking access to student test results. These lawsuits have failed thus far, and the state Supreme Court has not yet ruled on the issue.²¹ In addition to questions about individual parental rights, the No Child Left Behind Act requires the release of test items where practicable.²²

Multiple Uses of One Assessment Mechanism

Currently, FCAT is a series of tests (given in one day in February and over two weeks in March) that is supposed to fulfill the following functions simultaneously: measure individual student performance in an unbiased manner, compare the state’s academic performance to the performance of other children around the country, provide information for third-grade retention decisions, be a gatekeeper for the standard high school diploma. In addition the FCAT decides whether: parents can send their children to other public schools in the same county, families enrolling their children in Title I

funds can use Title I dollars for private tutoring, parents can send their children to voucher schools, the state will give the school \$100 per student, teachers will be eligible for merit-pay bonuses. The FCAT, due to the broad publicity of test results, also carries the popular functions of letting the public judge the performance of schools and, indirectly, of influencing the values of property in neighborhoods.

In its original design, few expectations were placed on the FCAT. Florida's current testing system, as originally designed (between 1994 and 1996), was a mix of multiple-choice and open-ended items used to track student achievement in a moderate-stakes environment. The set of tests designed a decade ago was a limited probe of skills at key grades, mixing multiple choice items with questions that required written answers.

Accountability Differences in Florida's K–12 Public Education System

This subsection describes the range of school accountability provisions applied to different schools receiving direct or indirect aid from the state. All of the following paragraphs describe variations from the accountability provisions as applied to local public schools.

Financial Controls

Florida does not hold voucher schools accountable for fiscal management. The December, 2003, audit by the state's Chief Financial Officer reports that four programs had been created without requiring that the voucher recipients manage money appropriately, or keep track of enrolled students properly. The document explained that the Florida Department of Education had failed to establish mechanisms to avoid fraud in the programs.²³ In January 2004, the Education Commissioner acknowledged that the Department of Education broke the legislature's prohibition against allowing

kindergarten and first-graders into the state's virtual-school voucher program, a violation of the law that cost the state \$1.1 million.²⁴

Student Achievement and Voucher Schools

Three of the state's voucher programs are not held responsible for student performance. Children who participate in the K–8 virtual-school voucher program will be taking the FCAT in early 2004. Children who attend voucher schools in the Opportunity Scholarship Program are supposed to take the FCAT for applicable grades, but there has been no statewide evaluation of those scores until recently. Children who attend voucher schools through the McKay Scholarship Program for students with disabilities, and the corporate tax-credit voucher program, have no obligation to participate in the state's testing program.²⁵

Student Achievement and Charter Schools

Florida does not make the renewal of charter school contracts dependent on student performance. A number of charter schools receive low grades in the state system without threats to their contracts, including at least eight that received F's in 2003 but continue to operate,²⁶ and are not subject to the same state sanctions as local public schools labeled F. Suspension or cancellation of charter school contracts, based on poor performance on the FCAT, is not required by the state of Florida and is rare.²⁷ More fundamentally, many charter schools do not receive letter grades because of their size or the grade configuration. In 2002, 135 of 173 charter schools received no letter grade from the state.²⁸

Evaluation of Voucher and Charter Programs

Florida's Department of Education conducts little evaluation of charter schools' policies or state voucher programs, essentially the largest experiment in educational privatization in United States history. Because the state holds individual student records (including test scores) as confidential information, only the state (or researchers under contract with the state) can evaluate how individual students are performing in the voucher programs. Only one evaluation has been conducted of voucher programs in the state thus far, and findings were not widely disseminated until they were first reported in the Miami Herald.²⁹

Ethical Standards

Florida has an ethical code of conduct for teachers, a code that safeguards the treatment of students. For example, local public and charter school teachers who engage in unprofessional conduct may have their licenses revoked. The code does not extend to voucher schools, however, which can legally hire unlicensed teachers, including those who have had their licenses revoked by the state.³⁰

Special Education

Florida does not require that voucher schools provide an appropriate education for students with disabilities. The state operates a voucher program for students with disabilities, but it has few safeguards to make sure that family rights are protected, that an appropriate education is provided, or that the state meets all the federal requirements (necessary for such schools to continue receiving federal funding for the purposes of special education).

The state allows families to move children to private schools with state funding, but it doesn't require that the voucher schools provide individualized education plans, collaborative planning with families, transition plans for adolescent students, or a whole range of other services. All of these rights are guaranteed to public school students with disabilities. As reported in late 2003 by the Palm Beach Post, 77 percent of voucher schools educating students with disabilities do not have special services that federal law requires for students in special-education programs, and many have no teachers with specialized training. As of January 2004, there were no test cases of special-education rights in voucher schools.³¹

To hold states accountable for the achievement of students with disabilities and to ensure special education services go only to students who need them, federal mandates require that Florida include students with disabilities in state assessments and reassess students receiving federal special-education services every three years. At the moment, Florida does not enforce these requirements for students with disabilities in voucher schools. As yet, there have been no financial consequences in the state for the lack of participation in assessments or triennial reevaluations.³²

Information about Contract Schools Used for Special Education

Florida does not provide any information about contract schools used for a very small number of students with disabilities. Counties have the right to contract special-education services with outside agencies. In most cases, these are itinerant service providers such as physical therapists. In rare cases, counties contract with a private special-education school for a child's entire educational program. This is a longstanding prerogative of counties in consultation with families.³³ Yet there is no public

accountability for these outside providers. As with the McKay Scholarship special-education voucher schools, contract schools are using public funds to provide education without public accountability.

Quality of Available Data

The most reliable sources of information on accountability policies in Florida and in the country are the statutes, regulations, and rules—the explicit structures of the policies. The implementation of Florida’s accountability policies is clearest in one respect: the letter grades given to each local public and charter school are public information. The audit of voucher programs released in December, 2003, is the work of a professional staff conducted under the state’s Chief Financial Officer, who is in the same party as Florida’s governor and its legislative majorities. The series of articles by the Palm Beach Post is based substantially on public records that the Post requested and received from the state Department of Education. Because the state does not collect or publish information on student achievement and accountability in voucher schools or in contract schools, the quality of such information is questionable.

Section 4: Findings

Florida’s written assessment and accountability policies display both benefits and areas of concern.

Benefits of Florida’s Assessment and Accountability System

1. Florida policy sets positive expectations for children. Florida’s official assessment and accountability policies affirm children’s rights to a high-quality education. This emphasis clearly meets the spirit of Florida’s constitutional mandate for high-quality education.

2. Florida's accountability policy is an extension of adult experiences in education. Florida's official assessment and accountability policies dovetail with the experiences of most adults in the state. The vast majority of Florida's adults attended American schools; parents are likely to find that the state's assessment and accountability practices make sense as they are familiar with testing and grading.³⁴
3. Florida had a practical testing program before 1999. As developed in the mid-1990s, the FCAT was a limited set of tests that combined multiple-choice items with open-response questions that required that students explain their reasoning in different subjects. The original FCAT program, with moderate stakes, was a reasonably reliable guide to student achievement over multiple years.

Areas of Concern in Florida's Assessment and Accountability Systems

1. Florida does not hold all publicly-aided schools to the same standards. Under Florida's constitution, schools given financial aid are part of the free public education system—therefore, the existence of different rules for different types of schools contradicts basic assumptions. The most discussed double standards are in fiscal management accountability and student achievement. Furthermore, there are multiple gaps between accountability for local public schools and accountability for other schools that provide public education. Such gaps do not appear to reflect the state's constitutional requirement to provide a uniform free public education system, if "uniform" means that we hold the same expectations for all schools given public dollars.

2. Florida has frequently changing, and obscure, accountability rules. The standards for grading Florida's local public and charter schools have changed (in the majority of years since 1999) and are not clear or easily understandable to either educators or to the general public. Changing criteria can lead to spurious changes in the letter grades, regardless of a rise or fall in student achievement. In addition to its changing nature, the formula for grading local public and charter schools in any single year has been a complex scheme that few understand. The complexity of the rules has undermined the credibility of the accountability system with educators, who see constantly moving targets rather than clear goals.³⁵ While the end result is something simple—a single letter grade—the complexity of the actual grading criteria makes it difficult to evaluate the effectiveness of a school fairly, based on the grade.
3. Florida relies on one set of measures for all accountability consequences. Florida's accountability system relies on a snapshot of student performance for multiple purposes. Florida's state leaders have relied on a business metaphor to justify monetary incentives for test score results. The current system provides money based on student performance over a week of testing. Basing bonuses on a snapshot of one day or one week is not a standard business practice, however.³⁶ Annual reports by corporations cover revenues, costs, and other financial data over a year, not the last week of the year. High-stakes decisions in business are rarely made on data from a compressed period such as a week. Assigning financial consequences to FCAT results alone is not consistent with such business principles.³⁷

4. Florida keeps test items secret after the end of testing each year. Test security is a crucial feature of any test system. However, test security needs to be balanced against the need for transparency so that the public can ensure that tests, especially those carrying high stakes, are accurately scored and that they validly measure what they purport to measure. Keeping test items secret after each year's testing allows the items to be recycled for future years, but it prevents the use of items in public debate.

Section 6: Recommendations

1. Create a uniform system of accountability that allows the accurate assessment of, and comparison among, all schools receiving direct or indirect financial aid from the state.
2. Redesign Florida's accountability regime so that the FCAT and other test results are used in a professionally-validated manner as described in the *Standards for Educational and Psychological Testing*, published jointly by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.
3. Release for public review (and comment) the test items on the FCAT test each year.

Notes and References

¹ Florida Constitution, Article IX, Section 1.

² These programs are the Opportunity Scholarship Program (commonly known as the failing-schools voucher), the McKay Scholarship (for students with disabilities), the K-8 virtual-school program (where \$4,800 per student is given to two for-profit virtual schools), and the dollar-for-dollar corporate tax credit for donations to private-school scholarships.

³ *Bush v. Holmes* (October 3, 2000), retrieved December 24, 2003, from <http://www.1dca.org/opinions2000/10-03-2000/00-1121.htm>.

⁴ One could say the same about governors, that they are all education governors, Erwin V. Johanningmeier, personal communications. For a more complete discussion of this topic, see Sherman Dorn, "The Political Legacy of School Accountability Systems," *Education Policy Analysis Archives* 6,1 (January 1, 1998). Also see Carl F. Kaestle and Marshall S Smith, "The Federal Role in Elementary and Secondary Education, 1940-1980," *Harvard Educational Review* 42 (1982): 384-408.

⁵ Sonya Isger, "Students' Writing Ability Put to Test in State Exam," *Palm Beach Post*, February 14, 1994; Stephen Hegarty, "Low Scores Have Led to Teaching Changes," *St. Petersburg Times*, May 22, 1994; Ron Bartlett, "State plan will raise school, pupil standards," *Tampa Tribune*, June 18, 1995; Diane Rado, "Student Standards Are in for Overhaul," *St. Petersburg Times*, June 28, 1995; Stephen Hegarty, "Progress: Emphasis is now on Schools," *St. Petersburg Times*, July 10, 1995; Meg James, "Panel OKs Sanctions for Low-Scoring Schools," *Palm Beach Post*, October 31, 1995; Stephen Hegarty, "Brogan's List Spurs Fairness Debate," *St. Petersburg Times*, November

17, 1995; Linda Kleindienst, "Decision Near on Statewide Achievement Test for Students," *Tampa Tribune*, May 28, 1996; Rob Chepak, "Student Standards Get Boost," *Tampa Tribune*, May 30, 1996; Mary Warejcka, "Students May Face Test of More Than Basics To Graduate," *Palm Beach Post*, August 9, 1996; Mary Warejcka, "New Test Spelled out for Students," *Palm Beach Post*, September 10, 1996.

⁶ In NCLB terms, annual yearly progress is a measure each state chooses to show progress towards all students' having competence in math, reading, and any other subject the state chooses to add.

⁷ The State of Florida Consolidated State Application Accountability Workbook is available at <http://www.ed.gov/admins/lead/account/stateplans03/flcsa.pdf>. For the comparison of A schools to those not meeting the state's definition of federal annual-yearly-progress criteria, see Joe Humphrey, "Report Says Schools Leave Kids Behind," *Tampa Tribune*, August 14, 2003; Stephen Hegarty, "Feds: Your Schools Still Need Work," *St. Petersburg Times*, August 9, 2003.

⁸ Other state plans are available at <http://www.ed.gov/admins/lead/account/stateplans03/index.html>. The plans of Maine and Nebraska, in particular, are different from that of Florida's in several respects. The Enhanced Assessment Project of the New England Compact is described at <http://www.necompact.org/enhanced.htm>. This brief does not analyze the appropriateness of the federal law. There is ongoing debate about the balance between accountability and resources, among other issues, but that is beyond the scope of this discussion.

⁹ Current education code can be found on the web site of the Florida Senate (http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Index&Title_Request=XLVIII#TitleXLVIII); current rules are at the Florida Department of Education web site (<http://www.firn.edu/doe/rules/rules.htm>). The Florida Senate web site also has archived versions of Florida statutes; before 2002, the state's education laws were in Title 16 (http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Index&Title_Request=XVI#TitleXVI). One can find selected on-line archives of the education administrative rules beginning in

1997 at the Internet Archive

(http://web.archive.org/web/*/http://www.firm.edu/doi/rules/rules.htm). Florida's school grade reports are available at <http://www.firm.edu/doi/schoolgrades/index.html>, and the federal web site on education reform is <http://www.nochildleftbehind.gov>.

- ¹⁰ The preamble of the 1999 education reform law refers to “shared high academic expectations” as one condition necessary to a “high-quality education.” When he signed the bill, Governor Bush said, “Now the fun begins, when we roll up our sleeves and see that children learn. And when they don’t, we’re not going to blame them anymore.” See Florida Chapter 99-398, p. 6 (available at http://election.dos.state.fl.us/pdf/99laws/ch_99-398.pdf; Shirsh Date, “Bush Signs School Voucher Bill,” *Palm Beach Post*, June 22, 1999).
- ¹¹ Florida Statutes 1008.
- ¹² Florida Statutes 1003.43, 1008.25(5), and 1012.22(1)(c)(4). The state legislature created several exemptions for the FCAT graduation requirement in spring 2003. A permanent exemption concerned special-education students, and a temporary exemption gave diplomas to the few hundred students who failed the FCAT but who had met certain scores in the college-admissions ACT or SAT exams; F.S. 1003.43(11)(b), 1008.22 (9).
- ¹³ Stephen Hegarty, “Teachers Not Buying State’s Performance Bonus Program,” *St. Petersburg Times*, April 3, 2003. This behavior is consistent with general teacher skepticism about merit pay.
- ¹⁴ Florida Acts 97-212, 98-422.
- ¹⁵ Gary Fineout, “Bush Vows To Veto Budget over School Recognition Awards,” *Sarasota Herald-Tribune*, April 10, 2003; Alisa Ulferts and Steve Bousquet, “Budget Veto Brewing over School Funds,” *St. Petersburg Times*, April 10, 2003.

¹⁶ One recent article that describes the standard argument is Steven Malanga, “Why Merit Pay Will Improve Teaching,” *City Journal* (Summer 2001), available on-line at http://www.city-journal.org/html/11_3_why_merit_pay.html. Though Malanga addresses merit pay for individual teachers, the argument is applicable to schools as a whole.

¹⁷ See Florida Department of Education, “School Accountability Report Guide June 1999,” retrieved December 24, 2003, from <http://www.myfloridaeducation.com/evaluation/guide99.htm>; “2000 School Accountability Report Guidesheet,” <http://www.firn.edu/doe/schoolgrades/guide00.htm>; “2001 School Accountability Report Guidesheet,” <http://www.firn.edu/doe/schoolgrades/guide01.htm>; “2001-2002 School Accountability Report Guidesheet,” <http://www.firn.edu/doe/schoolgrades/guide02.htm>; “2002-2003 School Accountability Report Guidesheet,” <http://www.firn.edu/doe/schoolgrades/guide03.htm>.

¹⁸ The exact part of the rule regarding students in the lowest reading quartile the prior years reads as follows: “One (1) point for each percent of students in the lowest twenty-five (25) percent in reading in the school as defined in paragraph (5)(c) of this rule who make learning gains as defined in paragraph (5)(b) of this rule. The percent of students reflected in each of the six (6) school grade point elements defined in paragraphs (6)(a) - (f) of this rule shall be expressed to the nearest whole number. The corresponding points assigned for each grade point element shall also be expressed to the nearest whole number. In the event that a school does not have at least thirty (30) eligible students tested in writing, the grade point element as defined in paragraph (6)(a) of this rule shall be substituted for the grade point element defined in paragraph (6)(c) of this rule. In the event that a school does not have at least thirty (30) students in the lowest twenty-five (25) percent in reading as defined in paragraph (5)(c) of this rule, the grade point element defined in paragraph (6)(d) of this rule shall be substituted for the grade point element defined in paragraph (6)(f) of this rule.” Florida Administrative Rule 6A-1.09981 (6) (f), approved by Florida Board of Education February 11, 2002, <http://www.firn.edu/doe/rules/6a-1-11.htm#6A-1.09981>. The guides referred to in the previous note do not include these provisions for substituting some scores for

others, though the details do appear in Office of Assessment and School Performance, “2003 Guide to Calculating School Grades,” June 18, 2003, <http://schoolgrades.fldoe.org/pdf/guide-calc-sg2003.pdf>. This latter publication is a 21-page technical report explaining the calculation of school grades.

¹⁹ Florida Statutes 1008.24.

²⁰ For recent tests in Texas and New York, see <http://www.tea.state.tx.us/student.assessment/resources/release/taks/index.html> and <http://www.nysedregents.org/testing/hsregents.html>.

²¹ *Florida v. Cooper* (2003), 1DCA 02-4040, available on-line at <http://www.1dca.org/opinion/opinions2003/11-06-03/02-4040.pdf>; Stephen Hegarty, “Court Rules Father Can’t See Son’s FCAT,” *St. Petersburg Times*, November 7, 2003.

²² The NCLB requires that state testing systems “enable itemized score analyses to be produced and reported, consistent with [professional technical standards for validity, reliability], to local educational agencies and schools, so that parents, teachers, principals, and administrators can interpret and address the specific academic needs of students as indicated by the students’ achievement on assessment items.” Section 1111(b)(3)(c)(xii).

²³ Florida Department of Financial Services, “Corporate Tax Credit Scholarship Program” and “McKay and Opportunity Scholarship Programs,” December 10, 2003, available on-line at <http://www.fldfs.com/aadir/>. Also see S.V. Date, “Extension Sought for ‘Virtual Schools,’” *Palm Beach Post*, November 19, 2003.

²⁴ S.V. Date, “Virtual-School Mix-Up May Cost Taxpayers \$1 Million,” *Palm Beach Post*, January 8, 2004; Joni James, “Internet Schools Get Their Bailout,” *St. Petersburg Times*, January 9, 2004.

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- ²⁵ Florida Statutes 1002.38(5)(c) requires participating in state testing as a criteria for participation in the Opportunity Scholarship Program; Florida Statutes 1002.39(5)(3) makes participating in state testing an option in the McKay Scholarship Program and puts the burden on parents to make arrangements; Florida Statutes 220.187(5) imposes no testing obligations on parents as a condition of participation in the tax-credit vouchers.
- ²⁶ Examples include Lakeside Academy and Toussaint L'Overtoure High School, in Palm Beach County, North Lauderdale Charter High School and Charter School Training Institute, in Broward County; ASPIRA South Youth Leadership Charter School and North County Charter School, in Miami-Dade; Academic Research Charter School, in Polk County; and Tampa United Methodist Charter School, in Hillsborough County.
- ²⁷ Florida Statutes 1002.33(7)(a)(12), 1002.33(8)(a) does not include the state accountability system as a required provision in the termination clause of a charter nor as an allowable reason for general termination of a charter. The St. Lucie County school board did close one charter school in 1999, in part because of student achievement. The Academy School of Florida (in Palm Beach County) closed before the 2003 grades (including its F) were released. In 2003, North Lauderdale fired Charter Schools USA, the private company that had run North Lauderdale Charter High School before 2003. See "Decision To Close Charter School Was 'Difficult,' Official Says," *Fort Pierce News*, July 23, 1999; Mary Ellen Flannery, "Three County Charter Schools Earn F Rating," *Palm Beach Post*, June 19, 2003; Steve Harrison, "Six Schools in Broward Receive F's," *Miami Herald*, June 19, 2003. For national issues involving charter-school performance and renewal issues, see Katrina Bulkley, "Educational Performance and Charter School Authorizers: The Accountability Bind," *Education Policy Analysis Archives* 9(37) (October 2001), available at <http://epaa.asu.edu/epaa/v9n37.html>.
- ²⁸ Charter School Accountability Center, "White Paper on Florida Charter School Accountability," December 19, 2002, available on-line at <http://csac.fsu.edu/csac.nsf/WP?OpenPage>.

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- ²⁹ Matthew I. Pinzur, "Voucher Schools Mostly a Blank Slate," *Miami Herald*, December 9, 2003. As of January 15, 2004, there was no link to the evaluation on the Florida Department of Education web site.
- ³⁰ Florida Statutes 1012.795-796, Florida Administrative Rules 6-B1. Many private schools hire teachers with state certification, but it is not a statutory requirement. The December 2003 audit of the voucher programs notes the lack of criminal background check requirements for voucher schools and recommends them. This would be a lower standard than the code of ethics. Charter schools will have to hire licensed teachers within a few years.
- ³¹ Kimberly Miller, "Vouchers Don't Help Disabled Students," *Palm Beach Post*, December 8, 2003. There is no current active case involving special-education law and the McKay Scholarship Program. There has been considerable controversy over special-education and charter schools. Charter schools are explicitly mentioned in the Individuals with Disabilities Education Act (§1413(a)(5)). There are a few specific cases involving charter schools and violations of special-education laws: *Boston Renaissance Charter School*, 26 IDELR 889 (OCR 1998); *Coeur d'Alene (ID) Charter Academy*, 35 IDELR 280 (OCR 2001), *TOVAS Charter Sch. (TX)*, 37 IDELR 290 (OCR 2002). Also see Jay P. Heubert, "Schools without Rules? Charter Schools, Federal Disability Law, and the Paradoxes of Deregulation," paper published by Center for Applied Special Technology and available at <http://www.cast.org/ncac/SchoolswithoutRules2850.cfm>
- ³² 20 U.S.C. § 1412; Miller, "Vouchers Don't Help Disabled Students."
- ³³ The history of contracted special education was a critical basis for the *Bush v. Holmes* decision.
- ³⁴ School reforms are more likely to survive politically when they match the images that most people have of "real schools." See David Tyack and Larry Cuban, *Tinkering Toward Utopia: A Century of Public School Reform* (Cambridge, Mass.: Harvard University Press, 1995): Chapter 4; Mary Heywood Metz, "Real School: A Universal Drama Amid Disparate Experience," in D. Mitchell

and M.E. Goertz, eds., Education Politics for the New Century: The Twentieth Anniversary Yearbook of the Politics of Education Association (Philadelphia: The Falmer Press, 1990): 75-91.

³⁵ Brett D. Jones and Robert J. Egley, "Voices from the Frontlines: Teachers' Perceptions of High-Stakes Testing," *Education Policy Analysis Archives*, 12 (2004, forthcoming).

³⁶ See, for example, Lance A. Berger and Dorothy R. Berger, eds., *The Compensation Handbook* (4th ed.) (New York: McGraw-Hill, 1999).

³⁷ For the professional standards on the use of testing (including in high-stakes policies), see American Educational Research Association, American Psychological Association, and National Council on Measurement in Education, *Standards for Educational and Psychological Testing* (rev. ed.) (Hanover, PA: Authors, 1999), and American Educational Research Association, "Position Statement Concerning High-Stakes Testing in PreK-12 Education," July 2000, available at <http://www.aera.net/about/policy/stakes.htm>; Florida Association of School Psychologists, "Position Paper on the Use of the Florida Comprehensive Assessment Test (FCAT) in High Stakes Decision Making," November 2002, available on-line at <http://www.fasp.org/PDFfiles/FASP%20FCAT%20Paper.pdf>.