

## Educational Rights

### Florida Constitution

#### **Right to High Quality Education Article IX (a)**

.... Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

### Florida Statutes

#### **39.0016 Education of abused, neglected, and abandoned children; agency agreements; children having or suspected of having a disability.—**

Requires DCF and the Department of Education to enter into an interagency agreement re provision of education to children in the child welfare system.

#### **39.604 Rilya Wilson Act; short title; legislative intent; requirements; attendance and reporting responsibilities.—**

Governs attendance and reporting requirements concerning young children, 0 – school age, in early education or child care programs.

#### **402.22 Education program for students who reside in residential care facilities operated by the Department of Children and Families or the Agency for Persons with Disabilities.—**

Specifies responsibilities of schools and agencies for the education of children.

#### **409.145(2)(a) 6 Care of children; quality parenting; “reasonable and prudent parent” standard.—**

Requires caregivers to “Support the child’s school success by participating in school activities and meetings, including Individual Education Plan meetings, assisting with school assignments, supporting tutoring programs, meeting with teachers and working with an educational surrogate if one has been appointed, and encouraging the child’s participation in extracurricular activities.”

Prepared by Florida’s Children First, 2015 with assistance from the Community Law Program. Please share with all who can make use of this document 1

#### **1002.20 K-12 student and parent rights.—**

Includes attendance, health, discipline, transportation, extracurriculars, limited English proficiency, student records, athletics.

**1003.21(1)(d).** Pregnant students have the right to remain in school and participate in teen parenting programs Fla. Stat. 1003.54

#### **1009.25 Tuition and Fee Exemption**

Specifies categories of students adopted from and aging out of child welfare who are eligible for free tuition at Florida’s public colleges, universities and vocational schools.

#### **Early Learning Statutes Compilation:**

<http://www.floridaearlylearning.com/sites/www/Uploads/files/Florida%20Statutes%20Related%20to%20Early%20Learning%202014.pdf>

#### **Exceptional Student Education Statutes Compilation:**

<http://www.fldoe.org/core/fileparse.php/7690/urlt/1BTOC.pdf>

**Vocational Rehabilitation** Chapter 413, Florida Statutes

### Florida Administrative Code

#### **High Quality Early Education for Children in Out of Home Care:**

**65C-13.030 Standards for Licensed Out-of-Home Caregivers.** Subsection (2)(d) sets order of priority for selection of child care.

#### **Education in Group Care:**

**65C-14.047 Educational and Vocational Services.** Sets out requirement for schooling for children placed in residential facilities – which includes preference for education in the community “wherever possible to enable them to have normal contacts with other children and with the general life of the community” Also requires vocational and life skills training.

## Source of Rights for Children in the Child Welfare System

**65C-28.009 Adolescent Services.** Educational goal setting.

**65C-30.011(7)(b) Placement Responsibilities of the Services Worker or Child Protective Investigator.** Requires school continuity or a transition plan when children have to change schools.

### **Florida Interagency Agreement**

<http://www.centerforchildwelfare.org/kb/educsr/c/InteragencyAgreement-MultipleServicesForChildren.pdf>

### **Federal Law**

**Education Training Vouchers of the Chafee Foster Care Independence Program.** 42 U.S.C. §677 Federal funds for college (full time/ instate not required)

**Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. §1232** protects the privacy of students' education records.

**Fostering Connections to Success & Increasing Adoptions Act. ) 42 U.S.C. § 622** Addresses educational stability.

**Individuals with Disabilities Education Act (IDEA) 20 U.S.C. § 1400, et. seq**  
Governs how states and public agencies provide early intervention, special education and related services to children with disabilities. IDEA Part C covers infants and toddlers with disabilities (birth-2) IDEA Part B. covers Children and youth (ages 3-21)

**McKinney Vento 42 U.S.C. 11431 et seq Subtitle B of title VII , §721 Education of Homeless Children and Youth** which is intended to facilitate educational access for children applies can be used to facilitate educational placement.

**Rehabilitation Act §504, 29 U.S.C. 794**  
Requires accommodations for persons with disabilities in government programs, including schools.

**Rehabilitation Act Title I (Vocational Rehabilitation Services) Statute: 29 U.S.C. §§ 701 – 751** The basic law for state public vocational rehabilitation programs.

**Uninterrupted Scholars Act (USA)** creates a new exception under FERPA that makes it easier for schools to release a child's education records to child welfare agencies.

### **Federal Regulations**

**FERPA: 34 C.F.R. §99 et seq.**

**IDEA: 34 C.F.R. §300 et seq.**

**Rehabilitation Act: 34 C.F.R. §104 et seq.**

**Vocational Rehabilitation 34 C.F.R. Part 631**

### **International Law**

**UN Convention on the Rights of the Child, Articles 28 & 29.**

## Health Care Rights

### Florida Statutes

**39.01305. Appointment of Counsel for children with certain special needs.** Requires appointment of a child’s attorney for children who are placed in a nursing facility or SIPP or who are at risk of such a placement, who do not (or cannot assent) to psychotropic medication or those who have a developmental disability.

**39.407. Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.** Authorizes medical screening of all children who come in to care. Consent from parent or court order is required for treatment. Sets requirements for administration of psychotropic medications and admission into residential treatment centers.

**39.5075(2) Citizenship or residency status for immigrant children who are dependents.—** Coverage for immigrant children (most not eligible for Medicaid) “Services to children alleged to have been abused, neglected, or abandoned must be provided without regard to the citizenship of the child except where alienage or immigration status is explicitly set forth as a statutory condition of coverage or eligibility.”

**39.6012. Case Plan Tasks, Services**  
(2)(b) plan must ensure child’s needs are met – includes health and mental health.

**381.0051 Family Planning.** Specifies when minors can seek contraceptives without consent.

**384.30. Minors’ consent to treatment.** Minor’s right to seek treatment for sexually transmitted diseases without parental consent.

**390.0111(3). Termination of Pregnancies**

**390.01114 Parental Notice of Abortion Act** (see associational rights for adoption & parenting child)

### **Ch. 393 Developmental Disabilities**

**409.903(4) Mandatory payments for eligible persons and 409.1451(9)** Medicaid coverage for young adults 18-21 who were adopted or placed into guardianship after age 16 and had been in licensed care for at least 6 months before that placement.

**409.905(2) Mandatory Medicaid services.** – Specifies provision of EPSDT services

### Florida Administrative Code

**65A-1.703(1)(b);** Medicaid Eligibility for Children in Care.

**65A-1.703(1)(b)** Eligibility for children in Emergency Shelter

**65C-35 et seq Psychotropic Medication For Children In Out Of Home Care**

**65C-27 Suitability Assessment.** – Applies to placement in residential treatment centers

**65C-28.003 Medical Treatment.** Routine and urgent care

**65C-28.015 Residential Mental Health Treatment.**

**65C-13.029(1)(n)(3). Licensed out of home Team Member Roles** – developmentally appropriate information about sexual health.

**65C-30.007(10)(e). Case Manager Responsibilities** developmentally appropriate information about sexual health.

## Source of Rights for Children in the Child Welfare System

### Federal Statutes

**Patient Protection and Affordable Care Act,:** 42 U.S.C. § 18001 et seq. Title II, §2004 Medicaid coverage for former foster care children to age 26.

**EPSDT – Early Periodic Screening Diagnosis and Treatment:** 42 U.S.C. § 1396(a)(43) & 1396d(r)(5). A comprehensive health benefit for *all* Medicaid-eligible children and youth under age 21.

**Fostering Connections Act (amended by the Affordable Care Act)** 42 U.S.C. § 622(b)(15)vii. Transition plans for aging out youth must address health care needs including advance health directives.

**HIPAA – Health Insurance Portability and Accountability Act** [42 U.S.C. § 300gg](#) and [29 U.S.C § 1181 et seq.](#) and [42 USC 1320d et seq.](#)

### International Law

**UN Convention on the Rights of the Child, Articles 23-25.**

## **Emotional Well Being**

### **Florida Statutes**

**409.145 Care of children; quality parenting; “reasonable and prudent parent” standard.**

### **Florida Administrative Code**

**65C-13.029 Licensed Out-of-Home Team Member Roles** Caregiver’s role to promote normalcy.

**65C-14.047. Educational and Vocational Services.** Encouraging enrollment in extracurricular activities and employment in the community.

**65C-28.004 Placement Matching Requirements.** Right to appropriate placement match.

**65C-28.005 Changing Placements.** How transitions are to take place – notice to parties.

**65C-28.009 Adolescent Services.** Independent Living Services.

**65C-28.014 Behavioral Health Services.** – Comprehensive Behavioral Health Assessments

**65C-30.006 Case Planning.** CBHA information should be included in case plans

**65C-30.007(10) Case Management Responsibilities.** Normalcy

### **DCF Policy Memo**

**DCF Memo on Moving Infants & Young Children, 10/1/2010**

<http://centerforchildwelfare.org/kb/policymemos/GuidelinesMovingYoungCh2010.pdf>

### **Federal Statutes**

**The Preventing Sex Trafficking and Strengthening Families Act, Subtitle B §111: Improving Opportunities for Children in Foster Care and Supporting Permanency.**

### **International Law**

**UN Convention on the Rights of the Child, Articles 27 and 31.**

## Property

### Florida Constitution

**Article I §9 Due Process**

**Article X§4(c) Homestead Exemptions**

### Florida Statutes

**39.5085 Relative Caregiver Program** – also funds nonrelative caregivers.

**39.6251 Continuing Care for Young Adults** (Extended Foster Care)

**39.701(3)5 Judicial review.**—Bank account requirement

**393.12 Capacity; appointment of guardian advocate.** and **744.3085 Guardian advocates.**—For persons with developmental disabilities

**409.1451 The Road-to-Independence Program.** Post-Secondary Education Services and Supports and Aftercare.

**409.1454 Motor vehicle insurance for children in care**

**402.17 Claims for care and maintenance; trust property.** Property held in trust by DCF

**743.044 Removal of disabilities of minors; executing agreements for depository financial services.**

**743.045 Removal of disabilities of minors; executing contracts for a residential lease**

**743.046 Removal of disabilities of minors; executing agreements for utility services.**

**743.047 Removal of disabilities of minors; executing agreements for motor vehicle insurance**

**322.09 Application of minors; responsibility for negligence or misconduct of minor.**—Driver's License

*744 et seq* **Guardianship**

### Florida Administrative Code

**65C-13.029 Licensed Out-of-Home Team Member Roles** Allowance, money management, maintaining child's property

**65C-14.020. Clothing and Personal Belongings.** Allowing and safeguarding possessions when a child is in group care.

**65C-17 Master Trust**

**65C-28.008 Relative Caregiver Program Requirements.** Funds for relative and non-relative caregivers

**65C-30.007(10) Case Management Responsibilities.** Obtain employment, money management

### DCF Operating Procedures & Policy Memos

**CFOP 175-59 (2006) Master Trust for Benefit of Family Safety Program Clients** - guidelines for administration of a Master Trust fund for DCF clients

**Master Trust & Fee Waiver (8/07)**  
<http://centerforchildwelfare.org/kb/PlcyMmo/Master%20Trust%20and%20Fee%20Waiver%2008.10.07.pdf>

**SSA Policy on Transfer of Master Trust Funds (3/11/11)**  
<http://centerforchildwelfare.org/kb/PlcyMmo/Transfer%20of%20Conserved%20Master%20Trust%20Funds%20Memo.pdf>

## Source of Rights for Children in the Child Welfare System

### **Consumer Credit Checks for Minors (12/6/11)**

<http://centerforchildwelfare.org/kb/policymemos/ConsumerCreditChecksforMinors.pdf>

### **New Requirements for Obtaining Credit History for Foster Teens**

<http://centerforchildwelfare.org/kb/policymemos/ReqCreditHistFosterTeens.pdf>

### **Federal Constitution**

#### **Article V Due Process**

### **Federal Statutes**

**The Chafee Foster Care Independence Program.**  
42 U.S.C. §677

**Child and Family Services Improvement & Innovation Act (2011)**— 42 U.S.C. 675(5)  
Requires credit checks to combat identity theft.

## Liberty/Association

### Florida Constitution

#### Article I, §2 Basic Rights

#### Article I, §23 Right to Privacy

### Florida Statutes

**39.01(72) Definition of Sibling.** Can include other children the child has lived with in a family setting.

**39.5075 Citizenship or residency status for immigrant children who are dependents.**

**39.811(7) Post TPR Dispositional Powers.** Allowing continued contact with grandparents, siblings and other relatives, including birth parents, after TPR.

**63.082(1)(b) Execution of consent to adoption or affidavit of nonpaternity; family social and medical history; revocation of consent.** Right to place child for adoption.

**63.0427 Agreements for continued communication or contact between adopted child and siblings, parents, and other relatives.—**

**409.175(5)(a)(12) and (5)(e) Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.** Safeguarding the cultural, religious, and ethnic values of a child and addressing the religious freedom of children placed in licensed foster care.

### Florida Administrative Code

**65C-13.029 Licensed Out-of-Home Team Member Roles.** Respect religious and ethnic heritage, support communication with important people.

**65C-14.018. Community Interaction.** Requiring a child in group care to be integrated in the community and addressing transportation.

**65C-14.019. Recreation, Leisure Activities and Work Experience.** For children in group homes.

**65C-14.049. Religious and Ethnic Heritage.** Requiring written parental permission for a child to participate in required religious activities.

**65C-30.007 Case Management Responsibilities.** Support normal activities including dating

**65C-28.002 Visitation.** Parents and siblings

**65C-30.016(5)(a).** Caseworker to assist child to decide what to do when pregnant. (See Health for right terminate pregnancy).

**65C-28.010 Minor Parents in the Custody of the Department.** Right to placement with child

**65C-28.013 Indian Child Welfare Act.** Right to maintain connection to tribe.

**65C-13.030 Standards for Licensed Out-of-Home Caregivers.** Right to physical safety.

### Federal Constitution

#### Article V - Due Process

**14<sup>th</sup> Amendment Substantive Due Process right to be free from harm.** See eg *Taylor v. Ledbetter*, 818 F.2d 791 (11th Cir. 1987) (en banc), *cert. denied*, 489 U.S. 1065 (1989)