
	AGENCY FOR WORKFORCE INNOVATION <b>Office of Early Learning</b>		
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**Subject:** Prohibited forms of discrimination in the VPK program

**Summary:** This information memorandum examines the state and federal laws prohibiting certain forms of discrimination in the VPK program. The VPK law prohibits a private prekindergarten provider or public school from discriminating against a parent or child on the ground of race, color, or national origin. The VPK law does not establish special VPK programs for children with disabilities; however, provisions of the VPK law express the legislative intent that children with disabilities would be served in the VPK program. In addition, federal law prohibits public schools and most private prekindergarten providers from discriminating against persons with disabilities.

**References:** Section 1(b), Art. IX of the State Constitution  
 Section 1002.53(2) and (6)(c), F.S.  
 Section 1002.57(2)(b), F.S.  
 Section 1002.59, F.S.  
 Section 1002.69(3), F.S.  
 29 U.S.C. § 794  
 42 U.S.C. § 2000d  
 42 U.S.C. §§ 12102, 12131-12189

**Purpose:** To provide information concerning the forms of discrimination prohibited in the VPK program

**Background:** The VPK law (ss. 1002.51-1002.79, F.S.) allows a parent to enroll his or her child with any private prekindergarten provider or public school that is eligible to deliver the VPK program (s. 1002.53(6)(a) and (b), F.S.).

Federal civil rights requirements provide that:

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 (42 U.S.C. § 2000d).

Following these federal civil rights requirements, the VPK law specifies that:

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 (s. 1002.53(6)(c), F.S.).

Thus, the VPK law prohibits discrimination against parents and children on the ground of race, color, or national origin.

The State Constitution specifies that “[e]very *four-year old child* in Florida shall be provided by the State a[n] ... early childhood development and education program” (s. 1(b), Art. IX of the State Constitution) [emphasis added]. Further, the VPK law specifies that “[e]ach *child* who resides in this state who will have attained the age of 4 years on or before September 1 of the school year is eligible for the V[PK p]rogram during that school year” (s. 1002.53(2), F.S.) [emphasis added]. Both the State Constitution and the VPK law require that the VPK program be available for all 4-year-old children. These provisions do not relieve the state of providing the VPK program for students with disabilities.

Moreover, the VPK law includes provisions specifically addressing students with disabilities. For example, s. 1002.69(3), F.S., requires the “statewide kindergarten screening [to] incorporate mechanisms for recognizing potential variations in kindergarten readiness rates for students with disabilities.” Section 1002.57(2)(b), F.S., requires the prekindergarten director credential to include training in “[s]trategies that allow students with disabilities and other special needs to derive maximum benefit from the V[PK p]rogram,” and s. 1002.59, F.S., requires emergent literacy training courses for prekindergarten instructors to “provide resources containing strategies that allow students with disabilities and other special needs to derive maximum benefit from the V[PK p]rogram.”

**Information: (1) *Discrimination on the ground of race, color, or national origin.***—Section 1002.53(6)(c), F.S., prohibits a private prekindergarten provider or public school from discriminating against a parent or child, including the refusal to admit a child for enrollment in the VPK program, by violating federal civil rights requirements that prohibit exclusion from participation in, denial of the benefits of, or other discrimination under a program “on the ground of race, color, or national origin” (42 U.S.C. § 2000d).

**(2) *Discrimination because of a disability.***—

(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 prekindergarten 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).

PLEASE DIRECT QUESTIONS AND COMMENTS TO THE STAFF CONTACT LISTED ABOVE.

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