

CHAPTER 98-292

Committee Substitute for House Bill No. 161

An act relating to education paraprofessionals; amending ss. 228.041, 228.056, 231.141, 231.15, 231.3605, 231.40, 240.40685, and 121.091, F.S.; replacing the term “teacher aide” with the term “education paraprofessional”; requiring the State Board of Education to classify school services and prescribe rules; creating s. 231.143, F.S.; authorizing school districts to adopt a program for the career development of education paraprofessionals; specifying levels of achievement that paraprofessionals can attain through the program; providing restrictions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) of subsection (9) and subsection (23) of section 228.041, Florida Statutes, are amended to read:

228.041 Definitions.—Specific definitions shall be as follows, and wherever such defined words or terms are used in the Florida School Code, they shall be used as follows:

(9) **INSTRUCTIONAL PERSONNEL.**—“Instructional personnel” means any staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes personnel whose functions provide direct support in the learning process of students. Included in the classification of instructional personnel are:

(e) **Instructional paraprofessionals aides.**—Instructional paraprofessionals aides are individuals who are under the direct supervision of an instructional staff member, aiding the instructional process. Included in this classification are classroom paraprofessionals aides in regular instruction, exceptional education paraprofessionals aides, career education paraprofessionals aides, adult education paraprofessionals aides, library paraprofessionals aides, physical education and playground paraprofessionals aides, and other school-level ~~aides and~~ paraprofessionals.

(23) **EDUCATION PARAPROFESSIONAL TEACHER AIDE.**—~~An education paraprofessional A teacher aide~~ is any paid person appointed by a school board to assist members of the instructional staff in carrying out their instructional or professional duties and responsibilities.

Section 2. Paragraph (e) of subsection (12) of section 228.056, Florida Statutes, is amended to read:

228.056 Charter schools.—

(12) **EMPLOYEES OF CHARTER SCHOOLS.**—

(e) Teachers employed by or under contract to a charter school shall be certified as required by chapter 231. A charter school may employ or contract

with skilled selected noncertified personnel to provide instructional services or to assist instructional staff members as ~~education paraprofessionals teacher aides~~ in the same manner as defined in chapter 231. A charter school may not employ an individual to provide instructional services or to serve as ~~an education paraprofessional a teacher aide~~ if the individual's certification or licensure as an educator is suspended or revoked by this or any other state. The qualifications of teachers shall be disclosed to parents.

Section 3. Section 231.141, Florida Statutes, is amended to read:

~~231.141 Education paraprofessionals Teacher aides.~~—A school board may appoint ~~education paraprofessionals teacher aides~~ to assist members of the instructional staff in carrying out their duties and responsibilities. ~~An education paraprofessional A teacher aide~~ shall not be required to hold a teaching certificate. ~~An education paraprofessional A teacher aide~~, while rendering services under the supervision of a certificated teacher, shall be accorded the same protection of laws as that accorded the certified teacher. ~~Paid education paraprofessionals teacher aides~~ employed by a school board shall be entitled to the same rights ~~as those~~ accorded noninstructional employees of the board.

Section 4. Section 231.143, Florida Statutes, is created to read:

231.143 Education paraprofessional career development.—

(1) The Legislature recognizes that education paraprofessionals play an important role in educating school children and in assisting teachers. The Legislature further recognizes the increasing role of education paraprofessionals in the school system in light of teacher shortages. To achieve the goal of excellence for all persons who have an impact on student learning, it is the intent of the Legislature that education paraprofessionals be afforded career opportunities and economic incentives through a career development program.

(2)(a) Each school district may adopt a program for the career development of education paraprofessionals. The purpose of the program is to provide to education paraprofessionals a system of career development which is based upon education and training advancement, and to furnish economic incentives to encourage excellence among education paraprofessionals.

(b) The adoption of each program is subject to chapter 447, and the implementation of a program is contingent upon the agreement and ratification of the program by both the employer and employees under s. 447.309.

(3) A district education paraprofessional career development program must include voluntary participation by paraprofessionals in five career development levels. The school board shall adopt a procedure for verifying the competency levels of all persons who participate in the career development program and a procedure to determine the outcomes and results of the program and impact on student performance.

(4)(a) Level I.—To qualify for Level I, the person must meet:

1. The health requirement established for certified personnel.
2. The age requirements for certified personnel.
3. The local school district requirements for employment.

(b) Level II.—To qualify for Level II, the person must:

1. Have earned a high school diploma or the equivalent.
2. Possess a clear understanding of state and district rules and policies relevant to paraprofessionals.
3. Possess knowledge of all state and district instructional practices and policies relevant to paraprofessionals.
4. Have maintained satisfactory job performance of appropriate skills and competencies for 1 year.

(c) Level III.—To qualify for Level III, the person must:

1. Have completed 30 college semester hours or the equivalent inservice hours.
2. Possess a clear understanding of state and district rules and policies relevant to paraprofessionals.
3. Possess knowledge of all state and district instructional practices and policies relevant to paraprofessionals.
4. Have maintained satisfactory job performance of appropriate skills and competencies for 2 years.

(d) Level IV.—To qualify for Level IV, the person must:

1. Have completed 60 college semester hours or the equivalent inservice hours.
2. Possess a clear understanding of state and district rules and policies relevant to paraprofessionals.
3. Possess knowledge of all state and district instructional practices and policies relevant to paraprofessionals.
4. Have maintained satisfactory job performance of appropriate skills and competencies for 2 years.

(e) Level V.—To qualify for Level V, the person must:

1. Have completed coursework to earn a bachelor of arts or bachelor of science degree from an accredited institution pursuant to s. 231.17(3)(c).
2. Possess a clear understanding of state and district rules and policies relevant to paraprofessionals.

3. Possess knowledge of all state and district instructional practices and policies relevant to paraprofessionals.

4. Have maintained satisfactory job performance of appropriate skills and competencies for 2 years.

(5) Paraprofessionals may not:

(a) Establish instructional objectives;

(b) Make decisions regarding the relevancy of certain activities or procedures to the attainment of instructional objectives;

(c) Make decisions regarding the appropriateness of certain teaching materials for accomplishing instructional objectives; or

(d) Make judgments regarding the attainment of instructional objectives unless these judgments are based upon clear and objective criteria, such as specific achievement standards on a true-false test.

Section 5. Subsection (1) of section 231.15, Florida Statutes, is amended to read:

231.15 Positions for which certificates required.—

(1) The State Board of Education shall ~~have authority to~~ classify school services and ~~to~~ prescribe rules in accordance with which the professional, temporary, and part-time certificates shall be issued by the Department of Education to school employees who meet the standards prescribed by such rules for their class of service. Each person employed or occupying a position as school supervisor, principal, teacher, library media specialist, school counselor, athletic coach, or other position in which the employee serves in an instructional capacity, in any public school of any district of this state shall hold the certificate required by law and by rules of the state board in fulfilling the requirements of the law for the type of service rendered. However, the state board shall adopt rules authorizing school boards to employ selected noncertificated personnel to provide instructional services in the individuals' fields of specialty or to assist instructional staff members as ~~education paraprofessionals~~ teacher aides. Each person who is employed and renders service as an athletic coach in any public school in any district of this state shall hold a valid part-time, temporary, or professional certificate. Each person employed as a school nurse shall hold a license to practice nursing in the state, and each person employed as a school physician shall hold a license to practice medicine in the state. The provisions of this subsection shall not apply to any athletic coach who renders service in a voluntary capacity and who is not employed by any public school of any district in this state.

Section 6. Paragraph (a) of subsection (1) of section 231.3605, Florida Statutes, is amended to read:

231.3605 Educational support employees.—

(1) As used in this section:

(a) “Educational support employee” means any person employed by a district school system who is ~~so employed as a teacher aide~~, a teacher assistant, an education paraprofessional, a member of the transportation department, a member of the operations department, a member of the maintenance department, a member of food service, a secretary, or a clerical employee, or any other person who by virtue of his or her position of employment is not required to be certified by the Department of Education or school board pursuant to s. 231.1725. This section does not apply to persons employed in confidential or management positions. This section applies to all employees who are not temporary or casual and whose duties require 20 or more hours in each normal working week.

Section 7. Paragraph (a) of subsection (1) of section 231.40, Florida Statutes, is amended to read:

231.40 Sick leave.—

(1) DEFINITIONS.—As used in this section, unless the context otherwise requires, the term:

(a) “Educational support employee” means any person employed by a district school board as ~~a teacher aide~~; a teacher assistant; an education paraprofessional; a member of the transportation, operations, maintenance, or food service department; or a secretary or a clerical employee.

Section 8. Section 240.40685, Florida Statutes, is amended to read:

240.40685 Certified Education Paraprofessional Teacher-Aide Welfare Transition Program.—

(1) There is created the Certified Education Paraprofessional Teacher-Aide Welfare Transition Program to provide education and employment for recipients of public assistance who are certified to work in schools that, because of the high proportion of economically disadvantaged children enrolled, are at risk of poor performance on traditional measures of achievement. The program is designed to enable such schools to increase the number of adults working with the school children. However, the increase in personnel working at certain schools is intended to supplement and not to supplant the school staff and should not affect current school board employment and staffing policies, including those contained in collective bargaining agreements. The program is intended to be supported by local, state, and federal program funds for which the participants may be eligible. Further, the program is designed to provide its participants not only with entry-level employment but also with a marketable credential, a career option, and encouragement to advance.

(2) The Commissioner of Education, the Executive Director of the State Board of Community Colleges, the secretary of the Department of Children and Family Services Health and Rehabilitative Services, and the Secretary of Labor and Employment Security have joint responsibility for planning and conducting the program.

(3) The agencies responsible may make recommendations to the State Board of Education and the Legislature if they find that implementation or operation of the program would benefit from the adoption or waiver of state or federal policy, rule, or law, including recommendations regarding program budgeting.

(4) The agencies shall complete an implementation plan that addresses at least the following recommended components of the program:

(a) A method of selecting participants. The method must not duplicate services provided by those assigned to screen participants of the WAGES Program, but must assure that screening personnel are trained to identify recipients of public assistance whose personal aptitudes and motivation make them most likely to succeed in the program and advance in a career related to the school community.

(b) A budget for use of incentive funding to provide motivation to participants to succeed and excel. The budget for incentive funding includes:

1. Funds allocated by the Legislature directly for the program.;
2. Funds that may be made available from the federal Job Training Partnership Act based on client eligibility or requested waivers to make the clients eligible.;
3. Funds made available by implementation strategies that would make maximum use of work supplementation funds authorized by federal law.;
4. Funds authorized by strategies to lengthen participants' eligibility for federal programs such as Medicaid, subsidized child care, and transportation.

Incentives may include a stipend during periods of college classroom training, a bonus and recognition for a high grade-point average, child care and prekindergarten services for children of participants, and services to increase a participant's ability to advance to higher levels of employment. Nonfinancial incentives should include providing a mentor or tutor, and service incentives should continue and increase for any participant who plans to complete the baccalaureate degree and become a certified teacher. Services may be provided in accordance with family choice by community colleges and school district technical centers, through family service centers and full-service schools, or under contract with providers through central agencies.

(5) The agencies shall select Department of Children and Family Services Health and Rehabilitative Services districts to participate in the program. A district that wishes to participate must demonstrate that a district school board, a community college board of trustees, an economic services program administrator, and a private industry council are willing to coordinate to provide the educational program, support services, employment opportunities, and incentives required to fulfill the intent of this section.

(6)(a) A community college or school district technical center is eligible to participate if it provides a technical certificate program in Child Development Early Intervention as approved by the Jobs and Education Partnership and it is participating in the Performance Based Incentive Funding program authorized in s. 239.249. Priority programs provide an option and incentives to articulate with an associate in science degree program or a baccalaureate degree program.

(b) A participating educational agency may earn funds appropriated for performance-based incentive funding for successful outcomes of enrollment and placement of recipients of public assistance who are in the program. In addition, an educational agency is eligible for an incentive award determined by the Jobs and Education Partnership for each recipient of public assistance who successfully completes a program leading to the award of a General Education Development credential.

(c) Historically black colleges or universities that have established programs that serve participants of the WAGES Program are eligible to participate in the Performance Based Incentive Funding Program and may earn an incentive award determined by the Jobs and Education Partnership for successful placement of program completers in jobs as education paraprofessionals ~~teacher-aides~~ in at-risk schools.

(7)(a) A participating school district shall identify at-risk schools in which the program participants will work during the practicum part of their education. For purposes of this act, an at-risk school is a school with grades K-3 in which 50 percent or more of the students enrolled at the school are eligible for free lunches or reduced-price lunches. Priority schools are schools whose service zones include the participants' own communities.

(b) A participating school district may use funds appropriated by the Legislature from Job Training Partnership Act service delivery area allotments to provide at least 6 months of on-the-job training to participants in the Certified Education Paraprofessional Teacher-Aide Welfare Transition Program. Participating school districts may also use funds provided by grant diversion of funds from the WAGES Program for the participants during the practicum portion of their training to earn the certificate required for their employment.

(8) The agencies shall give priority for funding to those programs that provide maximum security for the long-range employment and career opportunities of the program participants. Security is enhanced if employment is provided through a governmental or nongovernmental agency other than the school board, or if the plans assure in another way that the participants will supplement, rather than supplant, the workforce available to the school board. It is the intent of the Legislature that, when a program participant succeeds in becoming a certified education paraprofessional teacher-aide after working successfully in a school during the practicum or on-the-job training supported by the program, the participant shall have the opportunity to continue in full-time employment at the school that provided the training or at another school in the district.

Section 9. Paragraph (b) of subsection (9) of section 121.091, Florida Statutes, is amended to read:

121.091 Benefits payable under the system.—No benefits shall be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the division.

(9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

(b)1. Any person who is retired under this chapter, except under the disability retirement provisions of subsection (4), may be reemployed by any private or public employer after retirement and receive retirement benefits and compensation from his or her employer without any limitations, except that a person may not receive both a salary from reemployment with any agency participating in the Florida Retirement System and retirement benefits under this chapter for a period of 12 months immediately subsequent to the date of retirement. However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

2. Any person to whom the limitation in subparagraph 1. applies who violates such reemployment limitation and who is reemployed with any agency participating in the Florida Retirement System before completion of the 12-month limitation period shall give timely notice of this fact in writing to the employer and to the division and shall have his or her retirement benefits suspended for the balance of the 12-month limitation period. Any person employed in violation of this paragraph and any employing agency which knowingly employs or appoints such person without notifying the Division of Retirement to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received while reemployed during this reemployment limitation period shall be repaid to the retirement trust fund, and retirement benefits shall remain suspended until such repayment has been made. Benefits suspended beyond the reemployment limitation shall apply toward repayment of benefits received in violation of the reemployment limitation.

3. A district school board may reemploy a retired member as a substitute or hourly teacher, education paraprofessional teacher aide, transportation assistant, bus driver, or food service worker on a noncontractual basis after he or she has been retired for 1 calendar month, in accordance with s. 121.021(39). Any retired member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. District school boards reemploying such teachers, education paraprofessionals teacher aides, transportation assistants, bus drivers, or food service workers are subject to the retirement contribution required by subparagraph 7. Reemployment of a retired member as a substitute or hourly teacher, education paraprofessional teacher aide, transportation assistant,

bus driver, or food service worker is limited to 780 hours during the first 12 months of his or her retirement. Any retired member reemployed for more than 780 hours during his or her first 12 months of retirement shall give timely notice in writing to the employer and to the division of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the first 12 months of retirement. Any person employed in violation of this subparagraph and any employing agency which knowingly employs or appoints such person without notifying the Division of Retirement to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during the first 12 months of retirement shall be repaid to the Retirement System Trust Fund, and his or her retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retired member's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

4. A community college board of trustees may reemploy a retired member as an adjunct instructor, that is, an instructor who is noncontractual and part-time, or as a participant in a phased retirement program within the State Community College System, after he or she has been retired for 1 calendar month, in accordance with s. 121.021(39). Any retired member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. Boards of trustees reemploying such instructors are subject to the retirement contribution required in subparagraph 7. A retired member may be reemployed as an adjunct instructor for no more than 780 hours during the first 12 months of retirement. Any retired member reemployed for more than 780 hours during the first 12 months of retirement shall give timely notice in writing to the employer and to the division of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the first 12 months of retirement. Any person employed in violation of this subparagraph and any employing agency which knowingly employs or appoints such person without notifying the Division of Retirement to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during the first 12 months of retirement shall be repaid to the Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retired member's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

5. The State University System may reemploy a retired member as an adjunct faculty member or as a participant in a phased retirement program

within the State University System after the retired member has been retired for 1 calendar month, in accordance with s. 121.021(39). Any retired member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The State University System is subject to the retired contribution required in subparagraph 7., as appropriate. A retired member may be reemployed as an adjunct faculty member or a participant in a phased retirement program for no more than 780 hours during the first 12 months of his or her retirement. Any retired member reemployed for more than 780 hours during the first 12 months of retirement shall give timely notice in writing to the employer and to the division of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the first 12 months of retirement. Any person employed in violation of this subparagraph and any employing agency which knowingly employs or appoints such person without notifying the Division of Retirement to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during the first 12 months of retirement shall be repaid to the Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retired member's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

6. The Board of Trustees of the Florida School for the Deaf and the Blind may reemploy a retired member as a substitute teacher, substitute residential instructor, or substitute nurse on a noncontractual basis after he or she has been retired for 1 calendar month, in accordance with s. 121.021(39). Any retired member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The Board of Trustees of the Florida School for the Deaf and the Blind reemploying such teachers, residential instructors, or nurses is subject to the retirement contribution required by subparagraph 7. Reemployment of a retired member as a substitute teacher, substitute residential instructor, or substitute nurse is limited to 780 hours during the first 12 months of his or her retirement. Any retired member reemployed for more than 780 hours during the first 12 months of retirement shall give timely notice in writing to the employer and to the division of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the first 12 months of retirement. Any person employed in violation of this subparagraph and any employing agency which knowingly employs or appoints such person without notifying the Division of Retirement to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during the first 12 months of retirement shall be repaid to the Retirement System Trust Fund,

and his or her retirement benefits shall remain suspended until payment is made. Benefits suspended beyond the end of the retired member's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

7. The employment by an employer of any retiree or DROP participant of any state-administered retirement system shall have no effect on the average final compensation or years of creditable service of the retiree or DROP participant. Prior to July 1, 1991, upon employment of any person, other than an elected officer as provided in s. 121.053, who has been retired under any state-administered retirement program, the employer shall pay retirement contributions in an amount equal to the unfunded actuarial accrued liability portion of the employer contribution which would be required for regular members of the Florida Retirement System. Effective July 1, 1991, contributions shall be made as provided in s. 121.122 for retirees with renewed membership or subsection (13) with respect to DROP participants.

8. Any person who has previously retired and who is holding an elective public office or an appointment to an elective public office eligible for the Elected State and County Officers' Class on or after July 1, 1990, shall be enrolled in the Florida Retirement System as provided in s. 121.053(1)(b) or, if holding an elective public office that does not qualify for the Elected State and County Officers' Class on or after July 1, 1991, shall be enrolled in the Florida Retirement System as provided in s. 121.122, and shall continue to receive retirement benefits as well as compensation for the elected officer's service for as long as he or she remains in elective office. However, any retired member who served in an elective office prior to July 1, 1990, suspended his or her retirement benefit, and had his or her Florida Retirement System membership reinstated shall, upon retirement from such office, have his or her retirement benefit recalculated to include the additional service and compensation earned.

9. Any person who is holding an elective public office which is covered by the Florida Retirement System and who is concurrently employed in non-elected covered employment may elect to retire while continuing employment in the elective public office, provided that he or she shall be required to terminate his or her nonelected covered employment. Any person who exercises this election shall receive his or her retirement benefits in addition to the compensation of the elective office without regard to the time limitations otherwise provided in this subsection. No person who seeks to exercise the provisions of this subparagraph, as the same existed prior to May 3, 1984, shall be deemed to be retired under those provisions, unless such person is eligible to retire under the provisions of this subparagraph, as amended by chapter 84-11, Laws of Florida.

10. The limitations of this paragraph apply to reemployment in any capacity with an "employer" as defined in s. 121.021(10), irrespective of the category of funds from which the person is compensated.

11. From July 1, 1997, through December 31, 1998, notwithstanding the limitations of this subsection, except that any retiree who is reemployed

within 1 calendar month after retirement shall void his or her application for retirement benefits, any retiree of the Florida Retirement System may be reemployed by a covered employer during the 2nd through 12th months of the reemployment limitation period without suspending his or her retirement benefits, provided that the reemployment is for the sole purpose of working on the technical aspects of correcting or replacing the computer systems and programs necessary to resolve the year 2000 date problem for computing which confronts all public employers covered by the Florida Retirement System.

Section 10. This act shall take effect July 1 of the year in which enacted.

Became a law without the Governor's approval May 29, 1998.

Filed in Office Secretary of State May 28, 1998.