



## Marion County Land Development Regulation Commission

### Growth Services

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**DATE:** January 19, 2023

**TO:** Marion County Board of County Commissioners

**THRU:** Tracy Straub, Assistant County Administrator

**FROM:** Earl R. Hahn, AICP, Growth Services Department Director

**SUBJECT:** Marion County Third Amended and Restated Interlocal Agreement for Public School Facility Planning

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The purpose of this memorandum is to establish a uniform memorandum to be used by the respective governing body staff to describe to their governing body:

- The legislative history of the requirement in Section 163.31777, Florida Statutes, on the Public schools interlocal agreement;
- The adoption history of the Public School Interlocal Agreements (ILA) in Marion County;
- Information on the reconstitution of the Technical Work Group, the group responsible for preparing the draft 2023 ILA proposed for adoption by Marion County's local governments and the School Board of Marion County (the Parties); and
- A section-by-section analysis of the key changes between the 2008 Second Amended and Restated Interlocal Agreement for Public School Facility Planning and the Third Amended and Restated Interlocal Agreement for Public School Facility Planning. It is the intent of the Parties that this Third Amended and Restated Interlocal Agreement for Public School Facility Planning replace in its entirety the Second Amended and Restated Interlocal Agreement for Public School Facility Planning, adopted in 2008.

*Legislative history.* Section 5 of Chapter 2002-296, Laws of Florida, created Florida Statutes (F.S.) Section 163.31777, Public schools interlocal agreement (see Attachment A). That section included seven (7) subsections with sixteen paragraphs. Paragraph 163.31777(1)(a), F.S., required the local governments and the school board to enter into an ILA to address how plans and process are to be coordinated. Subsection 163.31777(2), established nine (9) paragraphs with each providing specific requirements the ILA must address. Subsection 163.31777(3) included three (3) paragraphs addressing state review of the ILA.

Section 15 of Chapter 2003-01, Laws of Florida, made five (5) changes that were all related to amending citations due to a reorganization of Florida Statutes Chapter 235 as Florida Statutes Chapter 1013 (see Attachment B).

Section 4 of Chapter 2005-290, Laws of Florida, amended Section 163.31777(2) to provide cross references to Paragraph 163.3180(13)(g) and Subsection 163.3177(12), to amend Paragraph 163.31777(2)(e) to address the effects of comprehensive plan amendment on school capacity, and to amend Paragraph 163.31777(2)(i) by deleting the delete the signatory provision. It also amended Subsections 163.31777(5), (6) and (7). Section 5 of Chapter 2005-290, Laws of Florida, amended Section 163.3180, F.S., to mandate public school concurrency and adoption of a public-schools facilities element (see Attachment B).

Section 11 of Chapter 2010-70, Laws of Florida merely amended Paragraphs 163.31777(1)(a) and (3)(a) by repealing reference to the SMART Schools Clearinghouse (see Attachment D).

Section 13 of Chapter 2011-139, Laws of Florida, repealed the last sentence in paragraph 163.31777(a) and repealed in its entirety paragraphs (b) through (d), amended Section 163.31777(2) to repeal the cross references to Paragraph 163.3180(13)(g) and Subsection 163.3177(12), and to repeal Subsections 163.31777(3) through (7) (see Attachment E). In summation, this Section of Chapter 2011-139, Laws of Florida, repealed the requirement for public school concurrency and the public schools facility element of the Comprehensive Plan.

Section 5 of Chapter 2012-99, Laws of Florida, added Subsections 163.31777(3) and (4) on exemptions from the ILA, which provisions remain effective today (see Attachment F). Attachment G displays the current requirements in Section 163.31777, F.S.

*Marion County Interlocal Agreement for Public Schools Facility Planning history.* On November 18<sup>th</sup>, 2003, the City of Belleview became the last signatory of the Interlocal Agreement for Public School Facility Planning. The other signatories included Marion County, Florida (October 7<sup>th</sup>, 2003), the City of Ocala (October 14<sup>th</sup>, 2003), City of Dunnellon (October 13<sup>th</sup>, 2003), Town of Reddick (October 13<sup>th</sup>, 2003), the Town of McIntosh (September 17<sup>th</sup>, 2003), and the School Board of Marion County, Florida (October 28<sup>th</sup>, 2003) (collectively the Parties) executed an Interlocal Agreement for Public School Facility Planning (see Attachment H) as was required by Section 163.3177(1)(b), which established a schedule for submission of the ILA.

This ILA was amended and restated in April – July, 2008 by Marion County (July 15<sup>th</sup>, 2008), the School Board (April 8, 2008), and the City of Dunnellon (April 29<sup>th</sup>, 2008) to reflect changes in the state concurrency legislation relating to public schools as provided in Chapter 2005-290 (Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 360), Laws of Florida, which became effective July 1, 2005 (see Attachment I). That agreement included 22 sections, including the following six (6) sections pertaining to public school concurrency:

1. Section 4, School Concurrency Program Development and Update;
2. Section 12, Levels of Service Standards;

3. Section 13, School Concurrency Service Areas;
4. Section 14, School Concurrency Applicability and Exemptions;
5. Section 15, School Concurrency Determination Standards; and
6. Section 17, Mitigation Alternatives.

On September 30, 2008, a Second Amended and Restated Interlocal Agreement for Public School Facility Planning was executed among the Parties (see Attachment J). This ILA made various minor changes to the Amended and Restated Interlocal Agreement and still remains the effective agreement as the Parties have not exercised Section 20 on termination of the agreement.

*Reconstitution of the Technical Working Group (TWG).* As noted in the legislative history, Chapter 2011-139 eliminated the requirement for public school concurrency and a public schools facility element. Subsequently, The Parties recognized the need to amend the Second Amended and Restated Interlocal Agreement for Public School Facility Planning. The TWG was reconstituted with the following members:

- Elected Officials
  - Michelle Stone, Marion County Board of County Commissioners, District 5
  - Nancy Thrower, School Board for Marion County, Florida, District 4
  - Kristen Dreyer, Councilmember, City of Ocala
  - Jan Cubbage, Councilmember, Seat 5, City of Dunnellon
  - Ray Dwyer, Commissioner, Seat 2, City of Belleview
- Professional Staff
  - Tracy Straub, P.E., Assistant County Administrator, Marion County
  - Earl R. Hahn, AICP, Growth Services Department Director, Marion County
  - Darlene Pocock, Staff Assistant, Growth Services Department, Marion County
  - David Herlihy, Planning and Governmental Relations, School Board for Marion County
  - Tye Chighizola, Growth Management Director, City of Ocala
  - Mandy Odom, CMC, City Clerk, City of Dunnellon
  - Georgina Cid, Community Development Manager, City of Dunnellon
  - Shawna Chancey, MPA, Development Services Director, City of Belleview
  - Jeannie Rickman, and later Jessica Gonzalez, Town Manager/Clerk, Town of McIntosh

The TWG met on the following dates to discuss the proposed 2022 Interlocal Agreement:

- March 4, 2022
- March 24, 2022
- March 29, 2022
- April 28, 2022
- May 12, 2022
- May 23, 2022
- June 16, 2022
- June 23, 2022
- July 21, 2022
- August 12, 2022

- September 8, 2022

Subsequent to the September 8, 2022 TWG meeting, Marion County staff forwarded the draft ILA to the Parties so that it could be reviewed by their respective attorney's. Upon their review and transmittal to Marion County staff, Marion County staff would prepare a revised ILA that considered the changes recommended by their respective attorneys. In addition, on December 7, 2022 a Joint Public Workshop was held with the Public Schools Planning Officials. On December 30<sup>th</sup>, 2022, Marion County staff e-mailed to the Parties the final revised ILA, which incorporated many of the recommendations made the Parties attorneys

On January 13<sup>th</sup>, 2023, the Parties and their legal advisors met to finalize the ILA and reached a consensus on the wording of the attached Third Amended and Restated Interlocal Agreement for Public School Facility Planning. As stated previously, this ILA is intended to replace in its entirety the previously adopted ILA.

*Section-by-section analysis.* This portion of the staff report focuses on a section-by-section summary analysis of the Marion County Third Amended and Restated Interlocal Agreement for Public School Facility Coordination and Planning as compared to the 2008 ILA and the key issues raised by the TWG and the Parties attorneys in drafting this ILA.

Introduction and Recitals. The number of Whereas clauses has been reduced from 17 in the 2008 to 13. The Whereas Clauses deleted from the 2008 ILA primarily related to public school concurrency. The new Whereas Clauses primarily contain a chronology of the previously adopted Public School Interlocal Agreements. At the January 13<sup>th</sup>, 2023 workshop, the most contentious issue was the order of the Whereas Clauses. After substantial discussion, The Parties agreed to the order depicted in the Marion County Third Amended and Restated Interlocal Agreement for Public School Facility Coordination and Planning.

Section 1. The TWG recommended renumbering Section 1 on Joint Meetings to Section 2 in order to add Definitions as Section 1. The 2008 ILA included a Glossary with 23 terms as Appendix "D" but the TWG recommended the term Glossary be changed to Definitions and that it be added as the first section of the ILA in order to familiarize the reader of the terms used and its meaning. The TWG recommended the deletion of 13 terms from the 2008 ILA Glossary, these being 1) Ancillary Facility, 2) Applicant, 3) Contiguous Concurrency Service Areas, 4) Development, 5) Development of Regional Impact, 6) Financial Feasibility, 7) Housing for Older Persons, 8) Levels of Service, 9) Maximum Utilization, 10) Proportionate Student Station, 11) Residential Unit, 12) School Impact Fee, and 13) State Requirements for Educational Facilities.

The TWG also recommended three amendments to the 2008 ILA terms: 1) FISH capacity is being replaced with FISH Permanent Capacity and FISH Total Capacity, 2) Relocatable or Portable with Temporary Classroom, and 3) School District Facilities Work Program or Work Program to District Facilities Work Program or Work Program. In addition, the definition of School Type is amended to add two additional facilities: Combination School and Exceptional Student Education Center. At the January 13, 2023 workshop, the

Parties agreed to delete the definition of Exceptional Student Education Center because it was going to be included into the definition of School Type as Other Schools.

The TWG further recommended increasing the number of definitions from 23 to 45. New definitions that are added that were not previously included in the 2008 ILA Glossary include: 1) Attendance Zone, 2) Building Permit, 3) Capital Outlay, Full-Time Equivalent (COFTE) Projections, 4) Charter School, 5) Combination School, 6) Combination School Capacity, 7) Comprehensive Plan, 8) Comprehensive Plan Amendment, 9) Consistent, 10) Development Approval, 11) Educational Facilities Plan, 12) Educational Facility, 13) Educational Plant Survey, 14) Elementary School, 15) Enrollment or Membership, 16) Exceptional Student Education Center, 17) Five-Year Capital Facilities Program, 18) Five-Year Capital Improvements Plan, 19) Florida Inventory of School Houses, 20) High School, 21) Joint Planning Workshop (JPW), 22) Middle School, 23) Municipalities, 24) Program Capacity, 25) Public School Advisory Committee (PSAC), 26) Public Schools Planning Officials (PSPO), 27) Redistricting, 28) Satisfactory Permanent Student Stations, 29) School, 30) School Capacity, 31) Student Capacity, 32) Student Station, 33) Superintendent, 34) Superintendent's Designee or Designee, and 35) Technical Working Group (TWG). It should be noted that some terms, such as but not limited to, JPW, PSAC, PSPO, and TWG were defined elsewhere in the 2008 ILA but those terms were relocated to the Definitions section. As a result of this new Section 1, the numbering of all the remaining Sections of the Interlocal Agreement may be different. At the January 13, 2023 workshop, the definition of Exceptional Student Education Center was deleted, thereby reducing the number of definitions to 44.

It bears mentioning that the TWG struggled with providing a definition for capacity, which term was not included in the Glossary. The issue with capacity was whether to define the term for purposes of school capital outlay or for planning purposes. The TWG recommended the planning purposes definition be chosen because this Agreement is about school facility planning. Another debated issue was about defining school capacity. This term also was not included in the Glossary. After substantial discussion, it became apparent that school capacity has various meanings and the meaning depends on the purpose for which capacity is being measured. Consequently, a compromise was reached to provide for five different definitions. This provides the Parties with greater flexibility in implementing the ILA. Finally, it should be noted that the September 8, 2022 version of the ILA had various missing definitions, these being 1) Combination School, 2) Combination School Capacity, 3) Elementary School, 4) Enrollment or Membership, 5) Exception Student Education, 6) FISH Permanent Capacity, 7) FISH Total Capacity, 8) High School, 9) Middle School, 10) Program Capacity, and 11) Satisfactory Permanent Student Stations. Marion County staff added these missing definitions and the Parties agreed to these definitions.

Section 2. The most significant change to the ILA is the recognition that the previous Section 1 (now renumbered as Section 2) is not about Joint Meetings but about the Collegial Bodies that meet periodically to facilitate the coordination of the school district and local government plans and processes. This insight resulted in changing the heading of Section 2 from Joint Meetings to Collegial Bodies, changing the title of Subsection 2.2 from Joint Planning Workshop to Public Schools Planning Official, and adding as Subsection 2.3 the Public Schools Advisory Committee. This format revision also helped

in establishing which of the Parties is responsible for scheduling the meetings, providing notifications, and taking minutes. It also helped clarify the data and analysis needed by each collegial body in order to best perform their function.

At the January 13, 2023 workshop, the Parties agreed to make the following four changes. First, Subsection 2.1 was amended by adding the word “Meetings” after the words Technical Working Group. Second, amending the words Marion County Superintendent of Schools to Superintendent and amending Public Schools Planning Official to read PSPO. Third, amending Subsection 2.2 by adding the words “Joint Planning Workshop” after PSPO. Fourth, adding the District Facilities Work Program and Educational Plant Survey as items that could be considered at the Joint Planning Workshop.

Section 3. The TWG recommended several changes to Section 3 (previously Section 2) on student enrollment and population projections. First, the 2008 ILA language under Subsection 2.2 pertaining to Concurrency Service Areas (CSAs) and the allocation of student enrollment projections was deleted. Second, the 2008 ILA text under Subsection 2.5 on Student Generation Multipliers was deleted. Third, was the addition of a new Subsection 3.4 on Impact Fees. It should be noted there was significant discussion about the imposition of public-school impact fees. The Parties agreed that while there is a need to address public-school concurrency and impact fees, the emphasis of these negotiations was to get the Parties to resume planning and coordination activities to address long-range planning for public schools. As a consequence, it was determined that the imposition of school impact fees should be resolved through a subsequent amendment to the Interlocal Agreement. The new Subsection 3.4 allows for the School Board to conduct a public-school impact fee study but this Section places no obligation on the local governments to adopt such a fee. Finally, editorial changes were made by adding a header or title before each subsection.

At the January 13, 2023 workshop, the Parties agreed to some language change concerning impact fees, specifically, that Local Governments consider in good faith any School Board recommended impact fees.

Section 4. Section 4 on coordinating and sharing of information was previously numbered Section 3 under the 2008 ILA. The TWG recommended seven (7) changes to this Section. First, the 2008 ILA requirements under Section 3.1 was renumbered as Section 4.6 and the ten specific data requirements under Section 3.1 were eliminated. In its place, reference was made to the Education Facilities Plan.

Second, a new Subsection 4.1 was created which requires the local government to provide to the School Board any Future Land Use Map (FLUM) amendment application that increases residential density within 10 days of receipt of a complete application and, if adopted, within 40 days of adoption. The 10-day period is intended to provide School Board staff with sufficient notice to review and make comments on the FLUM amendment application prior to any public hearing. The 40-day notice is intended to allow for a 30-day period where a party can object to the FLUM amendment. Subsection 4.1 also provides for a local government to provide to the school board and other local governments any updates to the Capital Improvements Element (CIE) Schedule of Capital Improvements and Transportation Element amendments that reduce roadway

capacity at least 10-days prior to a Local Planning Agency public hearing and within 40-days after adoption.

Third, 2008 ILA Subsections 3.2 on the Proposed Work Program and 3.5 on Educational Plant Survey (EPS) were replaced respectively by Subsection 4.2 on the Tentative Educational Facilities Plan and Subsection 4.3 on the Adopted Educational Facilities Plan, which Plan is broader in scope than the Work Program and EPS

Fourth, a new Subsection 4.4 was added to acknowledge the state legislature has amended the Florida Statutes to allow density increases outside the typical Comprehensive Plan amendment process and that the local governments shall notify the School Board of such density increases within 10-days of receipt of such application increasing density.

Fifth, the 2008 ILA Subsection 3.3 requiring the Local Governments to annual update their Capital Improvements Element to incorporate the School Board's adopted Work Program was deleted. As mentioned above, this provision has been incorporated into Subsection 4.1.

Sixth, 2008 ILA Subsection 3.5 on growth and development trends was modified and is incorporated in Subsection 4.5.

Seventh, 2008 ILA Subsections 3.6 on notification of renovations and other facility changes and 3.7 on redistricting were deleted and replaced with Subsection 4.6 to address the long-term tracking and forecasting of the number of students. County staff also is proposing some new language encouraging the Parties to adopt a similar long-term time frame, which could be tied to the Transportation Planning Organizations Long Range Transportation Plan horizon.

At the January 13, 2023 workshop, the Parties agreed to some minor editorial changes.

Section 5. The TWG recommended two changes. First, as mentioned under Section 2 of this Staff Report, Subsection 5.1 on the Public Schools Advisory Committee was renumbered as Subsection 2.3. Second, a new criterion (i.e., Paragraph 5.2.3) was added to provide that when evaluating new school sites, significant renovations and closures, the location of middle schools proximate to and within bicycling distance of residential neighborhoods served be considered.

At the January 13, 2023 workshop, the Parties agreed to amend the notice requirements by striking the requirement that written notice be "by personal service or certified mail return receipt requested." The Parties were comfortable with written notice via email.

Section 6. Section 6 on Local Planning Agencies was previously numbered Section 7 under the 2008 ILA. The TWG recommended the six subsections in the 2008 ILA be reduced to one. It was the TWG's opinion that Section 4 on coordinating and sharing of information sufficiently addressed comprehensive plan amendments, rezonings, and other development approvals. Notwithstanding, the City of Belleview has recommended

a new Subsection 6.2 be added and Marion County staff is supportive of this change and is now included in the draft ILA.

At the January 13, 2023 workshop, the Parties agreed to the proposed addition of Subsection 6.2.

Section 7. Section 7 on Co-location and shared use was previously numbered Section 8. The most significant change was repealing 2008 ILA Subsection 8.3 addressing background screening for certain non-instructional school district employees and contractors and adding Subsection 7.3., which appears repetitive of Subsection 7.1. Marion County staff recommended Subsection 7.3 be replace with 2008 ILA Subsection 8.3.

At the January 13, 2023 workshop, the Parties agreed to the proposed addition of Subsection 7.3.

Section 8. Previously numbered as 2008 ILA Section 6, Section 8 addresses supporting infrastructure. The TWG recommended several changes to this section. First, the reference to Public Education Facility Construction in the Section title was repealed, thereby focusing this section on supporting infrastructure. Second, 2008 ILA Subsections 6.1 and 6.2 were combined into Subsection 8.1 and was further amended by defining what constitutes “significant” and limiting this subsection only to those instances where capacity is being added to accommodate new student populations. Further, 2008 ILA Sections 6.3 on proportionate sharing and concurrency payments and 6.4 on landscaping were repealed and replaced with Subsection 8.2 which provides this section shall not be construed to require the local government to bear any cost of infrastructure improvements related to school concurrency.

At the January 13, 2023 workshop, the Parties agreed to the deletion of the existing Subsection 8.3 and its replacement with the previous ILA provision addressing landscaping.

Section 9. Section 9 in both the 2008 Agreement and the proposed Agreement deal with Amendments, which section is not a statutory requirement. The TWG recommended this section be retained with the following exceptions. First, that Subsections 9.1.3 and 9.1.4 be repealed as these subsections pertain to mitigation options and processes and to the Public-School Facility Element, both of which are no longer required. Second, with regard to Subsection 9.2.3., that the reference to the Department of Community Affairs be replaced with the Department of Economic Opportunity and that the reference to school concurrency be repealed. Marion County staff also is recommending the Work Program reference be replaced with Adopted Educational Facilities Plan.

At the January 13, 2023 workshop, the Parties agreed to some editorial changes in Subsection 9.2.

Section 10. Section 10 (formerly Section 11) addresses the District Facilities Work Plan, Five Year Capital Plan. The TWG recommended that those portions of Subsections 10.1, Paragraph 10.3.2, Subsection 10.4 and Subsection 10.6 referencing Concurrency

Service Areas and Levels of Service be repealed. The TWG also recommended a scaled-down approach that focuses on a public hearing for the Five-Year Work Program and for the Educational Plant Survey. At the January 13, 2023 workshop, the Parties agreed to the existing language.

Section 11. The TWG recommended this section addressing dispute of resolution be amended to allow alternative dispute resolution methods and to provide that each party is responsible for their own attorney's fees and costs. At the January 13, 2023 workshop, the Parties agreed an editorial change.

Section 12. The TWG recommended the section addressing the oversight process be retained but that the reference to school concurrency be repealed. At the January 13, 2023 workshop, the Parties agreed to the existing language.

Section 13. The TWG recommended the section titled Termination of Agreement be retained but that reference to the Department of Community Affairs exemption and waiver process be repealed because neither the Department nor the exemption/waiver provisions exist. At the January 13, 2023 workshop, the Parties agreed an editorial change.

Section 14. The TWG recommend the section captioned Miscellaneous be retained in its entirety. At the January 13, 2023 workshop, the Parties agreed to the existing language.

Section 15. The TWG recommended a new section pertaining to severability be added in the event that if a portion of the agreement is found invalid, only that portion will be stricken and not the entire agreement.

Section 16. The TWG recommended a new section titled Notice be included in the Agreement. The purpose of this section is to provide the name and mailing address of The Parties so that they can be notified of upcoming meetings and any other actions. At the January 13, 2023 workshop, the Parties agreed some editorial changes.

Section 17. The TWG recommended the section titled effective date be retained in its entirety. At the January 13, 2023 workshop, the Parties agreed to retain said language.

### **List of Attachments**

- A Section 5 of Chapter 2002-296, Laws of Florida
- B Section 15 of Chapter 2003-01, Laws of Florida
- C Section 4 of Chapter 2005-290, Laws of Florida
- D Section 11 of Chapter 2010-70, Laws of Florida
- E Section 13 of Chapter 2011-139, Laws of Florida
- F Section 5 of Chapter 2012-99, Laws of Florida
- G Section 163.31777, Florida Statutes
- H Interlocal Agreement for Public School Facility Planning
- I Amended and Restated Interlocal Agreement for Public School Facility Planning and School Concurrency

J Second Amended and Restated Interlocal Agreement for Public School Facility  
Planning and School Concurrency