



**The Best & Brightest Teacher and Principal Program
Frequently Asked Questions
September 20, 2019**

Where can I access the list of eligible schools for the retention and principal award?

The list of eligible schools was released on September 20, 2019, and can be accessed at <http://www.fldoe.org/core/fileparse.php/5306/urlt/bestandbrightest-rp.xls>.

When will districts receive Best and Brightest Award Funding?

The Best and Brightest allocation funds will be distributed to school districts in the September 26, 2019, FEFP payments through revenue code 3310.

How will charter schools receive Best and Brightest Award Funding?

Districts should distribute to charter schools their proportionate share of the funds upon receipt of the district's allocation. Similar to the allocation of other categorical funds to charter schools, it is recommended to allocate the funds on a full-time equivalent student basis.

Withholding Employer Payroll Taxes and Other Expenses from State Funds Provided for the Best and Brightest Scholarship Program:

From the inception of the Best and Brightest Program to the present, the Department's guidance has been that districts may subtract applicable payroll taxes, including the employer portion of FICA taxes, and any mandatory payroll expenses to determine the gross amount that will be paid to each award recipient.

In July, a putative class action lawsuit, *Alianiello v. State of Florida, Department of Education*, No. 2019-CA-001674 (Fla. 2d Cir. Ct. filed July 16, 2019), was filed against the Department claiming damages based on the theory that certain award recipients had received less than the amounts set out in the statute. The Department denies any and all liability. Copies of the Alianiello complaint and of the Department's motion to dismiss that lawsuit are attached.

The Department continues to stand by its prior guidance to districts about awards under the Best and Brightest Program. Although employers are liable for the employer portion of FICA taxes vis-à-vis the IRS, federal tax law does not prohibit an employer from adjusting an employee's gross compensation to account for the employer's FICA taxes. In addition, courts have held that FICA does not create a private right of action for an employee to challenge employer deductions or withholdings for FICA taxes, and courts have also held that state-law claims challenging those practices (as such) are preempted by federal law. Courts have thus rejected claims challenging deductions of the employer portion of FICA taxes from amounts that might otherwise have been available to compensate employees.

If a district chooses to use some of the state funds made available under the Best and Brightest Program to pay FICA taxes, the Department's prior guidance provided that the amount used to pay the employer portion of FICA should not be included in "wages" for either FICA or income tax purposes. For example,



if a district received \$100 in state funds under the program and chose to deduct \$7.10 from that amount to cover the employer portion of FICA taxes before paying the balance to an employee, only \$92.90 could be reported as the employee's wages, from which the employee portion of FICA would be withheld. The Form W-2 would report wages of \$92.90 and FICA tax withheld from the employee of \$7.10. The district would remit \$14.20 in FICA with its Form 941.

While the Department stands by its guidance on the costs associated with these awards, in light of the pending putative class action lawsuit, districts should nevertheless consult with their own tax and legal counsel to ensure compliance with all state and federal requirements.