

By the Committees on Appropriations; Education; and Senator Bullard

309-2384-04

1                                   A bill to be entitled  
2           An act relating to accountability of the John  
3           M. McKay Scholarships for Students with  
4           Disabilities Program; amending s. 1002.39, F.S;  
5           revising the definition of an eligible student;  
6           revising the eligibility requirements of the  
7           program to extend the term of the scholarship;  
8           prohibiting certain students from receiving a  
9           scholarship; revising the parental notification  
10          requirements; authorizing certain scholarship  
11          students to participate in a distance learning  
12          or correspondence course under certain  
13          circumstances; providing a definition of timely  
14          parental notification; providing requirements  
15          for district school boards with respect to  
16          completing and making changes to the matrix of  
17          services for scholarship students; requiring  
18          school districts to provide parental  
19          notification related to reassessments; revising  
20          requirements that a participating private  
21          school demonstrate fiscal soundness; requiring  
22          a surety bond; providing an exception;  
23          requiring annual registration of private  
24          schools; providing requirements for  
25          documentation and notice; providing additional  
26          requirements for participating private schools;  
27          requiring annual sworn and notarized compliance  
28          statements to be filed with the department;  
29          requiring specific documentation for  
30          participating scholarship students; requiring  
31          that the private school maintain a physical

1 location in this state; requiring that  
2 information be made available to potential  
3 scholarship students and the department;  
4 requiring scholarship students to participate  
5 in assessments; requiring notification to  
6 parents regarding student skill levels;  
7 requiring notification to the department  
8 regarding changes in information; requiring  
9 notification to local health departments;  
10 requiring certain individuals to undergo level  
11 2 background screening requirements pursuant to  
12 s. 435.04, F.S.; providing for the Department  
13 of Law Enforcement to retain and search  
14 fingerprint records; providing for an annual  
15 fee as provided by rule of the Department of  
16 Law Enforcement; requiring that costs of  
17 background checks be borne by certain parties;  
18 prohibiting a private school from acting as an  
19 attorney in fact for the parent of a  
20 scholarship student or endorsing scholarship  
21 warrants on behalf of a parent; prohibiting  
22 participating private schools from sending or  
23 directing scholarship funds to parents of a  
24 scholarship student who receives instruction at  
25 home; prohibiting a participating school from  
26 being a correspondence or distance learning  
27 school; prohibiting a participating school from  
28 accepting students pending verification of  
29 information; authorizing a participating  
30 private school to request, and the department  
31 to grant, closed-enrollment status for a

1 school; prohibiting the parent of a scholarship  
2 student from designating a participating  
3 private school as the parent's attorney in fact  
4 to sign a scholarship warrant; clarifying that  
5 the school district must report to the  
6 department the students who are attending a  
7 private school under the program; establishing  
8 additional obligations of the Department of  
9 Education; requiring the department to review,  
10 approve, and verify information and review  
11 background checks; requiring the department to  
12 determine the eligibility of a private school  
13 to participate in the program; requiring the  
14 department to publish an on-line list of  
15 current eligible private schools; requiring the  
16 department to deny or refuse to allow the  
17 participation of a private school for failing  
18 to meet certain requirements; requiring the  
19 department to issue a notice of noncompliance  
20 for minor violations; providing for an  
21 emergency order revoking the registration of a  
22 private school for failing to satisfy the  
23 requirements in the notice; requiring the  
24 Department of Education to immediately revoke  
25 the registration of a private school for  
26 certain other violations; requiring the  
27 department to revoke the scholarship for a  
28 participant for failing to comply with  
29 statutory requirements or for engaging in  
30 specified practices; requiring the department  
31 to conduct investigations of legally sufficient

1 complaints of violations; authorizing the  
2 department to require supporting information or  
3 documentation; authorizing the Department of  
4 Education to change the matrix of services  
5 under certain circumstances; providing for  
6 audits by the Auditor General; providing  
7 requirements for the audits; requiring the  
8 State Board of Education to adopt rules;  
9 specifying the required rules; requiring the  
10 State Board of Education to initiate the  
11 adoption of rules by a time certain and report  
12 to the Legislature; providing exceptions for  
13 certain participating private schools subject  
14 to specific conditions; providing an effective  
15 date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19 Section 1. Subsections (1), (2), (3), (4), and (5) and  
20 paragraphs (d) and (e) of subsection (6) of section 1002.39,  
21 Florida Statutes, are amended, present subsections (7) and (8)  
22 of that section are redesignated as subsections (9) and (10),  
23 respectively, and amended, and new subsections (7) and (8) are  
24 added to that section, to read:

25 1002.39 The John M. McKay Scholarships for Students  
26 with Disabilities Program.--There is established a program  
27 that is separate and distinct from the Opportunity Scholarship  
28 Program and is named the John M. McKay Scholarships for  
29 Students with Disabilities Program, pursuant to this section.

30 (1) THE JOHN M. MCKAY SCHOLARSHIPS FOR STUDENTS WITH  
31 DISABILITIES PROGRAM.--The John M. McKay Scholarships for

1 Students with Disabilities Program is established to provide  
2 the option to attend a public school other than the one to  
3 which assigned, or to provide a scholarship to a private  
4 school of choice, for students with disabilities for whom an  
5 individual education plan has been written in accordance with  
6 rules of the State Board of Education. Students with  
7 disabilities include K-12 students who are documented as  
8 having mental retardation, a ~~mentally handicapped,~~ speech or  
9 and language impairment, a ~~impaired, deaf or hard of hearing~~  
10 impairment, including deafness, a visual impairment, including  
11 blindness, a, ~~visually impaired,~~ dual sensory impairment, a  
12 physical impairment, a serious emotional disturbance,  
13 including an emotional handicap, a ~~impaired, physically~~  
14 impaired, emotionally handicapped, specific learning  
15 disability, including, but not limited to, dyslexia,  
16 dyscalculia, or developmental aphasia, a traumatic brain  
17 injury disabled, hospitalized or homebound, or autism  
18 autistic.

19 (2) SCHOLARSHIP ELIGIBILITY; PROHIBITIONS.--

20 (a) The parent of a public school student with a  
21 disability who is dissatisfied with the student's progress may  
22 request and receive from the state a John M. McKay Scholarship  
23 for the child to enroll in and attend a private school in  
24 accordance with this section if:

25 1.(a) By assigned school attendance area or by special  
26 assignment, the student has spent the prior school year in  
27 attendance at a Florida public school. Prior school year in  
28 attendance means that the student was enrolled and reported by  
29 a school district for funding during the preceding October and  
30 February Florida Education Finance Program surveys in  
31 kindergarten through grade 12.

1           ~~2.(b)~~ The parent has obtained acceptance for admission  
2 of the student to a private school that is eligible for the  
3 program under subsection (4) and has notified the Department  
4 of Education ~~school district~~ of the request for a scholarship  
5 at least 60 days prior to the date of the first scholarship  
6 payment. The parental notification must be through a  
7 communication directly to the ~~district or through the~~  
8 Department of Education ~~to the district~~ in a manner that  
9 creates a written or electronic record of the notification and  
10 the date of receipt of the notification. The Department of  
11 Education must notify the district of the parent's intent,  
12 upon receipt of the parent's notification.

13  
14 ~~This section does not apply to a student who is enrolled in a~~  
15 ~~school operating for the purpose of providing educational~~  
16 ~~services to youth in Department of Juvenile Justice commitment~~  
17 ~~programs.~~ For purposes of continuity of educational choice,  
18 the scholarship shall remain in force until the student  
19 returns to a public school or graduates from high school or  
20 reaches the age of 22, whichever occurs first. However, at any  
21 time, the student's parent may remove the student from the  
22 private school and place the student in another private school  
23 that is eligible for the program under subsection (4) or in a  
24 public school as provided in subsection (3).

25           (b) A student is not eligible to receive a scholarship  
26 under this section if he or she:

27                 1. Receives a scholarship from an eligible scholarship  
28 funding organization under s. 220.187.

29                 2. Receives an opportunity scholarship under s.  
30 1002.38.

31

1           3. Participates in a home education program as defined  
2 in s. 1002.01(1).

3           4. Receives instruction from a correspondence school  
4 or participates in distance learning courses.

5           5. Does not have regular and direct contact with his  
6 or her private school teachers at the school's physical  
7 location.

8           6. Is enrolled in a school operating for the purpose  
9 of providing educational services to youth in commitment  
10 programs of the Department of Juvenile Justice.

11  
12 Notwithstanding the prohibition set forth in subparagraph 4.,  
13 a student who receives a John M. McKay Scholarship may  
14 participate in a distance learning course or a course offered  
15 by a correspondence school, the tuition and other costs of  
16 which are not paid by scholarship funds provided under this  
17 section.

18           (3) SCHOOL DISTRICT AND DEPARTMENT OF EDUCATION  
19 OBLIGATIONS.--

20           (a) The Department of Education ~~A school district~~  
21 shall timely notify the parent of each public school ~~the~~  
22 student of all options available pursuant to this section and  
23 offer that student's parent an opportunity to enroll the  
24 student in another public school within the district. The  
25 parent is not required to accept this offer in lieu of  
26 requesting a John M. McKay Scholarship to a private school.  
27 However, if the parent chooses the public school option, the  
28 student may continue attending a public school chosen by the  
29 parent until the student graduates from high school. If the  
30 parent chooses a public school consistent with the district  
31 school board's choice plan under s. 1002.31, the school

1 district shall provide transportation to the public school  
2 selected by the parent. The parent is responsible to provide  
3 transportation to a public school chosen that is not  
4 consistent with the district school board's choice plan under  
5 s. 1002.31. For purposes of this paragraph, timely  
6 notification means notification no later than April 1 of each  
7 school year.

8 (b)1. For a student with disabilities who does not  
9 have a matrix of services under s. 1011.62(1)(e), the school  
10 district must complete a matrix that assigns the student to  
11 one of the levels of service as they existed prior to the  
12 2000-2001 school year.

13 2.a. The school district must complete the matrix of  
14 services for any student who is participating in the John M.  
15 McKay Scholarships for Students with Disabilities Program and  
16 must notify the Department of Education of the student's  
17 matrix level within 30 days after receiving notification by  
18 the Department of Education of the parent's ~~student's parent~~  
19 of intent to participate in the scholarship program. The  
20 nature and intensity of the services indicated in the matrix  
21 must be consistent with the services described in the  
22 student's individual education plan.

23 b. A school district may change a matrix of services  
24 only if the change is to:

25 (I) Correct a technical, typographical, or calculation  
26 error; or

27 (II) Align the matrix of services with the student's  
28 individual education plan completed by the public school  
29 district for use in the public school prior to the student  
30 enrolling in or attending a private school.

31



1           3. The Department of Education shall notify the  
2 private school of the amount of the scholarship within 10 days  
3 after receiving the school district's notification of the  
4 student's matrix level.

5           4. Within 10 school days after it receives  
6 notification of a parent's intent to apply for a McKay  
7 Scholarship, a district school board must notify the student's  
8 parent if the matrix has not been completed and provide the  
9 parent with the date for completion of the matrix required in  
10 this paragraph.

11           (c) If the parent chooses the private school option  
12 and the student is accepted by the private school pending the  
13 availability of a space for the student, the parent of the  
14 student must notify the Department of Education ~~school~~  
15 ~~district~~ 60 days prior to the first scholarship payment and  
16 before entering the private school in order to be eligible for  
17 the scholarship when a space becomes available for the student  
18 in the private school.

19           (d) The parent of a student may choose, as an  
20 alternative, to enroll the student in and transport the  
21 student to a public school in an adjacent school district  
22 which has available space and has a program with the services  
23 agreed to in the student's individual education plan already  
24 in place, and that school district shall accept the student  
25 and report the student to the Department of Education for  
26 purposes of the district's funding pursuant to the Florida  
27 Education Finance Program.

28           (e) For a student in the district who participates in  
29 the John M. McKay Scholarships for Students with Disabilities  
30 Program whose parent requests that the student take the  
31

1 statewide assessments under s. 1008.22, the district shall  
2 provide locations and times to take all statewide assessments.

3 (f) ~~A school district must notify~~ The Department of  
4 Education must notify the school district upon receipt of the  
5 ~~within 10 days after it receives~~ notification of a parent's  
6 intent to apply for a scholarship for a student with a  
7 disability. A school district must provide the student's  
8 parent with the student's matrix level within 10 school days  
9 after its completion.

10 (g) A school district shall provide notification to  
11 parents of the availability of a reassessment of each student  
12 who receives a McKay Scholarship at least every 3 years.

13 (4) PRIVATE SCHOOL ELIGIBILITY; REGISTRATION;  
14 PROHIBITIONS.--

15 (a) To be eligible to participate in the John M. McKay  
16 Scholarships for Students with Disabilities Program, a private  
17 school must be a Florida private school as defined in s.  
18 1002.01(2), may be sectarian or nonsectarian, and must:

19 1.(a) Demonstrate fiscal soundness by filing with  
20 ~~being in operation for 1 school year or provide~~ the Department  
21 of Education ~~with~~ a surety bond for the amount equal to the  
22 scholarship amount for each quarter of the school year. The  
23 surety bond must be filed at the time of the private school's  
24 initial registration and at each renewal period thereafter for  
25 a total of 2 years. This requirement does not apply to an  
26 eligible private school that:

27 a. Participates in the program for a total of 2 years  
28 or longer; and

29 b. Has had no action taken by the Department of  
30 Education against the private school for any violation of this  
31 section during the 2-year period.

1  
2 However, any private school that was subject to an action  
3 taken by the department for any violation of this section  
4 shall, following the date on which the action was taken  
5 against the private school for a violation of this section,  
6 but prior to receiving the next quarterly payment and for 2  
7 years thereafter, file a surety bond with the department.

8 2. Annually register with the Department of Education.  
9 Each owner or administrator of a private school must provide  
10 the following information:

11 a. The legal business and trade name, mailing address,  
12 and business location of the private school;

13 b. The full name, address, and telephone number of  
14 each owner or administrator of the private school;

15 c. A notification of the private school's intent to  
16 participate in the program under this section. The notice must  
17 specify the grade levels and services that the private school  
18 has available for students with disabilities who are  
19 participating in the scholarship program.~~statement by a~~  
20 ~~certified public accountant confirming that the private school~~  
21 ~~desiring to participate is insured and the owner or owners~~  
22 ~~have sufficient capital or credit to operate the school for~~  
23 ~~the upcoming year serving the number of students anticipated~~  
24 ~~with expected revenues from tuition and other sources that may~~  
25 ~~be reasonably expected. In lieu of such a statement, a surety~~  
26 ~~bond or letter of credit for the amount equal to the~~  
27 ~~scholarship funds for any quarter may be filed with the~~  
28 ~~department.~~

29 ~~(b) Notify the Department of Education of its intent~~  
30 ~~to participate in the program under this section. The notice~~  
31 ~~must specify the grade levels and services that the private~~

1 ~~school has available for students with disabilities who are~~  
2 ~~participating in the scholarship program.~~

3 3.(c) Comply with the antidiscrimination provisions of  
4 42 U.S.C. s. 2000d.

5 4.(d) Meet state and local health and safety laws and  
6 codes.

7 5.(e) Be academically accountable to the parent for  
8 meeting the educational needs of the student.

9 6.(f) Employ or contract with teachers who hold  
10 baccalaureate or higher degrees, or have at least 3 years of  
11 teaching experience in public or private schools, or have  
12 special skills, knowledge, or expertise that qualifies them to  
13 provide instruction in subjects taught.

14 7.(g) Comply with all state laws relating to general  
15 regulation of private schools, including, but not limited to,  
16 s. 1002.42.

17 8.(h) Publish and adhere to the tenets of its adopted  
18 ~~published~~ disciplinary procedures prior to the expulsion of a  
19 scholarship student.

20 9. Provide the Department of Education with all  
21 documentation required for each scholarship student's  
22 participation in the scholarship program, including, but not  
23 limited to:

24 a. The private school's fee schedule, including, but  
25 not limited to, fees for services, tuition, and instructional  
26 materials, and each individual scholarship student's schedule  
27 of fees and charges, at least 30 days before the first  
28 quarterly scholarship payment is made for the student; and

29 b. The enrollment and attendance information,  
30 including an on-line attendance verification form, for each  
31

1 scholarship student at the private school, prior to each  
2 scholarship payment.

3  
4 The on-line attendance form must be documented each quarter by  
5 a notarized statement that is signed by the private school and  
6 the parents of each McKay scholarship student in attendance at  
7 the private school. The private school must maintain the  
8 completed notarized statements at the private school for each  
9 academic year. The completed notarized statements shall be  
10 open to the Department of Education upon request.

11 10. Maintain a physical location in this state where a  
12 scholarship student regularly attends classes.

13 11.a. Advertise or notify potential McKay Scholarship  
14 students and parents of the specific types of disabilities  
15 served by the school, and provide this information to the  
16 Department of Education.

17 b. Review with the parent the student's individual  
18 education plan.

19 12. Require each McKay Scholarship student to  
20 participate at least annually in a student assessment which as  
21 determined by the private school, in consultation with the  
22 student's parent or guardian, will demonstrate the student's  
23 skill level to the student's parents.

24 13. Notify the student's parent at least annually  
25 about the student's skill level on a student assessment that  
26 is determined by the private school.

27 14. Notify the Department of Education of any change  
28 in the school's registered name or location prior to any such  
29 change and notify the Department of Education within 15 days  
30 after any other change in the registration information  
31 submitted to the department.

1           15. Notify each local health department within 15 days  
2 after establishing operations at a physical location or  
3 address and within 3 days after discovering any ongoing health  
4 code violation that has not yet been remedied in full.

5           16. Annually complete and file with the Department of  
6 Education a sworn and notarized compliance statement in a form  
7 and timeline specified in rules adopted by the State Board of  
8 Education.

9           (b) A private school participating in the John M.  
10 McKay Scholarships for Students with Disabilities Program must  
11 ensure that all personnel who are hired, contracted, or  
12 engaged to provide services to fill positions requiring direct  
13 contact with students in the private school, and all owners of  
14 a private school shall, upon employment, entry into the  
15 contract, engagement to provide services, or assumption of a  
16 position of ownership, a position of decisionmaking authority,  
17 or a position having access to scholarship funds, undergo  
18 background screening pursuant to s. 435.04 by filing with the  
19 Department of Education a complete set of fingerprints taken  
20 by an authorized law enforcement agency or an employee of the  
21 private school who is trained to take fingerprints. These  
22 fingerprints shall be submitted to the Department of Law  
23 Enforcement for state processing, which shall in turn submit  
24 the fingerprints to the Federal Bureau of Investigation for  
25 federal processing. The Department of Education shall screen  
26 the background results and report to the private school any  
27 person described in this paragraph who fails to meet level 2  
28 screening standards pursuant to s. 435.04 or any person  
29 described in this paragraph who has been convicted of a crime  
30 involving moral turpitude. Employees, contractors, personnel  
31 engaged to provide services, or owners found through

1 fingerprint processing to have been convicted of a crime  
2 involving moral turpitude or failing to meet level 2 screening  
3 standards pursuant to s. 435.04 may not be employed,  
4 contracted with, or engaged to provide services in any  
5 position in the private school requiring direct contact with  
6 students, and may not assume a position of ownership, a  
7 position of decisionmaking authority, or a position having  
8 access to scholarship funds. The cost of the background  
9 screening may be borne by the private school, the employee,  
10 the contractor, the person engaged to provide services, or the  
11 owner.

12 1. Every 5 years each person described in this  
13 paragraph must meet level 2 screening requirements as  
14 described in s. 435.04, at which time the Department of  
15 Education shall request the Department of Law Enforcement to  
16 forward the fingerprints to the Federal Bureau of  
17 Investigation for level 2 screening. If the fingerprints of a  
18 person described in this paragraph are not retained by the  
19 Department of Law Enforcement under subparagraph 2., the  
20 person must file a complete set of fingerprints with the  
21 Department of Education. Upon submission of fingerprints for  
22 this purpose, the Department of Education shall request the  
23 Department of Law Enforcement to forward the fingerprints to  
24 the Federal Bureau of Investigation for level 2 screening, and  
25 the fingerprints shall be retained by the Department of Law  
26 Enforcement under subparagraph 2. The cost of the state and  
27 federal criminal history check required by level 2 screening  
28 may be borne by the private school, the employee, the  
29 contractor, the person engaged to provide services, or the  
30 owner. Under penalty of perjury, each person described in this  
31 paragraph must agree to inform the private school immediately

1 if convicted of any disqualifying offense while in a capacity  
2 with the private school as described in this paragraph. If it  
3 is found that a person described in this paragraph does not  
4 meet the level 2 requirements, the person shall be immediately  
5 suspended from working in that capacity and shall remain  
6 suspended until final resolution of any appeals.

7 2. Beginning July 1, 2004, all fingerprints submitted  
8 to the Department of Law Enforcement as required by this  
9 paragraph shall be retained by the Department of Law  
10 Enforcement in a manner provided by rule and entered in the  
11 statewide automated fingerprint identification system  
12 authorized by s. 943.05(2)(b). Such fingerprints shall  
13 thereafter be available for all purposes and uses authorized  
14 for arrest fingerprint cards entered in the statewide  
15 automated fingerprint identification system pursuant to s.  
16 943.051.

17 3. Beginning December 15, 2004, the Department of Law  
18 Enforcement shall search all arrest fingerprint cards received  
19 under s. 943.051 against the fingerprints retained in the  
20 statewide automated fingerprint identification system under  
21 subparagraph 2. Any arrest record that is identified with the  
22 fingerprints of a person described in this paragraph shall be  
23 reported to the Department of Education. Each eligible private  
24 school shall participate in this search process by paying an  
25 annual fee to the Department of Law Enforcement and by  
26 informing the Department of Law Enforcement of any change in  
27 the status or place of employment, contracting, or engagement  
28 of services of its personnel as described in this paragraph  
29 whose fingerprints are retained under subparagraph 2. The  
30 Department of Law Enforcement shall adopt a rule setting the  
31 amount of the annual fee to be imposed upon each private



1 school for performing these searches and establishing the  
2 procedures for the retention of private school personnel  
3 fingerprints and the dissemination of search results. The fee  
4 may be borne by the private school, the employee, the  
5 contracted person, the person engaged to provide services, or  
6 the owner.

7 (c) A private school participating in the John M.  
8 McKay Scholarships for Students with Disabilities Program may  
9 not:

10 1. Act as attorney in fact for parents of a  
11 scholarship student under the authority of a power of attorney  
12 executed by such parents, or under any other authority, to  
13 endorse scholarship warrants on behalf of parents.

14 2. Send or direct McKay Scholarship funds to parents  
15 of a scholarship student who receives instruction at home.

16 3. Be a correspondence school or distance learning  
17 school.

18 4. Accept a McKay scholarship student until the sworn  
19 and notarized compliance statement has been completed,  
20 submitted to, and independently verified by the Department of  
21 Education.

22 (d) A participating private school may request that  
23 the school be listed by the Department of Education with a  
24 closed-enrollment status in the McKay Scholarship program if  
25 the school is no longer accepting new students with McKay  
26 Scholarships. As used in this paragraph, the term  
27 "closed-enrollment status" means that the private school is no  
28 longer accepting any new student with a McKay Scholarship.  
29 However, the private school is subject to all the requirements  
30 under this section and all applicable rules adopted by the  
31 State Board of Education if the private school is serving a

1 student with a McKay Scholarship. The private school must  
2 provide a written request for closed-enrollment status to the  
3 Department of Education. The Department of Education may grant  
4 closed-enrollment status to a participating private school.  
5 However, closed-enrollment status may not be granted for  
6 longer than 1 school year.

7 (5) OBLIGATION OF PROGRAM PARTICIPANTS.--

8 (a) A parent who applies for a John M. McKay  
9 Scholarship is exercising his or her parental option to place  
10 his or her child in a private school. The parent must select  
11 the private school and apply for the admission of his or her  
12 child.

13 (b) The parent must have requested the scholarship at  
14 least 60 days prior to the date of the first scholarship  
15 payment.

16 (c) Any student participating in the scholarship  
17 program must remain in attendance throughout the school year,  
18 unless excused by the school for illness or other good cause,  
19 and must comply fully with the school's code of conduct.

20 (d) The parent of each student participating in the  
21 scholarship program must comply fully with the private  
22 school's parental involvement requirements, unless excused by  
23 the school for illness or other good cause.

24 (e) If the parent requests that the student  
25 participating in the scholarship program take all statewide  
26 assessments required pursuant to s. 1008.22, the parent is  
27 responsible for transporting the student to the assessment  
28 site designated by the school district.

29 (f) Upon receipt of a scholarship warrant, the parent  
30 to whom the warrant is made must restrictively endorse the  
31

1 warrant to the private school for deposit into the account of  
2 the private school.

3 (g) The parent of a student participating in the  
4 scholarship program may not designate any participating  
5 private school as the parent's attorney in fact to sign a  
6 scholarship warrant.

7 (h)~~(g)~~ A participant who fails to comply with this  
8 subsection forfeits the scholarship.

9 (6) SCHOLARSHIP FUNDING AND PAYMENT.--

10 (d) The school district shall report to the Department  
11 of Education all students who are attending a private school  
12 under this program. The students with disabilities attending  
13 private schools on John M. McKay Scholarships shall be  
14 reported separately from other students reported for purposes  
15 of the Florida Education Finance Program.

16 (e) Following notification on July 1, September 1,  
17 December 1, or February 1 of the number of program  
18 participants, the Department of Education shall transfer, from  
19 General Revenue funds only, the amount calculated under  
20 paragraph (b) from the school district's total funding  
21 entitlement under the Florida Education Finance Program and  
22 from authorized categorical accounts to a separate account for  
23 the scholarship program for quarterly disbursement to the  
24 parents of participating students. When a student enters the  
25 scholarship program, the Department of Education must receive  
26 all documentation required for the student's participation,  
27 including, but not limited to,the private school's and  
28 student's fee schedules, at least 30 days before the first  
29 quarterly scholarship payment is made for the student. The  
30 Department of Education may not make any retroactive payments.

31 (7) OBLIGATIONS OF THE DEPARTMENT OF EDUCATION.--

1           (a) The Department of Education shall perform the  
2 following duties:

3           1. Review for compliance all documentation required  
4 for each scholarship student's participation, including,  
5 without limitation, the private school's schedule and the  
6 student's fee schedule.

7           2. Verify the admission acceptance of each scholarship  
8 student to an eligible private school prior to the initial  
9 scholarship payment.

10           3. Verify, prior to each scholarship payment, the  
11 enrollment and attendance of each scholarship student at the  
12 private school and that the scholarship student is not:

13           a. Receiving a scholarship under s. 220.187 or s.  
14 1002.38.

15           b. Participating in a home education program as  
16 defined in s. 1002.01(1).

17           c. Participating in instruction delivered by a  
18 correspondence school or distance learning courses, except as  
19 specifically permitted in paragraph (2)(b).

20           d. Enrolled in a school operating for the purpose of  
21 providing education services to youth in commitment programs  
22 of the Department of Juvenile Justice.

23           e. Currently enrolled in a public school in the state,  
24 if the student has a scholarship to attend a private school.

25           4. Administer and prescribe an annual sworn and  
26 notarized compliance statement for each participating private  
27 school and independently verify the information provided by  
28 each participating private school.

29           5. Review all results of the background checks  
30 performed pursuant to subsection (4).

31

1           6. Determine the eligibility of a private school to  
2 accept McKay scholarship students, based upon independent  
3 verification that the private school meets all the  
4 requirements in this section and all applicable rules adopted  
5 by the State Board of Education.

6           7. Publish a current, on-line list of eligible private  
7 schools.

8           8. Include each eligible private school on the on-line  
9 list of eligible private schools within 10 days after the  
10 private school is determined as eligible to participate in the  
11 McKay scholarship program.

12           9. Remove immediately from the on-line list of  
13 eligible private schools any school that is determined by the  
14 Department of Education to be an ineligible private school, as  
15 provided for in paragraph (b).

16           10. Remove immediately from the on-line list of  
17 eligible private schools any school that is determined by the  
18 Department of Education to be an ineligible school, as  
19 provided for in paragraphs (b) and (c).

20           (b) The Department of Education shall deny or refuse  
21 to allow the participation of any private school if it  
22 determines that the private school or any of its owners or  
23 administrators has failed to meet the requirements for initial  
24 application or renewal as provided in this section.

25           (c) The Department of Education shall issue a notice  
26 of noncompliance pursuant to s. 120.695 to any participating  
27 private school that violates any of the provisions of this  
28 section or the rules of the State Board of Education, if the  
29 violation is a minor violation as defined in s. 120.695. If a  
30 private school fails to satisfy the requirements specified in  
31 the notice of noncompliance within 30 days after its receipt

1 by the school, the Department of Education shall issue an  
2 emergency order revoking the registration of the participating  
3 private school. The Department of Education shall issue an  
4 emergency order to immediately revoke the registration of a  
5 participating private school for a violation that is not a  
6 minor violation as defined in s. 120.695.

7 (d) The Department of Education shall revoke the  
8 scholarship for a participant who fails to comply with the  
9 requirements in subsection (5) or who:

10 1. Receives a scholarship under s. 220.187 or s.  
11 1002.38.

12 2. Participates in a home education program as defined  
13 in s. 1002.01(1).

14 3. Participates in instruction delivered by a  
15 correspondence school or distance learning courses, except as  
16 specifically permitted in paragraph (2)(b).

17 4. Does not have regular and direct contact with the  
18 student's private school teachers at the school's physical  
19 location.

20 5. Enrolls in a school operating for the purpose of  
21 providing educational services to youth in commitment programs  
22 of the Department of Juvenile Justice.

23 (e) The Department of Education shall conduct an  
24 investigation of any written complaint of a violation of this  
25 section if the complaint is signed by the complainant and is  
26 legally sufficient. A complaint is legally sufficient if it  
27 contains ultimate facts that show that a violation of this  
28 section or any rule adopted by the State Board of Education  
29 has occurred. In order to determine legal sufficiency, the  
30 Department of Education may require supporting information or  
31 documentation.

1           (f) The Department of Education may not change a  
2 matrix of services completed by a school district. However,  
3 the department may make the following changes for a matrix for  
4 a student if the school district has identified the error but  
5 has failed to make a correction in a timely manner:

6           1. A correction to a technical, typographical, or  
7 calculation error; or

8           2. A change to align the matrix of services with the  
9 student's individual education plan completed by the school  
10 district for use in the public school prior to the student  
11 enrolling in or attending a private school.

12  
13 The department must report any change made under this  
14 paragraph to the school district and the parent of the  
15 student.

16           (8) OBLIGATIONS OF THE AUDITOR

17 GENERAL.--Notwithstanding any other law to the contrary, the  
18 Auditor General must include in the operational audit of the  
19 Department of Education the John M. McKay Scholarships for  
20 Students with Disabilities Program. The Auditor General must  
21 include in the audit a review of a sample of the warrants used  
22 to pay for the scholarships, as well as random site visits to  
23 private schools participating in the John M. McKay  
24 Scholarships for Students with Disabilities Program, in order  
25 to verify student enrollment and other information reported by  
26 the private schools as required by rules of the State Board of  
27 Education.

28           (9)~~(7)~~ LIABILITY.--No liability shall arise on the  
29 part of the state based on the award or use of a John M. McKay  
30 Scholarship.

31

1            (10)~~(8)~~ RULES.--The State Board of Education shall ~~may~~  
2 adopt rules pursuant to ss. 120.536(1) and 120.54 to  
3 administer this section, including rules for:-

4            (a) Administering the annual sworn and notarized  
5 compliance statement to all participating private schools;

6            (b) Establishing procedures for schools to request  
7 closed-enrollment and active status;

8            (c) Establishing forms for changes to a matrix by a  
9 school district and the department;

10           (d) Implementing the requirement that a private school  
11 timely notify the Department of Education of material changes  
12 to the school's registration information;

13           (e) Establishing attendance-verification procedures  
14 and forms; and

15           (f) Establishing procedures for determining student  
16 eligibility and approving scholarships.

17  
18 The rules related to the annual sworn and notarized compliance  
19 statement shall establish a deadline for the receipt of the  
20 initial sworn and notarized compliance statement from the  
21 private school and shall enumerate the items to be included in  
22 the statement. The rules shall enumerate the items to be  
23 included in a subsequent annual sworn and notarized compliance  
24 statement that is required in January of each year from the  
25 private school. However, the inclusion of eligible private  
26 schools within options available to Florida public school  
27 students does not expand the regulatory authority of the  
28 state, its officers, or any school district to impose any  
29 additional regulation of private schools beyond those  
30 reasonably necessary to enforce requirements expressly set  
31 forth in this section.



1           Section 2. The State Board of Education shall initiate  
2 the adoption of rules required by this act 10 days after the  
3 effective date of this act. The State Board of Education shall  
4 report to the presiding officers of the Legislature by  
5 December 1, 2004, on the status of the rulemaking required by  
6 this act.

7           Section 3. (1) A private school that meets the  
8 following requirements on June 1, 2004, is not required to  
9 file the surety bond as required in section 1002.39(4)(a)1.,  
10 Florida Statutes:

11           (a) The private school is participating in the McKay  
12 Scholarship Program under section 1002.39, Florida Statutes;  
13 and

14           (b) The private school is determined by the Department  
15 of Education to be in compliance with section 1002.39, Florida  
16 Statutes.

17           (2) Notwithstanding section 1002.39(4)(b)4., Florida  
18 Statutes, a private school that meets the requirements in  
19 paragraphs (1)(a) and (b) may accept a McKay scholarship  
20 student.

21           (3) Notwithstanding subsections (1) and (2), if the  
22 private school becomes, after June 1, 2004, subject to an  
23 action taken by the Department of Education for any violation  
24 of section 1002.39, Florida Statutes, the private school:

25           (a) Shall file a surety bond with the Department of  
26 Education following the date on which the action was taken  
27 against the private school for a violation of section 1002.39,  
28 Florida Statutes, but prior to receiving the next quarterly  
29 payment;

30           (b) Shall file a surety bond with the Department of  
31 Education for 2 additional consecutive years thereafter; and

1           (c) May not accept new McKay scholarship students  
2 until the private school complies with all the requirements in  
3 section 1002.39, Florida Statutes, and all applicable rules of  
4 the State Board of Education, as determined by the Department  
5 of Education.

6           Section 4. This act shall take effect upon becoming a  
7 law.

8  
9                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
10                           COMMITTEE SUBSTITUTE FOR  
11                           Senate Bill CS for SB 2882

12 The CS for CS revises the fingerprinting and background check  
13 requirements for private schools to make them consistent with  
14 proposed requirements for public schools. With regard to  
15 student eligibility, it restores the definition of "prior  
16 school year in attendance" to current law; it removes the  
17 Auditor General's audit of the FEFP or an alternate audit by  
18 an accounting firm; and it requires the private school to  
19 retain the notarized attendance documents for each student  
20 rather than send them all to the DOE.  
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