

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Education Committee

BILL: SB 1152

INTRODUCER: Senator Haridopolos

SUBJECT: McKay Scholarships/Disabilities

DATE: February 3, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	EA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill redefines the criteria for students who are eligible to participate in the program. The bill also makes several other changes to the John M. McKay Scholarships for Students with Disabilities Program, including:

- Providing that hospital or homebound students are not eligible to participate in the program;
- Providing for the eligibility of students from the Florida School for the Deaf and the Blind, the method for calculating the scholarship amount, and the reporting requirements for school districts;
- Providing for the eligibility of students exiting a Department of Juvenile Justice (DJJ) commitment program and a method for payment of scholarships to these students;
- Providing that a DJJ student may not receive a scholarship while he or she is enrolled in school during the commitment period; and
- Eliminating the provision authorizing partial payment of tuition.

This bill substantially amends section 1002.39, Florida Statutes.

The bill takes effect upon becoming a law.

II. Present Situation:

John M. McKay Scholarships for Students with Disabilities Program (McKay program)

Current law (s. 1002.39, F.S.) provides an option for students with certain documented disabilities to attend a public school or a private school of the parent's choice. For Fiscal Year 2003-2004, DOE reports that there were 673 participating schools and 13,739 scholarship

recipients. For Fiscal Year 2004-2005, 15,910 students received scholarships to attend 703 participating schools. For Fiscal Year 2005-2006 (as of November 1, 2005), 16,144 students received scholarships to attend 727 schools, with a total of \$97,276,718 in scholarship awards and an average scholarship award of \$6,117.

Eligible and Ineligible Students

Eligible students with disabilities include K-12 students who are mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospitalized or homebound, or autistic. Students who are enrolled in a school that provides educational services in Department of Juvenile Justice (DJJ) commitment programs are not eligible for a scholarship.¹

To be eligible for a McKay scholarship to attend a private school, a student with a disability must meet the following requirements:

- Have an individual education plan (IEP) written in accordance with SBE rules; and²
- Have spent the prior school year in attendance at a Florida public school, by assigned school attendance area or by special assignment.³

In addition, the student's parent must have obtained acceptance for the student's admission to an eligible private school and have notified the school district of the scholarship request prior to the date of the first scholarship payment. The parental notification must be through a communication directly to the district or through the DOE to the district in a manner that creates a written or electronic record of the notification and the notification's date of receipt.

At any time, the student's parent may remove the student from the private school and place the student in another eligible private school or in a public school.

Parent and Student Obligations

A parent who applies for a McKay scholarship is exercising his or her parental option to place his or her child in a private school. Parents are responsible for the following:

- Requesting the scholarship at least 60 days prior to the first scholarship payment;⁴
- Notifying the school district 60 days prior to the first scholarship payment and before the child enters the private school in order to be eligible for the scholarship when a space becomes available for the student in the private school;
- Selecting the private school and applying for the admission of the student;
- Complying fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause;⁴

¹ Residential commitment programs include low, moderate, high, and maximum risk Florida DJJ programs. Students temporarily reside in these programs while committed to DJJ.

² Rule 6A-6.03028, F.A.C., addresses the development of IEPs and requires school districts to provide a copy of an IEP to parents, upon request. Students whose parents choose the option of attending another public school must also have an IEP.

³ Prior school year in attendance means that the student was enrolled and reported by a school district for funding during the preceding October and February FEFP surveys in kindergarten through grade 12. Chapter 2004-230, L.O.F., waived the requirement that the student must have spent the prior year in attendance at a Florida public school for otherwise qualifying military students who relocate to Florida pursuant to a parent's military orders. Under this provision, transferring military students are still required to submit an IEP and evaluation data necessary to establish program eligibility.

⁴ A participant who fails to comply with this requirement forfeits the scholarship.

- Restrictively endorsing the warrant to the private school for deposit into the account of the private school, upon receipt of a scholarship warrant;⁴
- Transporting the student to:
 - A public school that is inconsistent with the district school board's choice plan under s. 1002.31, F.S.;
 - A public school in an adjacent school district with available space and a program with the services that meet the requirements of the student's current IEP; and
 - A designated assessment site, if he or she requests that the student take all statewide assessments.⁴

Students participating in the scholarship program must:

- Remain in attendance throughout the school year, unless excused by the school for illness or other good cause; and⁴
- Comply fully with the school's code of conduct.⁴

Term of Scholarship

For purposes of continuity of educational choice, the scholarship remains in force until the student returns to a public school or graduates from high school. If the parent chooses the public school option, the student may continue attending a public school chosen by the parent until the student graduates from high school.

School District Obligations

Under current law, school districts must:

- Timely notify parents of all options available in s. 1002.39, F.S.;
- Offer the student's parents an opportunity to enroll the student in another public school within the district;
- Notify the DOE within 10 days after it receives parental notification of intent to participate in the program;
- Complete a matrix of services for any student who is participating in the scholarship program;⁵
- Notify the DOE of the student's matrix level within 30 days after receiving parental notification of intent to participate in the scholarship program;
- Provide the student's parent with the student's matrix level within 10 school days after its completion;
- Notify the student's parent if the matrix has not been completed within 10 school days after receiving parental notification of intent to apply for a McKay Scholarship;
- Provide the parent with the date for completion of the matrix;
- Accept a student from an adjacent school district whose parent selects a public school in the recipient district, and report the student for purposes of funding under the Florida Education Finance Program (FEFP);

⁵ For a student with disabilities who does not have a matrix of services under s. 1011.62(1)(e), F.S., a matrix must be completed that assigns the student to one of the levels of service as they existed prior to the 2000-2001 school year.

- Provide locations and times to take all statewide assessments for a student in the district who participates in the scholarship program and whose parent requests that the student take the statewide assessments under s. 1008.22, F.S.;
- Provide transportation to the public school selected by the parent, if the parent chooses a public school consistent with the district school board's choice plan under s. 1002.31, F.S.; and
- Report all scholarship students who are attending a private school separately from other students reported for FEFP purposes.

DOE Obligations

The law tasks the DOE with the following requirements:

- Notifying the private school of the amount of the scholarship within 10 days after receiving the school district's notification of the student's matrix level;
- Disbursing quarterly scholarship payments to parents of scholarship students;⁶
- Receiving all required documentation for a student's participation in the program, including the private school and student fee schedules, at least 30 days prior to the first scholarship payment and prior to the student entering the program;
- Verifying student admission acceptance by a private school and continued enrollment and attendance;
- Reviewing and approving documentation prior to scholarship payments; and
- Mailing the warrant to the private school of the parent's choice.

The law prohibits the DOE from making any retroactive scholarship payments.

Private School Eligibility and Obligations

To be eligible to participate in the program, a Florida private school must meet the following requirements:

- Demonstrate fiscal soundness by:
 - Operating for 1 school year;
 - Providing DOE with a statement by a certified public accountant (C.P.A.) confirming that the school is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming year; or
 - Filing with DOE a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter.
- Notify DOE of intent to participate in the program, specifying the grade levels and services that the private school has available for students with disabilities who participate in the scholarship program;
- Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d;
- Meet state and local health and safety laws and codes;
- Be academically accountable to the parent for meeting the educational needs of the student;

⁶ Funds are derived from the school district's total funding entitlement under the FEFP and from authorized categorical amounts.

- Employ or contract with teachers who hold baccalaureate or higher degrees, or have at least 3 years of teaching experience in public or private schools, or have special skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught;
- Comply with all state laws relating to general regulation of private schools; and
- Adhere to the tenets of its published disciplinary procedures prior to the expulsion of a scholarship student.

Scholarship Funding and Payment

The scholarship amount is either a calculated amount or the amount of the private school's tuition and fees, whichever is less. Until the school district completes a matrix, the scholarship calculation is based on the lowest level of service. Payments must be made by individual warrant payable to the student's parent for his or her endorsement and for deposit into the private school's account.

Chief Financial Officer (CFO)/Department of Financial Services' Obligations

Florida's CFO must make quarterly scholarship payments on specific dates after verification by the DOE of student information on private school acceptance, enrollment, and attendance.

Matrix of Services

When a parent indicates that he or she intends to place the child in a private school, the child may or may not have a matrix of services. Under current law, only students with exceptional education cost factors for Support Levels IV and V must have a matrix of services that documents the services that each student will receive. Consequently, students who are at support levels I, II, and III will need a matrix of services. There are no specific administrative rules that address matrixes. Rather, various DOE publications address the implementation of matrixes.

Current law, (s. 1011.62, F.S.) relating to determining the annual allocation to each district for operations, requires the General Appropriations Act (GAA) to establish cost factors based on desired relative cost differences between specific programs. The Commissioner of Education must specify a matrix of services and intensity levels to be used by districts in the determination of the two weighted cost factors for exceptional students with the highest levels of need (i.e., levels IV and V). The funding model for exceptional student education programs uses specified FEFP cost factors, including support levels IV and V for exceptional students and a guaranteed allocation for exceptional student education programs. The law also provides for the following:

- Exceptional education cost factors are determined by using a matrix of services to document the services that each exceptional student will receive, and
- The nature and intensity of the services indicated on the matrix must be consistent with the services described in each exceptional student's individual educational plan.

In order to generate funds using one of the two weighted cost factors, a matrix of services must be completed at the time of the student's initial placement into an exceptional student education program and at least once every 3 years by personnel who have received approved training. Nothing listed in the matrix may be construed as limiting the services a school district must provide in order to ensure that exceptional students are provided a free, appropriate public education.

Department of Juvenile Justice (DJJ) Commitment Programs

Juvenile offenders in Florida can be ordered by the court to serve time in a juvenile residential or correctional facility. Depending on the severity of their crime and their behavior in the program, they will lose their freedom for anywhere from several months up to three years. A judge determines what level of confinement is appropriate for an offender, while the Florida Department of Juvenile Justice places the juvenile in a particular program.⁷

Residential commitment programs include low, moderate, high, and maximum risk Florida DJJ programs. Students temporarily reside in these programs while committed to DJJ. Juvenile residential facilities range from wilderness and marine camps to halfway houses, boot camps, drill academies, youth development centers, sex-offender programs and maximum-security correctional facilities. Currently, DJJ commitment programs are located in 45 counties.⁸

Florida School for the Deaf and the Blind

Section 1002.36, F.S., provides for the responsibilities of the Florida School for the Deaf and the Blind, which is a residential school for hearing-impaired and visually impaired students in preschool through 12th grade.

III. Effect of Proposed Changes:

The bill makes several changes to the John M. McKay Scholarships for Students with Disabilities Program. The bill redefines the criteria for students who are eligible to participate in the program to eliminate hospital or homebound students. Under the bill, the definition of a student with a disability includes K-12 students who are documented as having mental retardation; a speech or language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; a physical impairment; a serious emotional disturbance, including an emotional handicap; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; or autism.

The bill provides for the eligibility of students from the Florida School for the Deaf and the Blind for McKay Scholarships, the method for calculating the scholarship amount, and the reporting requirements for school districts. Also, the bill allows students exiting a DJJ commitment program to be eligible for scholarships and provides a method of payment for scholarships to these students. A DJJ student may not receive a scholarship while he or she is enrolled in school during the commitment period.

The bill revises the requirement for “prior school year in attendance at a Florida public school” to include time spent by students in a DJJ commitment program that is funded under the FEFP. The bill eliminates the requirement that prior school year in attendance must be at an assigned school, as well as the provision authorizing partial payment of tuition.

⁷ See <http://www.djj.state.fl.us/DJJServices/Residential/residentialindex.shtml>

⁸ Department of Juvenile Justice, February 2, 2006.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

On January 5, 2006, the Florida Supreme Court found that the Opportunity Scholarship Program violated s. 1(a), Art. IX of the State Constitution which mandates an education through a uniform system of free public schools.⁹ The court did not reach the issue of whether the program violated the “no aid” provision in Art. I, s. 3 of the State Constitution, as held by the First District. It is possible that the underlying program referenced in this bill may be similarly challenged.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The number of DJJ students or students from the Florida School for the Deaf and the Blind (FSDB) who will choose to receive a McKay scholarship is unknown at this time. It is anticipated that very few, if any, students at FSDB would take advantage of this provision because of the exclusive, special nature of the school. For former students in Juvenile Justice commitment programs, the bill may speed up their participation by one year subsequent to their release. In 2004, there were 10,199 students in 188 juvenile justice education programs (1,777 students in detention facilities, 2,072 students in day treatment programs,¹⁰ and 6,350 in residential commitment programs).¹¹

C. Government Sector Impact:

There would be little or no fiscal impact to school districts. Scholarship funds for

⁹ *Bush v. Holmes*, 2006 WL 20584 (Fla. 2006).

¹⁰ Prevention, aftercare, and intensive probation day treatment programs.

¹¹ Source: Juvenile Employment and Enrichment Program. This does not reflect the numbers of students served annually. Rather, this represents the number of students in a juvenile justice school on any given day. Also, it does not include 7 juvenile justice schools, due to interruptions from the hurricanes. According to the DJJ, this is the most recent data available.

potential participants from the Florida School for the Deaf and the Blind (FSDB) or Department of Juvenile Justice (DJJ) commitment programs would be provided from Florida Education Finance Program funds. School districts would report the FTE for funding and would be held harmless for any capped FTE. Scholarships would be calculated as currently provided for in the law and, for FSDB students, would be based on the county of residence of the parent at the time of the scholarship request, and for former DJJ clients, would be based on the student's school district prior to commitment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Pursuant to s. 1.04, F.S., acts passed during the same legislative session and amending the same statutory provision are read in pari materia, and full effect should be given to each, if that is possible. Amendments enacted during the same session are in conflict with each other only to the extent that they cannot be simultaneously given effect. Senate Bill 256, which passed the Education Committee, amends several provisions relating to the John M. McKay Scholarships for Students with Disabilities Program. These changes may be in conflict with the bill's eligibility requirements for students who wish to participate in this program.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
