

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1329 John M. McKay Scholarships for Students with Disabilities Program

SPONSOR(S): Bileca and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Innovation Subcommittee		Ourand	Sherry
2) PreK-12 Appropriations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

The bill expands the eligibility for John M. McKay Scholarships to students who have been issued a 504 accommodation plan or have a Tier 3 Response to Intervention (Tier 3 RTI) plan. However, the bill excludes students that have been issued certain temporary 504 plans or certain short term Tier 3 RTI plans.

The bill maintains the requirement that school districts notify parents of all school choice options available to them by April 1 of each year and within ten days after an individual education plan (IEP) meeting; however, the bill also requires school districts to notify parents of all available choice options within 10 days after a 504 accommodation plan is issued or within ninety days after a Tier 3 RTI plan is developed.

The bill continues to authorize parents to enroll their children in a public school in an adjacent school district which has available space and has a program with the services agreed to in the student's IEP; however, the bill expands this to include schools with the services agreed to in the 504 accommodation plan or the Tier 3 RTI plan. The bill continues to require the parent to provide transportation if the parent chooses this option.

The bill provides that the scholarship amount for a student eligible under s. 504 of the Rehabilitation Act or under a Tier 3 RTI plan must be based on the matrix that assigns the student to support level I of service as it existed prior to the 2000-2001 school year. These students are not currently funded at this level.

Currently, McKay Scholarships are only available for certain students with disabilities who have an IEP.

The bill provides an effective date of July 1, 2011.

See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

The John M. McKay Scholarships for Students with Disabilities Program (McKay Scholarship Program) provides scholarships for eligible students with disabilities¹ to attend an eligible public or private school of their choice.²

To be eligible to receive a McKay scholarship, the student must:

- Have received specialized instructional services under the Voluntary Prekindergarten Education Program during the previous school year and have a current individual educational plan (IEP);³
- Have spent the prior school year in attendance at a Florida public school or the Florida School for the Deaf and the Blind; or
- Have been enrolled and reported by a school district for funding, during the October and February Florida Education Finance Program (FEFP) surveys, in any of the 5 years prior to 2010-11 fiscal year; have a current IEP no later than June 30, 2011; and receive a first-time McKay scholarship for the 2011-12 school year.⁴

Additionally, parents must obtain acceptance for admission to an eligible school and request a scholarship at least 60 days before the date of the first scholarship payment. Parents must make the request for a McKay scholarship directly to the Department of Education (DOE).⁵

Students are not eligible to receive McKay scholarships while they are enrolled in a Department of Juvenile Justice commitment program; receiving a Florida tax credit scholarship; receiving an Opportunity Scholarship; participating in a home education program; participating in a private tutoring program; participating in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student's participation unless the participation is limited to no more than two courses per school year; enrolled in the Florida School for the Deaf and Blind; or do not have regular and direct contact with their private school teachers at the school's physical location.⁶

By April 1 of each year and within 10 days of an IEP meeting, the school district must:

- Notify parents of all options available under the McKay Scholarship program;

¹ Students with disabilities include K-12 students who are documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; an other health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder. Section 1002.39(1), F.S.

² Section 1002.39(1), F.S.

³ An IEP is a written statement developed by the student's school which consists of the following statements: the student's present levels of educational performance; annual goals, including short term instructional objectives; the specific special education and related services to be provided to the student and the extent to which the student will be able to participate in regular educational programs; the projected dates for initiation of services and the anticipated duration of the services; appropriate objective criteria and evaluation procedures and schedules for determining on at least an annual basis, whether short term instructional objectives are being achieved; and the needed transition services. Rule 6D-3.0021(1)(a), F.A.C.

⁴ Section 1002.39(2)(a), F.S.

⁵ Section 1002.39(2)(b), F.S.

⁶ Section 1002.39(3), F.S.

- Inform the parent of the availability of DOE's telephone hotline and website for additional information on the McKay scholarship program; and
- Offer the parent an opportunity to enroll their child in another public school within the district.⁷

Parents may choose to enroll their child in a public school in an adjacent school district which has available space if the school has a program with the services agreed to in the student's IEP. If a parent chooses this option, the parent is responsible for providing transportation. The adjacent school district must accept the student and report the student for purposes of the district's funding pursuant to the FEFP.⁸

School districts are required to complete a matrix of services⁹ for each student placed in an exceptional student education program.¹⁰ The matrix must assign the student to one of the levels of service as they existed prior to the 2000-2001 school year.¹¹ The scholarship amount is based in part on the matrix of services assigned to the student; however, if a matrix of services has not yet been assigned, the scholarship amount must be based on the matrix that assigns the student to support level I of service as it existed prior to the 2000-2001 school year until the school district completes the matrix for that student.¹² Additionally, the amount of the scholarship awarded to the student is supplemented by a calculation based partly on the matrix of services completed for that student.¹³

504 Accommodation Plans

The Rehabilitation Act of 1973 (Rehabilitation Act) defines the term individual with a disability to include individuals who have a physical or mental impairment that substantially limits one or more major life activities of the individual; who have a record of such impairment; or who are regarded as having such an impairment.¹⁴ Section 504 of the Rehabilitation Act specifies that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."¹⁵ The Rehabilitation Act provides individuals with disabilities the opportunity to participate in any activity receiving federal funding, including public education.¹⁶

A 504 Accommodation Plan is formulated by a team of parents, teachers, and other staff members for a student identified as an individual with a disability under the Rehabilitation Act. The plan provides a description of the accommodations the school will provide to the student.¹⁷ Students under a 504 plan do not receive additional funding above the base level under the FEFP. Generally, a student with a 504 plan does not have an IEP or a matrix of services.

⁷ Section 1002.39(5)(a)1., F.S.

⁸ Section 1002.39(5)(e), F.S.

⁹ The matrix of services form collects information about the student and his or her exceptionality and contains checklists of services in five domains: curriculum and learning environment; social/emotional behavior; independent functioning; health care; and communication. The matrix of services identifies and documents the services or supports that each exceptional student requires in order for his or her educational needs to be met. Matrixes are completed by trained school personnel at least annually and are based upon a student's IEP. Whenever a student's plan is reviewed, the student's matrix of services is also reviewed. Districts must ensure that matrixes reflect current services. *Exceptional Student Education/Florida Education Finance Program (ESE/FEFP) Matrix of Services*, Florida Department of Education, Bureau of Exceptional Education and Student Services, 2004 Revised Edition; reprinted 2006, at 5, 13-16.

¹⁰ Sections 1011.62(1)(e), F.S.; 1002.39(5)(b), F.S.

¹¹ Section 1002.39(5)(b), F.S.

¹² Section 1002.39(10)(a)4., F.S.

¹³ Section 1002.39(10)(a)2., F.S.

¹⁴ 29 U.S.C. § 705(20)(B), *incorporating* 42 U.S.C. § 12102 (1); 34 C.F.R. § 104.3(j).

¹⁵ 29 U.S.C. § 794(a); *see also* 34 C.F.R. § 104.4.

¹⁶ 34 C.F.R. § 104.2.

¹⁷ Florida Department of Education, *A Parent and Teacher Guide to Section 504: Frequently Asked Questions*, available at: www.fldoe.org/eae/pdf/504bro.pdf (last visited March 17, 2011). Examples of such accommodations include: permission to self-administer diabetes medication, special dietary considerations for allergies, and assistance with carrying books. Florida Department of Education, Bureau of Exceptional Education & Student Services, *Section 504*.

Tier 3 Response to Intervention Plan

Local school districts are responsible for developing and implementing coordinated general education intervention procedures for students who need additional academic and behavioral support to succeed in the general education environment.¹⁸ These procedures are called Response to Intervention plans. The term “response to intervention” (RTI) refers to “the change in behavior or performance as a function of an intervention.”¹⁹ The [RTI] model is comprised of three-tiers that provide escalating levels of intervention. The intensity of the interventions is adjusted based upon progress monitoring and data analysis.²⁰

The RTI model is designed to identify and overcome the barriers that are inhibiting the student’s ability to learn. These barriers may be a result of a disability, or they could also be caused by insufficient or inadequate instruction, poor attendance, limited academic engagement, emotional or behavioral concerns, limited opportunities for developmental enrichment, or limited English proficiency.²¹ Accordingly, there are students receiving interventions under the RTI model who do not have a disability; these students do not have an IEP or matrix of services.

There are three tiers under the RTI model. Tier 1 interventions use evidence-based practices to provide a general education program, such as implementing changes to curriculum to improve the educational benchmarks of an entire classroom of students.²² Tier 2 interventions are relatively short-term and are more intensive than Tier 1 interventions; for example, a Tier 2 intervention may involve additional instruction provided to a small group of students several days per week.²³ Tier 3 interventions are provided on a long-term basis and may result in special education services.²⁴ In general, Tier 3 services are performed on an individual basis. The delivery of Tier 3 services is so frequent and intensive that additional resources and personnel are often needed in addition to the general education teacher.²⁵ There are frequent data assessments for students receiving Tier 3 services to determine the student’s improvement. If a student can maintain improvement without Tier 3 services, the student may either stop receiving Tier 3 services or may receive altered Tier 3 services. A student who cannot maintain improvement without Tier 3 services may be considered for special education eligibility.²⁶

Effect of the Bill

The bill extends eligibility for McKay scholarships to students who have been issued a 504 accommodation plan or have a Tier 3 RTI Plan. However, the bill excludes students that have been issued a temporary 504 accommodation plan that is valid for six months or less or have been issued a Tier 3 RTI Plan that is valid for less than ninety days.

The bill maintains the requirement that school districts notify parents of all school choice options available to them by April 1 of each year and within ten days after an IEP meeting; however, the bill also requires school districts to notify parents of all available choice options within 10 days after a 504 accommodation plan is issued or within ninety days after a Tier 3 RTI plan is developed.

The bill continues to authorize parents to enroll their children in a public school in an adjacent school district which has available space and has a program with the services agreed to in the student’s IEP; however, the bill expands this to include schools with the services agreed to in the 504 accommodation

¹⁸ Rule 6A-6.0331(1), F.A.C.

¹⁹ Florida Department of Education, *The Response to Intervention (RTI) Model*, Technical Assistance Paper FY 2006-8 at 1, available at: www.fldoe.org/ese/pdf/y2006-8.pdf (last visited March 17, 2011) (citation omitted).

²⁰ *Id.*

²¹ *Id.* at 3.

²² *Id.* at 2, 17.

²³ *Id.*

²⁴ *Id.* at 2.

²⁵ *Id.* at 6.

²⁶ *Id.*

plan or the Tier 3 RTI plan. The bill continues to require the parent to provide transportation if the parent chooses this option.

The bill provides that the scholarship amount for a student eligible under s. 504 of the Rehabilitation Act or under a Tier 3 RTI plan must be based on the matrix that assigns the student to support level I of service as it existed prior to the 2000-2001 school year. These students are not currently funded at this level.

B. SECTION DIRECTORY:

Section 1. Amends s. 1002.39, F.S. to expand eligibility for McKay Scholarships to students under certain 504 accommodation plans or Tier 3 Response to Intervention plans; to expand school district notification obligations; to expand parental choices to reflect the eligibility expansion; and to establish the scholarship amount for students who are eligible under 504 accommodation plans or Tier 3 Response to Intervention plans.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The fiscal impact of the bill is indeterminate. The bill establishes the amount of the McKay scholarship for students with a 504 accommodation plan or a Tier 3 RTI plan at a rate higher than these students are currently funded in the FEFP. It is unknown how many newly eligible students will take advantage of the McKay Scholarship Program. See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Students in an exceptional student education (ESE) program who were funded in Support Levels 1, 2, and 3 in the 1999-2000 FEFP were funded in the appropriate Basic Programs in the 2000-2001 FEFP. Additional funding for these students is contained in the ESE Guaranteed Allocation within the FEFP. ESE services for students whose level of service is less than Support Levels 4 and 5 are funded through the ESE Guaranteed Allocation. The students generate FTE funding using the appropriate Basic Program weight for their grade level. This allocation provides for the additional services needed for these students.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill currently has a fiscal impact that could be alleviated by amending the level of funding provided for the scholarship received by students with a 504 accommodation plan and those with a Tier 3 Response to Intervention plan.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.