

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

**SPONSOR(S):** K-20 Innovation Subcommittee; Bileca and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Innovation Subcommittee	14 Y, 0 N, As CS	Ourand	Sherry
2) PreK-12 Appropriations Subcommittee	11 Y, 3 N	Seifert	Heflin
3) Education Committee	11 Y, 3 N	Ourand	Klebacha

### SUMMARY ANALYSIS

The bill expands eligibility for John M. McKay Scholarships to students who have been issued a 504 accommodation plan. However, the bill excludes students that have been issued a 504 accommodation plan with a duration of six months or less.

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.

The bill continues to authorize parents to enroll their children 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; however, the bill expands this to include schools with the services agreed to in the 504 accommodation 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 will be based upon the current student program cost factor generated by the student under the Florida Education Finance Program (FEFP). The amount of the scholarship for students with 504 accommodation plans will be equal to the amount of funding the school district currently receives for the student through the FEFP.

The bill has no fiscal impact. See FISCAL COMMENTS.

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

## 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 disabilities<sup>1</sup> to attend an eligible public or private school of their choice.<sup>2</sup>

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);<sup>3</sup>
- 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.<sup>4</sup>

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).<sup>5</sup>

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.<sup>6</sup>

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;

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<sup>1</sup> 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.

<sup>2</sup> Section 1002.39(1), F.S.

<sup>3</sup> 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.

<sup>4</sup> Section 1002.39(2)(a), F.S.

<sup>5</sup> Section 1002.39(2)(b), F.S.

<sup>6</sup> 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.<sup>7</sup>

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 receiving funding through the FEFP.<sup>8</sup>

School districts are required to complete a matrix of services<sup>9</sup> for each student placed in an exceptional student education program.<sup>10</sup> The matrix must assign the student to one of the levels of service as they existed prior to the 2000-2001 school year.<sup>11</sup> The scholarship amount is based in part upon 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 upon 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.<sup>12</sup> Additionally, the amount of the scholarship awarded to the student is supplemented by a calculation based partly upon the matrix of services completed for that student.<sup>13</sup>

#### *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.<sup>14</sup> 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."<sup>15</sup> The Rehabilitation Act provides individuals with disabilities the opportunity to participate in any activity receiving federal funding, including public education.<sup>16</sup>

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.<sup>17</sup> Students under a 504 plan do not receive additional funding above the base level of the FEFP. Generally, a student with a 504 plan does not have an IEP or a matrix of services.

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<sup>7</sup> Section 1002.39(5)(a)1., F.S.

<sup>8</sup> Section 1002.39(5)(e), F.S.

<sup>9</sup> 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.

<sup>10</sup> Sections 1011.62(1)(e) and 1002.39(5)(b), F.S.

<sup>11</sup> Section 1002.39(5)(b), F.S.

<sup>12</sup> Section 1002.39(10)(a)4., F.S.

<sup>13</sup> Section 1002.39(10)(a)2., F.S.

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

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

<sup>16</sup> 34 C.F.R. § 104.2.

<sup>17</sup> Florida Department of Education, *A Parent and Teacher Guide to Section 504: Frequently Asked Questions*, available at, [www.fldoe.org/eae/pdf/504bro.pdf](http://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*.

## **Effect of the Bill**

The bill extends eligibility for McKay scholarships to students who have been issued a 504 accommodation plan. However, the bill excludes students that have been issued a 504 accommodation plan with a duration of six months or less.

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.

The bill continues to authorize parents to enroll their children 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; however, the bill expands this to include schools with the services agreed to in the 504 accommodation 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 will be based upon the current student program cost factor generated by the student under the FEFP. The amount of the scholarship for students with 504 accommodation plans will be equal to the amount of funding the school district currently receives for the student through the FEFP.

### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 1002.39, F.S., expanding eligibility for McKay Scholarships to students under certain 504 accommodation 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:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The bill expands the number of students eligible for the McKay scholarship, but limits the scholarship to the amount of funding for the additional students to the amount they currently generate in the FEFP. The bill therefore has no fiscal impact.

### **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:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 28, 2011, the K-20 Innovation Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed eligibility for students with Tier 3 Response to Intervention plans and limited the scholarship amount for students with 504 accommodation plans to the amount they currently generate in the FEFP.