

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1331 School Choice
SPONSOR(S): Bileca and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Innovation Subcommittee	13 Y, 0 N	Valenstein	Sherry
2) PreK-12 Appropriations Subcommittee		Seifert	Heflin
3) Education Committee			

SUMMARY ANALYSIS

The bill expands the definition of a failing school for purposes of student eligibility for the Opportunity Scholarship Program (OSP). The bill changes the classification of a failing school from a school receiving two "F's" in a four-year period to a school that has received a "D" for two school years in a four year period or an "F" for one school year in a two year period, and meets certain other requirements.

The bill changes the authorization parents currently have to choose a higher-performing public school that has space available in an adjacent school district to any other school district in the state. The bill maintains the transportation requirements for school districts, thus, if a parent chooses a public school outside of the assigned school district, the parent is responsible for providing transportation. However, if a parent chooses a higher-performing public school within the assigned district, the school district is required to provide transportation. The authorization for use of categorical funds remains an option for school districts to provide the transportation required for opportunity scholarship recipients.

The bill repeals all portions of the law relating to the OSP private school choice options. This complies with existing case law that found this portion of the OSP unconstitutional.

The bill also makes necessary conforming changes relating to the expanded definition of a failing school for the OSP.

See FISCAL COMMENTS and DRAFTING ISSUES OR OTHER COMMENTS.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview

Opportunity Scholarship Program

The Opportunity Scholarship Program (OSP) was created in 1999 as part of a broad education reform package known as the A+ Plan.¹ The OSP was designed to provide parents of public school students in failing schools the opportunity to send their children to another public school performing satisfactorily or to an eligible private school. For purposes of the OSP, a failing school is a school that has received a performance grade of “F” for two years in a four-year period, this currently encompasses 24 schools.²

When created, both sectarian and nonsectarian private schools were eligible to receive an Opportunity Scholarship, if the school met all the requirements established in law.³ However, in 2006, the Florida Supreme Court ruled that the private school scholarship option of the OSP violates the State Constitution. The Court’s narrowly tailored opinion addressed only the issue of whether the State Constitution prohibits the state from expending public funds to allow students to use an Opportunity Scholarship to obtain a private school education. The Court held that “through the OSP the state is fostering plural, nonuniform systems of education in direct violation of the constitutional mandate for a uniform system of free public schools.”⁴ Accordingly, an Opportunity Scholarship may now only be used to attend a public school of choice.

Due to the Court’s ruling, a student may use an Opportunity Scholarship to attend either, a public school within the school district designated by the state as performing higher than that in which the student is currently enrolled or to which the student has been assigned, but not less than performance grade category “C,” or a public school in an adjacent school district with available space designated by the state as a higher-performing public school. If a parent chooses a school in an adjacent school district, the parent is responsible for transporting the student to and from the school.⁵

Currently, a student that receives an Opportunity Scholarship may continue attending a higher performing public school within the district or in an adjacent district until he or she graduates from high school.⁶

Differentiated Accountability

Differentiated accountability is a system of categorizing schools based upon student achievement and determining appropriate interventions. Schools are categorized according to the causes and severity of substandard student achievement. School improvement interventions are then applied to the school based upon the school’s categorization. A school’s categorization determines the type and intensity of school improvement interventions and whether interventions are directed by the school, school district, or state. The lowest performing schools receive more comprehensive interventions, while schools that are closer to meeting student achievement goals receive less intensive interventions.⁷

The six categories that comprise the differentiated accountability system include: Schools Not Required to Participate in Differentiated Accountability Strategies; Prevent I, Correct I, Prevent II, Correct II, and

¹ Section 2, ch. 99-398, L.O.F.

² Email, Department of Education Staff (March 16, 2011).

³ Section 2, ch. 99-398, L.O.F.

⁴ *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006).

⁵ Section 1002.38(3)(a) and (b), F.S.

⁶ Section 1002.38(3)(a) and (b), F.S.

⁷ Section 1008.33, F.S.; rule 6A-1.099811, F.A.C.

Intervene.⁸ In 2010 there were 22 schools in the Intervene category and 961 schools in the Correct II category.⁹

Each category is based upon the school's grade, progress towards adequate yearly progress under the federal No Child Left Behind requirements, and changes in student performance. A school's categorization determines the type and intensity of the intervention and whether the intervention is directed by the school, school district, or the Department of Education.

Effect of Proposed Changes

The bill expands the definition of a failing school for purposes of student eligibility for the OSP. The bill changes the classification of a failing school from a school receiving two "F's" in a four-year period to a school that has received a "D" for two school years in a four-year period or an "F" for one school year in a two-year period, and has been classified in one of the two lowest-performing categories within the differentiated accountability program (i.e. Correct II or Intervene). This expands the number of eligible schools from 24 to 194.¹⁰

The bill maintains the duration of eligibility for a student that receives an Opportunity Scholarship. The bill amends this to allow a student to choose to continue attending the higher-performing public school feeder pattern¹¹ until graduation. This appears to allow students to remain in the same schools as their classmates, regardless of the performance level of the feeder pattern school or their assigned school.

The bill changes the authorization parents currently have to choose a higher-performing public school that has space available in an adjacent school district to any other school district in the state. The bill maintains the transportation requirements for school districts, thus, if a parent chooses a public school outside of the assigned school district, the parent is responsible for providing transportation. However, if a parent chooses a higher-performing public school within the assigned district, the school district is required to provide transportation. The authorization for use of categorical funds remains an option for school districts to provide the transportation required for opportunity scholarship recipients.

The bill repeals all portions of the law relating to the OSP private school choice options. The bill removes these portions of the law to comply with existing case law regarding the constitutionality of using state funds to attend a private school.¹²

The bill also makes necessary conforming changes relating to the expanded definition of a failing school for the OSP.

B. SECTION DIRECTORY:

Section 1. Amends s. 1002.38, F.S., to revise legislative intent and eligibility requirements for participation in the Opportunity Scholarship Program; deleting provisions that authorize an Opportunity Scholarship for attendance at a private school; requiring that an Opportunity Scholarship remain in force until the student graduates from high school; and revising school district obligations and deleting provisions relating to private schools to conform to changes made by the bill.

Section 2. Amends s. 1001.42, F.S., to conform provisions to changes made by the bill.

Section 3. Amends s. 1002.20, F.S., to conform provisions to changes made by the bill.

Section 4. Provides an effective date of July 1, 2011.

⁸ Rule 6A-1.0099811, F.A.C.

⁹ Email, Florida Department of Education Staff (Sept. 7, 2010).

¹⁰ Email, Florida Department of Education Staff (March 24, 2011).

¹¹ See Drafting Issues or Other Comments section of this analysis for discussion of feeder pattern schools.

¹² See *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

As of March 24, 2011, the Department of Education estimates the number of schools that meet the expanded definition of a failing school, after excluding currently eligible schools and schools eligible for the federal public choice option, is an additional 30 schools. It should be noted the federal program is limited by:

- Choice under NCLB is limited to schools that meet AYP. This may mean that there are very few schools or no schools in the district that parents could choose as an option for their student. If these schools provided choice under the OSP program students would have the choice of schools graded C or above.
- School districts are provided a portion of their Title 1 Part A funds to be used to transport NCLB choice students to other schools. When those funds are used up the district no longer is required to provide choice with transportation. So, there may be parents that would like to exercise a choice option under NCLB that can't, because the transportation funding does not stretch far enough.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill allows students to attend a higher-performing public school in any district within the state. This may impact the Florida Education Finance Program, because different school districts are funded at different rates based on the cost of living adjustment for the district.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This 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 defines a failing school in part as a school that receives one “F” in a two year period. Providing a time period for receiving a single “F” is unnecessary because a school is deemed failing for purposes of the OSP as soon as the school receives an “F,” as long as the school meets the other established criteria.
- Current law states, “The opportunity to continue attending the higher performing public school shall remain in force until the student graduates from high school.” If the bill passes, the law will state, “The student shall have the opportunity to continue attendance in the higher-performing public school feeder pattern until the student graduates from high school.” If 60 percent of an elementary school’s students attend a particular middle school, that middle school is identified as the feeder pattern school.¹³ The bill, for example, would allow an elementary school student participating in the OSP to continue to the feeder pattern middle school, regardless of that school’s performance level.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹³ Section 1008.34(3)(a)3., F.S.