

# 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.)

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Prepared By: Judiciary Committee

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BILL: SB 1152

INTRODUCER: Senator Haridopolos

SUBJECT: McKay Scholarships/Disabilities

DATE: April 18, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>Matthews</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Chinn</u>	<u>Maclure</u>	<u>JU</u>	<b>Favorable</b>
3.	_____	_____	<u>EA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

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

- Providing that hospitalized 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, the method for calculating the scholarship amount, and the reporting requirements for school districts;
- Providing that a DJJ student may not receive a scholarship while he or she is enrolled in school in a commitment program; and
- Eliminating the provision authorizing partial payment of tuition.

This bill substantially amends section 1002.39, Florida Statutes.

## II. Present Situation:

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

Current law (s. 1002.39, F.S.) sets forth the requirements for parental placement of a student with disabilities in an eligible private school or another public school. The law also establishes requirements for student eligibility for scholarships to attend an eligible private school or to provide transportation to another public school and provides eligibility requirements for private schools participating in the program. As well, the law establishes responsibilities for school districts and the Department of Education (DOE). The State Board of Education (SBE) has statutory authority to adopt rules to administer the program.<sup>1</sup>

For FY 2003-2004, DOE reports that 13,739 students received scholarships to attend 673 participating schools. For FY 2004-2005, 15,910 students received scholarships to attend 703 participating schools. For FY 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 students in grades kindergarten through 12 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.<sup>2</sup> 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.<sup>3</sup>

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 State Board of Education (SBE) rules;<sup>4</sup> and
- Have spent the prior school year in attendance at a Florida public school, by assigned school attendance area or by special assignment.<sup>5</sup>

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

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<sup>1</sup> See s. 1002.39(8), F.S.

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

<sup>3</sup> Residential commitment programs include low, moderate, high, and maximum risk Florida Department of Juvenile Justice (DJJ) programs. Students temporarily reside in these programs while committed to DJJ.

<sup>4</sup> 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 have an IEP.

<sup>5</sup> 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 Florida Education Finance Program (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.

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. Under s. 1002.39(3) and (5), F.S., parents are responsible for the following:

- Requesting the scholarship at least 60 days prior to the first scholarship payment;<sup>6</sup>
- 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;<sup>6</sup>
- Restrictively endorsing the warrant to the private school for deposit into the account of the private school, upon receipt of a scholarship warrant;<sup>6</sup>
- 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 agreed to in the student's IEP already in place; and
  - A designated assessment site, if he or she requests that the student take all statewide assessments.<sup>6</sup>

Section 1002.39(5)(c), F.S., requires students participating in the scholarship program to:

- Remain in attendance throughout the school year, unless excused by the school for illness or other good cause; and<sup>6</sup>
- Comply fully with the school's code of conduct.<sup>6</sup>

**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<sup>7</sup> chosen by the parent until the student graduates from high school.

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<sup>6</sup> A participant who fails to comply with this requirement forfeits the scholarship.

<sup>7</sup> Section 1002.39(2)(b), F.S.

**School District Obligations**

Under current law,<sup>8</sup> school districts must:

- Timely notify parents of all options available in s. 1002.39, F.S.;
- Offer student's parents an opportunity to enroll a student in another public school within the district;
- Notify the DOE within 10 days after the district 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;<sup>9</sup>
- 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 student's parents with the student's matrix level within 10 school days after its completion;
- Notify student's parents 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);
- 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 another 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<sup>10</sup> 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;
- Transferring funds from the school district's total funding entitlement under FEFP to a scholarship fund for disbursement by the Chief Financial Officer for quarterly scholarship payments to parents of scholarship students;<sup>11</sup>
- 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;

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<sup>8</sup> Section 1002.39(3), F.S.

<sup>9</sup> 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.

<sup>10</sup> Section 1002.39(3) and (6), F.S.

<sup>11</sup> Funds are derived from the school district's total funding entitlement under the FEFP and from authorized categorical amounts.

- 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.<sup>12</sup>

#### **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 one school year;
  - Providing DOE with a statement by a certified public accountant (C.P.A.) confirming that the school is insured and that 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;
- Employ or contract with teachers who hold baccalaureate or higher degrees, or have at least three 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.<sup>13</sup>

#### **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.<sup>14</sup> 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.

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<sup>12</sup> Section 1002.39(6)(e), F.S.

<sup>13</sup> Section 1002.39(4), F.S.

<sup>14</sup> Section 1002.39(6)(b), F.S.

### **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.<sup>15</sup>

### **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.<sup>16</sup> 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 three 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 (i.e., commitment program). Depending on the severity of their crime and their behavior in the commitment program, they will remain in the program for anywhere from several months to three years. A judge determines what level of confinement is appropriate for an offender, while the DJJ places the juvenile in a particular program.<sup>17</sup>

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<sup>15</sup> Section 1002.39(6)(f), F.S.

<sup>16</sup> Section 1011.62(1)(e), F.S.

<sup>17</sup> Florida Department of Juvenile Justice, *Juvenile Justice Residential Services*, available at <http://www.djj.state.fl.us/DJJServices/Residential/residentialindex.shtml>.

Residential commitment programs in Florida include low, moderate, high, and maximum risk 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.<sup>18</sup>

### **Florida School for the Deaf and the Blind**

The Florida School for the Deaf and the Blind is located in St. Johns County and is a state-supported residential public school for hearing-impaired and visually impaired students in preschool through 12th grade.<sup>19</sup> The school is funded through the Department of Education and has a current operating budget of over \$40 million.<sup>20</sup> There is no tuition charge for in-state residents; room, board, and transportation to and from school are provided at state expense.

The school provides educational programs and support services appropriate to meet the education and related evaluation and counseling needs of hearing-impaired and visually impaired students in the state who meet enrollment criteria.<sup>21</sup> Education services may be provided on an outreach basis for sensory-impaired children ages 0 through 5 years and their parents.<sup>22</sup> Some students residing at the school also mainstream part time into the classes in St. Johns County public schools.<sup>23</sup>

Currently, there is no explicit provision in statute for students attending this school to be eligible for a McKay scholarship.

### **III. Effect of Proposed Changes:**

The bill makes several changes to the John M. McKay Scholarships for Students with Disabilities Program (McKay program). The bill redefines the criteria for students who are eligible to participate in the program to eliminate hospitalized or homebound students. Under the bill, the definition of a student with a disability includes students in grades kindergarten through 12 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 eligibility for McKay scholarships to students who spent the prior year in attendance at the Florida School for the Deaf and the Blind. The maximum scholarship granted for an eligible student with disabilities is a calculated amount equivalent to the base student

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<sup>18</sup> Information provided by the Department of Juvenile Justice, February 2, 2006.

<sup>19</sup> Section 1002.36, F.S.

<sup>20</sup> Florida School for the Deaf and the Blind, *Overview*, available at <http://www.fsdb.k12.fl.us/about/index.php>.

<sup>21</sup> Specific information on enrollment criteria for students who are deaf, hard-of-hearing, or blind is available on the school's website. See Florida School for the Deaf and the Blind, *Enrollment Criteria*, available at [http://www.fsdb.k12.fl.us/parent\\_information/enrollment\\_criteria.php](http://www.fsdb.k12.fl.us/parent_information/enrollment_criteria.php).

<sup>22</sup> Florida School for the Deaf and Blind, *Outreach Division*, available at [http://fsdb.k12.fl.us/outreach\\_services/what\\_we\\_do.php](http://fsdb.k12.fl.us/outreach_services/what_we_do.php).

<sup>23</sup> See note 20, *supra*.

allocation in the Florida Education Finance Program (FEFP), multiplied by the appropriate cost factor for the educational program that would have been provided for the student in the district school to which he or she was assigned, multiplied by the *district cost differential*.<sup>24</sup> The bill provides that the district cost differential, for purposes of calculating the scholarship amount for a student whose eligibility is based upon attendance at the Florida School for the Deaf and the Blind, is based upon the district cost differential for the district in which the parent lives at the time of the scholarship request. That school district must report the McKay student and is held harmless for these students for purposes of the weighted enrollment ceiling for group 2 programs.<sup>25</sup> The bill clarifies that funds may not be transferred from any funding for the Florida School for the Blind and the Deaf as a result of a student choosing to utilize a McKay scholarship.

The bill provides eligibility for McKay scholarships to students exiting a Department of Juvenile Justice (DJJ) commitment program and specifies that these students are not eligible for a McKay scholarship while still enrolled in a commitment program. Applying the same formula provided above, the maximum amount for a McKay scholarship for these students is calculated using the district cost differential for the school district the DJJ student attended before being assigned to a commitment program. That school district must report the McKay student for FEFP purposes and is held fiscally responsible for the student, meaning that funds are transferred from that school's budget to account for the scholarship.

The bill also eliminates a provision authorizing partial payment of tuition before the beginning of the school year for purposes of reserving a space for McKay students who have been admitted to a private school.

The bill takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

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<sup>24</sup> Section 1002.39(6)(a)1., F.S.

<sup>25</sup> School districts must project their enrollment for the coming school year and can be penalized if the calculation is not relatively close to the number of students who actually enroll and attend that school in the fall. Because the School for the Deaf and the Blind is completely separate from the public school districts and receives its funding directly from the state, the district that is used for this calculation would have no way of anticipating these students for enrollment/funding purposes.



#### D. Other Constitutional Issues:

On January 5, 2006, the Florida Supreme Court found that the Opportunity Scholarship Program (OSP) violated s. 1(a), Art. IX of the State Constitution, which mandates the state to provide the opportunity for an education to all Florida children through a uniform system of free public schools.<sup>26</sup> The Supreme Court's opinion did not squarely address the McKay program, but alluded to a similar program for disabled students challenged in *Scavella v. School Board of Dade County*.<sup>27</sup> The court noted that the program in *Scavella* was structurally different from the OSP, and it rejected the suggestion that programs like the program in *Scavella* would necessarily be affected by the court's decision.<sup>28</sup> This language in the *Bush v. Holmes* opinion is dicta,<sup>29</sup> meaning that it is not part of the doctrine of the decision, and it is unclear how a future court might apply the case if the McKay program were directly challenged.

The court did not reach the issue of whether the OSP violated the "no aid" provision in Art. I, s. 3 of the State Constitution, as held by the First District Court of Appeal. The appellate court opinion included similar language designed to limit its opinion the program being challenged, the OSP, but it is possible that the decision in that court could serve as precedent if the underlying program referenced in this bill were challenged in the future on no-aid grounds.

#### V. Economic Impact and Fiscal Note:

##### A. Tax/Fee Issues:

None.

##### B. Private Sector Impact:

The number of Department of Juvenile Justice (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 DJJ commitment programs, the bill may speed up their participation by one year subsequent to their release because currently the student would have to attend a public school outside the program to be eligible for a McKay scholarship. 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

<sup>26</sup> *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006).

<sup>27</sup> In *Scavella*, the court opined that under the "basic rights" provision of the Florida Constitution, Article I, s. 2 of the Florida Constitution, all Florida children have the right to adequate public funding for private school education when public schools lack services to meet the needs of students with disabilities. Based upon this opinion, it could be argued that a failure to provide public funding for a private education under these circumstances would treat students with disabilities unequally before the law (i.e., it would be a violation of the basic rights for students with disabilities). See *Scavella v. School Board of Dade County*, 363 So. 2d 1095, 1098 (Fla. 1978).

<sup>28</sup> *Holmes*, 919 So. 2d at 411-412.

<sup>29</sup> Black's Law Dictionary provides that "judicial dictum" is an opinion by a court on a question that is directly involved, briefed, and argued by counsel, and even passed on by the court, but that is not essential to the decision. Black's Law Dictionary (8th ed. 2004) (defining terms related to dictum).

programs,<sup>30</sup> and 6,350 in residential commitment programs).<sup>31</sup> It is uncertain how many of these DJJ students would meet the disability criteria for McKay scholarship eligibility or how many of those students would apply for a scholarship now that they would have the ability to do so.

### C. Government Sector Impact:

There would be little or no fiscal impact to school districts. Scholarship funds for potential participants from the FSDB or DJJ commitment programs would be provided from Florida Education Finance Program funds. School districts would report the FSDB students for funding and would be held harmless for any capped students.<sup>32</sup> 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 students, would be based on the student's school district prior to commitment.<sup>33</sup>

### 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 and the Judiciary 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.

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

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<sup>30</sup> Day treatment programs include prevention, aftercare, and intensive probation.

<sup>31</sup> 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 seven juvenile justice schools, due to interruptions from the hurricanes. According to the DJJ, this is the most recent data available.

<sup>32</sup> See note 25, *supra*.

<sup>33</sup> The Legislature may wish to revise the bill's designation of the school that the DJJ student attended before entering a commitment as the school used for calculating a McKay scholarship, and instead designate the district where the student's parents reside at the time of the scholarship request because the student's parents may have moved during the time that the student was residing in a commitment program.

## **VIII. Summary of Amendments:**

None.

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