

**The Florida Senate**  
**PROFESSIONAL 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 Pre-K - 12 Committee

BILL: SB 2600

INTRODUCER: Senator King

SUBJECT: Transition Program/Students with Disabilities

DATE: March 25, 2007                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	<b>Pre-meeting</b>
2.			GO	
3.			FT	
4.			EA	
5.				
6.				

**I. Summary:**

The bill creates a transition program for students with disabilities who previously received a scholarship to a private school under s. 1002.39, F.S., the John M. McKay Scholarships for Students with Disabilities Program. Funding is subject to an appropriation in the General Appropriations Act (GAA). The program expires June 30, 2025.

The bill allows an eligible student to receive instruction both at home and at an eligible private school. Alternatively, a student may receive all of his or her instruction at home. The bill specifies the criteria for students who are eligible to participate in the program. The bill also provides for the following:

- Eligibility requirements for participating private schools, including an annual notarized sworn compliance statement and evidence of criminal background checks of employees, and contractors;
- Obligations of school districts, private schools, and program participants;
- Authority and responsibilities of the Department of Education (DOE) to administer the program; and
- Sanctions for private schools and parents who fail to comply with the requirements in law.

This bill creates section 1002.371 of the Florida Statutes.

## II. Present Situation:

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

Current law sets forth the requirements for parental placement of a student with disabilities in an eligible private school or another public school.<sup>1</sup> 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) must adopt rules to administer the program.<sup>2</sup>

For FY 2005-2006, 17,300 students received scholarships to attend 751 schools with a total of \$107,686,252 in scholarship awards and an average scholarship award of \$6,926. For FY 2006-2007 (as of February 2007), 17,884 students received scholarships to attend 802 schools with a total of \$88,773,218 in scholarship awards.<sup>3</sup>

### ***Eligible and Ineligible Students***

Eligible students with disabilities include K-12 students who are documented as having mental handicap, including trainable, profound, or educable; 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.

Last year, the eligibility criteria were expanded to include students from the Florida School for the Deaf and the Blind (FSDB), students in a Department of Juvenile Justice (DJJ) commitment program, if funded under the Florida Education Finance Program (FEFP), and for students at least four years old who are eligible for special education and related services under s. 1003.21(1)(e), F.S.

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, and
- Have spent the prior school year in attendance at a Florida public school or the FSDB.<sup>4</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 date of the first scholarship payment.

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

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<sup>1</sup> s. 1002.39, F.S.

<sup>2</sup> See s. 1002.39(13), F.S.

<sup>3</sup> See [http://www.floridaschoolchoice.org/Information/McKay/quarterly\\_reports/mckay\\_report\\_feb2007.pdf](http://www.floridaschoolchoice.org/Information/McKay/quarterly_reports/mckay_report_feb2007.pdf)

<sup>4</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.

A student is not eligible to receive a McKay scholarship if he or she:

- Is currently enrolled in a school operating for the purpose of providing educational services to youth in DJJ commitment programs;
- Receives a scholarship from a scholarship funding organization under s. 220.187, F.S., or other educational scholarship under chapter 1002, F.S.;
- Participates in a home education program, as defined in s. 1002.01(1), F.S., or a private tutoring program pursuant to s. 1002.43, F.S.;
- Participates for more than two courses per school year in a virtual school, correspondence school, or distance learning program that receives state funding;
- Is currently enrolled in the FSDB; or
- Does not have regular and direct contact with his or her private school teachers at the school's physical location.

### ***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, F.S., parents are responsible for the following:

- Requesting the scholarship at least 60 days prior to the first scholarship payment;
- 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;
- Selecting the private school and applying for the admission of the student;
- Complying fully with the private school's published policies;
- Restrictively endorsing a scholarship warrant to the private school for deposit into the school's account, upon receipt of the warrant;
- 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.

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
- Comply fully with the school's published policies.

The law prohibits the parent of a scholarship student from designating any participating private school as the parent's attorney in fact to sign a scholarship warrant. Failure to comply with this requirement is grounds for forfeiting a scholarship.

### ***Term of Scholarship***

For purposes of continuity of educational choice, the scholarship remains in force until the student returns to a public school, graduates from high school, or reaches the age of 22,

whichever occurs first. 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.<sup>5</sup>

### ***School District Obligations***

Under current law, school districts must:<sup>6</sup>

- Timely notify parents of all options available in s. 1002.39, F.S.;
- Offer 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 a student who participates in the program;
- 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.; and
- Report all scholarship students who are attending a private school separately from other students reported for FEFP purposes.

### ***DOE and Commissioner of Education Obligations***

The law tasks the DOE with the following requirements:<sup>7</sup>

- 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;
- Verifying student admission acceptance by a private school and continued enrollment and attendance, as well as private school and parental compliance;
- 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;
- Reviewing documentation prior to scholarship payments;
- Cross-checking the list of participating students with the public school enrollment lists before each payment in order to avoid duplicative funding;
- Transferring funds from the school district's total funding entitlement under the FEFP to a scholarship fund for disbursement by the Chief Financial Officer for quarterly scholarship payments to parents of scholarship students;<sup>8</sup>
- Mailing the warrant to the private school of the parent's choice;
- Establishing a process for individuals to notify the department of violations of law related to scholarship program participation;
- Requiring an annual, notarized, sworn compliance statement by participating private schools and parents certifying compliance with state laws and retaining such records; and
- Conducting random site visits to private schools participating in the program to verify the information reported by the parents and schools concerning student enrollment and attendance, teacher credentials, background screening, and fingerprinting results.

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<sup>5</sup> s. 1002.39(5)(a)2., F.S.

<sup>6</sup> s. 1002.39(9)(d), F.S.

<sup>7</sup> s. 1002.39(6) and (7), F.S.

<sup>8</sup> Funds are derived from the school district's total funding entitlement under the FEFP and from authorized categorical amounts.

The commissioner is tasked with denying, suspending, or revoking participation of any private school if the school or any of its owners or administrators has failed to meet the requirements in s. 1002.39, F.S. However, if the noncompliance is correctable, the commissioner may issue a notice of noncompliance with a timeframe for correction. The commissioner may also:

- Immediately suspend payment of scholarship funds if there is an imminent threat to the health, safety, or welfare of the students, or fraudulent activity on the part of a private school; and
- Authorize the release of personally identifiable student records to facilitate investigations of fraud, subject to restrictions in federal law.<sup>9</sup>

A private school may request a hearing on the suspension of 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 at least 3 years or filing with the DOE a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter;
- Notify the DOE of intent to participate in the program;
- Comply with federal antidiscrimination provisions;<sup>10</sup>
- Meet state and local health, safety, and welfare laws and codes;
- Be academically accountable to the parent for meeting the educational needs of the student, which includes providing parents with an annual explanation of the student's progress;
- 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 the subjects taught;
- Require each employee and contract personnel with direct student contact, upon employment or engagement to provide services, to undergo a state and national background screening, pursuant to s. 943.0542, F.S.;
- Deny employment to or terminate an employee if he or she fails to meet the screening standards under s. 435.04, F.S.;
- Comply with all state laws relating to the general regulation of private schools, including s. 1002.42, F.S.;
- Provide the DOE with all documentation for each scholarship student's participation in the program, including the private school's and student's fee schedule at least 30 days prior to the first quarterly scholarship payment;
- Maintain a physical location in the state where the scholarship student regularly attends classes; and
- Annually complete and submit to the DOE a notarized scholarship compliance statement.

The inability of a private school to meet these requirements is grounds for the school to be ineligible to participate in the program.

<sup>9</sup> 20 U.S.C. 1232g., relating to the Family Educational Rights and Privacy Act.

<sup>10</sup> 42 U.S.C. s. 2000d

### ***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>11</sup> Florida's Chief Financial Officer must make quarterly scholarship payments on specific dates after verification by the DOE of student information on private school acceptance, enrollment, and attendance.<sup>12</sup> 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.

### ***Recent Changes to the McKay Scholarship Program***

Over the last few years, there was public criticism of the program regarding questionable business practices of certain private schools accepting scholarship students, as well as reports of students receiving long-term scholarships under the program for disabilities that were, in fact, temporary and short lived. Findings from audits and legislative committee interim studies suggested numerous potential solutions to the program's problems, including legislative remedies and the implementation of administrative rules.

During the past year, legislation was enacted to improve accountability in the program.<sup>13</sup> In December 2006, the SBE adopted rules to implement provisions of existing law and rule, as well as the recent legislative changes.<sup>14</sup> Specifically, the rule defines the term "regular and direct contact" as a program of instruction that provides for a minimum of 170 actual school instruction days with the required instructional hours determined by grade level in rule<sup>15</sup> under the direct instruction of the private school teacher at the school's physical location, with occasional off-site activities under the teacher's supervision.<sup>16</sup> Under the rule, a school's physical location is the site where regular and direct contact with the private school teacher occurs.<sup>17</sup>

Testimony at public meetings indicated that some scholarship students had not been receiving instruction at a private school's physical location, while others were unable to receive instruction for the number of hours required in rule due to the severity of their disability.<sup>18</sup>

For 2005-2006, the DOE is unable to accurately identify the number of McKay scholarship students who received instruction at home or received some combination of home instruction and regular and direct contact with a teacher at a school's physical location.<sup>19</sup> Similarly, DOE is unable to provide the total number of schools that were involved in home instruction. According to the DOE, at least four schools were involved with some level of instruction at home for 2005-

<sup>11</sup> s. 1002.39(10)(b), F.S.

<sup>12</sup> s. 1002.39(10)(e), F.S.

<sup>13</sup> ch. 2006-75, L.O.F.

<sup>14</sup> Rules 6A-6.0970 and 6A-6.03315, F.A.C., effective January 1, 2007.

<sup>15</sup> Rule 6A-1.09521, F.A.C., relates to private school compulsory attendance. Adopted in 1980, the rule specifies the required 170 days of instruction and the number of instructional hours by grade level.

<sup>16</sup> Rule 6A-6.03315, F.A.C.

<sup>17</sup> *Id.*

<sup>18</sup> Department of Education, *Summary of Workshop Proceedings and Public Comments*, August 2006, See [http://www.floridaschoolchoice.org/Information/events/August\\_Workshop\\_Comments.pdf](http://www.floridaschoolchoice.org/Information/events/August_Workshop_Comments.pdf), and SBE meeting on December 12, 2006.

<sup>19</sup> A student who has a designation of hospital/homebound on his or her IEP is no longer eligible for the program. For 2005-2006, the DOE identified 94 scholarship students with this designation. According to DOE, no student who had this designation prior to July 1, 2006, was deemed to be ineligible for the program.

2006.<sup>20</sup> The total scholarship amount for 186 scholarship students to attend these schools was approximately \$1.8 million. Scholarship amounts per student ranged from approximately \$3,400 to \$20,500.

### III. Effect of Proposed Changes:

The bill creates a transition program for students with disabilities who previously received a scholarship to a private school under s. 1002.39, F.S., the John M. McKay Scholarships for Students with Disabilities Program. A student may remain in the program until he or she returns to a public school, graduates from high school, or reaches the age of 22, whichever occurs first. At any time, the student's parent may remove the student from a private school and place the student in another eligible private school or in a public school. Funding is subject to an appropriation in the GAA. The program expires June 30, 2025. With the exceptions noted below, the bill subjects parents, students, private schools, school districts, and the DOE to the same requirements provided for in the McKay scholarship program.

#### *Student Eligibility and Obligations*

A parent of a student with a disability may request that the student participate in the transition program if the student meets the following requirements for the 2005-2006 school year:

- Was a previous recipient of a scholarship under s. 1002.39, F.S.;
- Received a program of instruction for less than the actual school days specified in SBE rules for compulsory attendance for students enrolled in private schools; and
- Was enrolled in a private school that was eligible under s. 1002.39, and scholarship funds were used for the student to receive instruction: at home; at a site other than the school's physical location; or both at home and at the physical location of an eligible private school in which the student was enrolled.

Students are ineligible to participate in the program if they are receiving a scholarship under ss. 212.187 or 1002.39, F.S., or are enrolled in a DJJ commitment program or the FSDB. The bill does not prohibit a student from also participating in a distance learning program, a virtual school, or a correspondence school that receives state funding or a private tutoring program. The bill does, however, require the DOE to cross-check public school enrollment lists before each payment to avoid duplication. Presumably, this requirement would detect double dipping.

A student participating in the school must remain in attendance as provided for in his or her services plan. This plan must include the site of instruction, the specific instruction and services to be provided by the parent at home and by the private school, and the number of hours of instruction to be provided by the parent at home and by the private school.

#### *Parent Obligations*

Under the transition program, parental responsibilities include the following:

- Obtaining acceptance by an eligible private school for the student to receive instruction both at the private school and at home or for the private school to coordinate instruction to the student at home;

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<sup>20</sup> Department of Education, December 22, 2006. There were a range of matrix levels for the scholarship students at these schools. Not all of the students had a designation of hospital/homebound.

- Submitting to the DOE evidence of compliance with the program's eligibility requirements, including a notarized statement that is signed by the parent and the director of the private school in which the student was enrolled during the 2005-2006 school year;
- Selecting a private school and applying for admission of the student; and
- Developing, reviewing, and revising a quarterly student services plan, in consultation with the private school.

A parent who provides instruction at home must meet the notice and portfolio requirements in s. 1002.41, F.S., relating to home education.<sup>21</sup> The portfolio is subject to an annual review by the private school. A parent must also arrange for an annual academic evaluation by the private school or by one of the methods required for students in home education programs.<sup>22</sup>

### ***School District Obligations***

School districts must provide locations and times to take all statewide assessments for a student in the district who participates in the program and whose parent requests that the student take the statewide assessments under s. 1008.22, F.S. Districts must also notify parents of the availability of reassessment of the student every three years.<sup>23</sup>

### ***DOE and Commissioner of Education Obligations***

Under the bill, the responsibilities of the DOE and the commissioner are the same as those for the McKay scholarship program, with the exception of random site visits to private schools, certification of compliance, and sanctions. The bill does not limit the number of site visits that the DOE may conduct. The bill also requires parents to submit an annual sworn compliance statement that certifies compliance with state law. The bill requires the commissioner to deny or suspend the participation of a parent who fails to meet the program's requirements. The commissioner may immediately suspend payment of funds if there is probable cause to believe that there is fraudulent activity on the part of a parent. This bill also provides for procedures and timelines for a parent to appeal the commissioner's actions.

### ***Funding and Payment***

The maximum funds granted under the program for an eligible student is the amount that the student received as a scholarship for the 2005-2006 school year under s. 1002.39, F.S. Payments must be made from funds provided in the GAA. Funds may be used for the student:

- To receive instruction at both the eligible private school and at home by the parent or by an individual employed or under contract with the private school; and
- To receive instruction at home by the parent or by an individual employed or under contract with the eligible private school.

Additionally, funds may be used for the private school to coordinate the instruction of the student at home. Presumably, this payment would be used for an administrative fee to the school.

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<sup>21</sup> This provision requires parents to notify the district school superintendent of the intent to establish, maintain, and terminate a home education program. Portfolios consist of a log of educational activities and materials used or developed by the student.

<sup>22</sup> s. 1002.41(1)(c) F.S.

<sup>23</sup> Rule 6A-6.0331(7), F.A.C., requires school districts to provide a reevaluation of each student with a disability at least every three years or more frequently if conditions warrant or if required by other rules. See also 20 U.S.C. s. 1414 (a).



All payment is contingent upon the following:

- Verification by the DOE of student attendance and continued enrollment at the private school;
- Submission by the parent to the school of evidence that documents the student's instruction at home; and
- Submission by the private school to the DOE of the school's and student's fee schedules and the student's services plan.

Payment 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. Payment for home instruction must be made to the private school and the school is responsible for reimbursing a parent who provides home instruction, as specified in the student's services plan.

The bill's effective date is 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.

##### **D. Other Constitutional Issues:**

The State Constitution provides, in pertinent part, that "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution."<sup>24</sup> Article IX, s. 1 of the State Constitution requires "[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools..."

On January 5, 2006, the Florida Supreme Court issued an opinion finding that the Opportunity Scholarship Program, which allowed a student attending certain failing public schools to attend a private school, sectarian or nonsectarian, chosen by the parent with the financial assistance of the state, violated Art. IX, s. 1(a) of the State Constitution, which mandates an education through a uniform system of free public schools.<sup>25</sup> The Florida Supreme Court opinion further stated that the court found it unnecessary to

<sup>24</sup> Art. I, s. 3, FLA. CONST

<sup>25</sup> *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006).

address whether the program is a violation of the “no aid” provision in Art. I, s. 3 of the State Constitution, as held by the First District Court of Appeal, since the program was found unconstitutional based on Art. IX, s. 1(a).

The transition program created in this bill may be similarly challenged, as it allows sectarian private schools to participate through a parent’s choice.

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

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

None.

### **B. Private Sector Impact:**

For school year 2005-2006, 17,300 students received a McKay scholarship. However, the number of students who received instruction at home or a combination of instruction at home and at a private school is unknown. The number of students who will choose to participate in the transition program is also unknown at this time.

A parent must arrange for an annual evaluation of a student by the private school or by one of the methods required for students in home education programs.<sup>26</sup> The bill also provides that any assessment fee required by the private school may be paid from the total amount of the student's payment under the program. If the parent selects an assessment that is not offered through the private school, the parent may incur some costs.

Private schools, employees, or contractors will be assessed a fee by the Florida Department of Law Enforcement (FDLE) for fingerprinting and background screening. According to the FDLE, the costs of the initial screening total approximately \$47: \$23 for Florida criminal history records checks and \$24 for Federal Bureau of Investigation (FBI) national records checks. Additionally, there is an annual fee to retain the prints (\$6) and a fee (\$24) for an FBI national records re-check every five years. There is no need for state screening at that time if the arrest records are screened against the retained prints on a regular basis. The annual fee will be set by FDLE rule. Fees for fingerprint searches must be paid to the FDLE.

Current law requires private school owners to comply with fingerprinting requirements;<sup>27</sup> however, the fingerprint and background screening requirements of the bill are more stringent than these requirements and will increase the cost for either the private school, employee, or contractor. Some private schools voluntarily participate in the Volunteer and Employee Criminal History System (VECHS). The initial costs for VECHS and Level 2 background screening of employees are the same.

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<sup>26</sup> s. 1002.41(1)(c), F.S.

<sup>27</sup> s. 1002.42(2)(c), F.S.

With regard to the surety bond, a surety company will likely require a school to demonstrate its financial standing and may require a review of assets, financial statements, cash flow and bank use history, an audit, or a quality review. The cost associated with this requirement is indeterminate.

**C. Government Sector Impact:**

There will some costs associated with the responsibilities for the DOE and the Commissioner of Education. These costs are unknown at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



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

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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