

By Senator King

8-1686B-07

1	A bill to be entitled
2	An act relating to students with disabilities;
3	creating s. 1002.371, F.S.; creating the
4	Transition Program to provide continuity in the
5	education of students with disabilities who
6	formerly received scholarships under the John
7	M. McKay Scholarships for Students with
8	Disabilities Program; providing eligibility
9	criteria for students and private schools to
10	participate in the program; providing for the
11	term of participation in the program; requiring
12	school districts to provide certain notice to
13	parents and provide locations for statewide
14	assessments; requiring that the Department of
15	Education notify parents of the program;
16	specifying additional duties of the department
17	with respect to verifying the eligibility of
18	private schools to participate, investigating
19	complaints, and conducting site visits at
20	participating private schools; requiring the
21	Commissioner of Education to deny, suspend, or
22	revoke a parent's participation and a private
23	school's eligibility to participate in the
24	program under certain circumstances; providing
25	notice requirements; providing for an expedited
26	hearing; providing circumstances under which
27	the commissioner may immediately suspend
28	payments under the program; providing
29	eligibility requirements for private schools
30	that participate in the program; requiring that
31	employees and personnel having direct contact

**CODING:** Words stricken are deletions; words underlined are additions.

1 with students undergo background checks;  
2 providing requirements for retaining  
3 fingerprint cards and performing background  
4 screening; providing requirements for a parent  
5 whose child participates in the program;  
6 prohibiting a parent from authorizing another  
7 person to endorse a warrant; providing for  
8 making payments on behalf of students  
9 participating in the program; requiring the  
10 department to confirm compliance with  
11 endorsement requirements; providing that the  
12 state is not liable in any action based on the  
13 award or use of funds under the program;  
14 providing that the act does not expand the  
15 regulatory authority of the state, its  
16 officers, or a school district; requiring the  
17 State Board of Education to adopt rules;  
18 providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22 Section 1. Section 1002.371, Florida Statutes, is  
23 created to read:

24 1002.371 Transition Program.--There is established a  
25 program that is separate and distinct from the John M. McKay  
26 Scholarships for Students with Disabilities Program.

27 (1) TRANSITION PROGRAM; LEGISLATIVE INTENT.--It is the  
28 intent of the Legislature, through the establishment of the  
29 Transition Program, to provide continuity in the education of  
30 students with disabilities who previously received a  
31 scholarship to a private school under s. 1002.39 and who meet

1 the requirements in this section. This section expires June  
2 30, 2025.

3 (2) TRANSITION PROGRAM ELIGIBILITY.--A parent of a  
4 student with a disability may request that the student  
5 participate in the transition program in accordance with this  
6 section if:

7 (a) The student meets the following requirements for  
8 the 2005-2006 school year:

9 1. Was a previous recipient of a scholarship under s.  
10 1002.39;

11 2. Received a program of instruction for less than the  
12 actual school days specified in rules of the State Board of  
13 Education for compulsory attendance for students enrolled in  
14 private schools; and

15 3. Was enrolled in a private school that was eligible  
16 under s. 1002.39, and scholarship funds were used for the  
17 student to receive:

18 a. Instruction at home;

19 b. Instruction at a site other than the school's  
20 physical location; or

21 c. A combination of instruction at home and at the  
22 physical location of the eligible private school in which the  
23 student was enrolled.

24 (b) The parent has obtained acceptance by a private  
25 school that is eligible for the program under subsection (8)  
26 for the student to receive instruction at the private school  
27 and instruction at home or for the private school to  
28 coordinate instruction to the student at home.

29 (c) The parent has requested to participate in the  
30 program at least 60 days before the date of the first payment.  
31 The request must be made through a communication directly to

1 the department in a manner that creates a written or  
2 electronic record of the request and the date of receipt of  
3 the request. A parent applying for his or her child to  
4 participate pursuant to this section must submit to the  
5 Department of Education documentation to prove compliance with  
6 the eligibility requirements in paragraph (a). The  
7 documentation must include a notarized statement of compliance  
8 that is signed by the parent and the director of the private  
9 school in which the student was enrolled during the 2005-2006  
10 school year.

11 (3) PROHIBITIONS.--A student is not eligible for the  
12 program while he or she is:

13 (a) Enrolled in a school operating for the purpose of  
14 providing educational services to youth in commitment programs  
15 of the Department of Juvenile Justice;

16 (b) Receiving a corporate income tax credit  
17 scholarship under s. 220.187;

18 (c) Receiving a scholarship under s. 1002.39; or

19 (d) Enrolled in the Florida School for the Deaf and  
20 the Blind.

21 (4) PROGRAM PARTICIPATION.--

22 (a) For purposes of continuity of educational choice,  
23 a student shall remain in the program until the student  
24 returns to a public school, graduates from high school, or  
25 reaches the age of 22, whichever occurs first.

26 (b) Upon reasonable notice to the department and the  
27 school district, the student's parent may remove the student  
28 from the private school and place the student in a public  
29 school.

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1           (c) Upon reasonable notice to the department, the  
2 student's parent may move the student from one participating  
3 private school to another participating private school.

4           (5) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.--

5           (a) A school district shall provide notification to  
6 parents of the availability of a reevaluation at least every 3  
7 years of each student who participates in the program.

8           (b) For a student who participates in the program  
9 whose parent requests that the student take the statewide  
10 assessments under s. 1008.22, the district in which the  
11 student attends private school or receives home instruction  
12 shall provide locations and times to take all statewide  
13 assessments.

14           (6) DEPARTMENT OF EDUCATION OBLIGATIONS.--The  
15 department shall:

16           (a) Establish a toll-free hotline that provides  
17 parents and private schools with information concerning  
18 participation in the Transition Program.

19           (b)1. Annually verify the eligibility of private  
20 schools that meet the requirements of subsection (8).

21           2. Annually verify the parent's compliance with the  
22 requirements in this section.

23           (c) Establish a process by which individuals may  
24 notify the department of any violation by a parent, private  
25 school, or school district of state laws relating to program  
26 participation. The department shall conduct an inquiry of any  
27 written complaint of a violation of this section, or make a  
28 referral to the appropriate agency for an investigation, if  
29 the complaint is signed by the complainant and is legally  
30 sufficient. A complaint is legally sufficient if it contains  
31 ultimate facts that show that a violation of this section or

1 any rule adopted by the State Board of Education has occurred.

2 In order to determine legal sufficiency, the department may  
3 require supporting information or documentation from the  
4 complainant. A department inquiry is not subject to the  
5 requirements of chapter 120.

6 (d) Require an annual, notarized, sworn compliance  
7 statement by participating private schools and parents  
8 certifying compliance with state laws and shall retain such  
9 records.

10 (e) Cross-check the list of participating students  
11 with the public school enrollment lists before each payment in  
12 order to avoid duplication.

13 (f)1. Conduct random site visits to private schools  
14 participating in the program. The purpose of the site visits  
15 is solely to verify the information reported by the parents  
16 and schools concerning the enrollment and attendance of  
17 students, the credentials of teachers, background screening of  
18 teachers, and teachers' fingerprinting results, which  
19 information is required by rules of the State Board of  
20 Education and subsection (8).

21 2. Annually, by December 15, report to the Governor,  
22 the President of the Senate, and the Speaker of the House of  
23 Representatives the Department of Education's actions with  
24 respect to implementing accountability in the program under  
25 this section, any substantiated allegations or violations of  
26 law or rule by an eligible private school or parent under this  
27 program concerning the enrollment and attendance of students,  
28 the credentials of teachers, background screening of teachers,  
29 and teachers' fingerprinting results and the corrective action  
30 taken by the Department of Education.

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1           (7) COMMISSIONER OF EDUCATION; AUTHORITY AND

2 OBLIGATIONS.--

3           (a) The Commissioner of Education shall deny, suspend,  
4 or revoke a parent's participation or a private school's  
5 eligibility to participate in the program if the commissioner  
6 finds that the private school or parent has failed to comply  
7 with the provisions of this section. However, in instances in  
8 which the noncompliance is correctable within a reasonable  
9 amount of time and in which the health, safety, or welfare of  
10 the students is not threatened, the commissioner may issue a  
11 notice of noncompliance which shall provide a timeframe within  
12 which to provide evidence of compliance before taking action  
13 to suspend or revoke eligibility to participate in the  
14 program.

15           (b) The commissioner's determination is subject to the  
16 following:

17           1. If the commissioner intends to deny, suspend, or  
18 revoke a private school's eligibility to participate in the  
19 program, the department shall notify the private school of  
20 such proposed action in writing by certified mail and regular  
21 mail to the private school's address of record with the  
22 department. The notification must include the reasons for the  
23 proposed action and notice of the timelines and procedures set  
24 forth in this paragraph.

25           2. The private school that is adversely affected by  
26 the proposed action shall have 15 days following receipt of  
27 the notice of proposed action to file with the department's  
28 agency clerk a request for a proceeding pursuant to ss.  
29 120.569 and 120.57. If the private school is entitled to a  
30 hearing under s. 120.57(1), the department shall forward the  
31 request to the Division of Administrative Hearings.

1           3. Upon receipt of a request referred under this  
2 paragraph, the director of the Division of Administrative  
3 Hearings shall expedite the hearing and assign an  
4 administrative law judge who shall commence a hearing within  
5 30 days after the receipt of the formal written request by the  
6 division and enter a recommended order within 30 days after  
7 the hearing or within 30 days after receipt of the hearing  
8 transcript, whichever is later. Each party shall be allowed 10  
9 days in which to submit written exceptions to the recommended  
10 order. A final order shall be entered by the agency within 30  
11 days after the entry of a recommended order. The provisions of  
12 this subparagraph may be waived upon stipulation by all  
13 parties.

14  
15 The commissioner's proposed action for a parent is subject to  
16 the same procedures and timelines as set forth in this  
17 paragraph. A parent may appeal pursuant to the same procedures  
18 and timelines as set forth in this paragraph.

19           (c) The commissioner may immediately suspend payment  
20 of funds if it is determined that there is probable cause to  
21 believe that there is:

22           1. An imminent threat to the health, safety, or  
23 welfare of the students; or

24           2. Fraudulent activity on the part of the private  
25 school or parent. Notwithstanding s. 1002.22(3), in incidents  
26 of alleged fraudulent activity under this section, the  
27 Department of Education's Office of Inspector General may  
28 release personally identifiable records or reports of students  
29 to the following persons or organizations:

30           a. A court of competent jurisdiction in compliance  
31 with an order of that court or the attorney of record in



1 accordance with a lawfully issued subpoena, consistent with  
2 the Family Educational Rights and Privacy Act, 20 U.S.C. s.  
3 1232g.

4 b. A person or entity authorized by a court of  
5 competent jurisdiction in compliance with an order of that  
6 court or the attorney of record pursuant to a lawfully issued  
7 subpoena, consistent with the Family Educational Rights and  
8 Privacy Act, 20 U.S.C. s. 1232g.

9 c. Any person, entity, or authority issuing a subpoena  
10 for law enforcement purposes when the court or other issuing  
11 agency has ordered that the existence or the contents of the  
12 subpoena or the information furnished in response to the  
13 subpoena not be disclosed, consistent with the Family  
14 Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and 34  
15 C.F.R. s. 99.31.

16  
17 The commissioner's order suspending payment under this  
18 paragraph may be appealed pursuant to the same procedures and  
19 timelines as the notice of proposed action set forth in  
20 paragraph (b).

21 (8) PRIVATE SCHOOL ELIGIBILITY, OBLIGATIONS, AND  
22 ACCOUNTABILITY.--

23 (a) A Florida private school participating in the  
24 program established under this section may be sectarian or  
25 nonsectarian and must comply with all requirements of this  
26 section in addition to requirements for private schools  
27 outlined in s. 1002.42 and other provisions of state law which  
28 apply to private schools.

29 (b) A private school participating in the program must  
30 be a Florida private school as defined in s. 1002.01, must be  
31 registered in accordance with s. 1002.42, and must:

- 1           1. Comply with the antidiscrimination provisions of 42  
2 U.S.C. s. 2000d.
- 3           2. Notify the department of its intent to participate  
4 in the program.
- 5           3. Notify the department of any change in the school's  
6 name, school director, mailing address, or physical location  
7 within 15 days after the change.
- 8           4. Complete student enrollment and attendance  
9 verification requirements, including use of an on-line  
10 attendance-verification form, before any payment is made.
- 11           5. Annually complete and submit to the department a  
12 notarized compliance statement certifying that all school  
13 employees and contracted personnel having direct contact with  
14 students have undergone background screening pursuant to s.  
15 943.0542.
- 16           6. Demonstrate fiscal soundness and accountability by:
- 17           a. Being in operation for at least 3 school years or  
18 obtaining a surety bond or letter of credit for the amount  
19 equal to the funds paid for any quarter and filing the surety  
20 bond or letter of credit with the department.
- 21           b. Requiring the parent of each student to personally  
22 restrictively endorse the warrant to the school. The school  
23 may not act as attorney in fact for the parent of a student  
24 under the authority of a power of attorney executed by such  
25 parent, or under any other authority, to endorse warrants on  
26 behalf of such parent.
- 27           7. Meet applicable state and local health, safety, and  
28 welfare laws, codes, and rules, including:
- 29           a. Firesafety.
- 30           b. Building safety.
- 31

1           8. Employ or contract with teachers who hold  
2 baccalaureate or higher degrees, have at least 3 years of  
3 teaching experience in public or private schools, or have  
4 special skills, knowledge, or expertise qualifying them to  
5 provide instruction in subjects taught.

6           9. Provide to the department all documentation  
7 required for a student's participation, including the private  
8 school's and student's fee schedules and the student's  
9 services plan, at least 30 days before the first quarterly  
10 payment is made for the student.

11           10. Be academically accountable to the parent for  
12 meeting the educational needs of the student by:

13           a. At a minimum, annually providing to the parent a  
14 written explanation of the student's progress.

15           b. Cooperating with the student whose parent chooses  
16 to participate in the statewide assessments pursuant to s.  
17 1008.22.

18           11. Maintain in this state a physical location where  
19 the student attends classes as provided in the services plan  
20 of a student who receives instruction at the private school.

21           (c) A private school participating in the program must  
22 require each employee and contracted personnel having direct  
23 student contact, upon employment or engagement to provide  
24 services, to undergo a state and national background  
25 screening, pursuant to s. 943.0542, by electronically filing  
26 with the Department of Law Enforcement a complete set of  
27 fingerprints taken by an authorized law enforcement agency or  
28 an employee of the private school, a school district, or a  
29 private company who is trained to take fingerprints and deny  
30 employment to or terminate an employee if he or she fails to  
31 meet the screening standards under s. 435.04. Results of the

1 screening shall be provided to the participating private  
2 school. For purposes of this paragraph:

3 1. An "employee or contracted personnel having direct  
4 contact with students" means any employee or contracted  
5 personnel who has unsupervised access to a student in the  
6 program for whom the private school is responsible.

7 2. The state may not pay the costs of fingerprinting  
8 or the background check of employees or contracted personnel  
9 having direct contact with students.

10 3. Continued employment of an employee or contracted  
11 personnel after notification that he or she has failed the  
12 background screening under this paragraph shall cause a  
13 private school to be ineligible for participation in the  
14 program.

15 4. An employee or contracted personnel holding a valid  
16 Florida teaching certificate who has been fingerprinted  
17 pursuant to s. 1012.32 is exempt from the background screening  
18 requirements of this paragraph.

19 (d) Beginning July 1, 2007, all fingerprints submitted  
20 to the Department of Law Enforcement as required by this  
21 section shall be retained by the Department of Law Enforcement  
22 in a manner provided by rule and entered in the statewide  
23 automated fingerprint identification system authorized by s.  
24 943.05(2)(b). Such fingerprints shall thereafter be available  
25 for all purposes and uses authorized for arrest fingerprint  
26 cards entered in the statewide automated fingerprint  
27 identification system pursuant to s. 943.051.

28 (e) Beginning July 1, 2007, the Department of Law  
29 Enforcement shall search all arrest fingerprint cards received  
30 under s. 943.051 against the fingerprints retained in the  
31 statewide automated fingerprint identification system under

1 paragraph (d). Any arrest record that is identified with the  
2 retained fingerprints of a person subject to the background  
3 screening under this section shall be reported to the  
4 employing school with which the person is affiliated. Each  
5 private school participating in the program shall participate  
6 in this search process by informing the Department of Law  
7 Enforcement of any change in the employment or contractual  
8 status of its personnel whose fingerprints are retained under  
9 paragraph (d). The Department of Law Enforcement shall adopt a  
10 rule setting the amount of the annual fee to be imposed upon  
11 each private school for performing these searches and  
12 establishing the procedures for retaining the fingerprints of  
13 private school employees and contracted personnel and  
14 disseminating search results. The fee may be borne by the  
15 private school or the person fingerprinted.

16 (f) Employees and contracted personnel whose  
17 fingerprints are not retained by the Department of Law  
18 Enforcement under paragraphs (d) and (e) must be  
19 refingerprinted and meet state and national background  
20 screening requirements upon reemployment or reengagement to  
21 provide services in order to comply with the requirements of  
22 this section.

23 (g) Every 5 years following employment or engagement  
24 to provide services with a private school, employees or  
25 contracted personnel required to be screened under this  
26 section must meet screening standards under s. 435.04, at  
27 which time the private school shall request the Department of  
28 Law Enforcement to forward the fingerprints to the Federal  
29 Bureau of Investigation for national processing. If the  
30 fingerprints of employees or contracted personnel are not  
31 retained by the Department of Law Enforcement under paragraph

1 (d), employees and contracted personnel must electronically  
2 file a complete set of fingerprints with the Department of Law  
3 Enforcement. Upon submission of fingerprints for this purpose,  
4 the private school shall request that the Department of Law  
5 Enforcement forward the fingerprints to the Federal Bureau of  
6 Investigation for national processing, and the fingerprints  
7 shall be retained by the Department of Law Enforcement under  
8 paragraph (d).

9  
10 The inability of a private school to meet the requirements of  
11 this section constitutes a basis for the ineligibility of the  
12 private school to participate in the program as determined by  
13 the department.

14 (9) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM  
15 PARTICIPATION.--A parent who applies for his or her child to  
16 participate in the program is exercising his or her parental  
17 option to place his or her child in a private school or  
18 receive home instruction. The parent of a student who  
19 participates in the program may provide for his or her child  
20 to receive instruction at home. As an alternative, the parent  
21 may place his or her child in an eligible private school to  
22 receive instruction at the private school and instruction at  
23 home.

24 (a) The parent must select an eligible private school  
25 and apply for the admission of the student to receive  
26 instruction at the private school and instruction at home or  
27 for the coordination by the private school of instruction to  
28 the student at home.

29 (b)1. The parent must have requested participation in  
30 the program at least 60 days before the date of the first  
31 payment.

1           2. The parent must annually complete and submit to the  
2 department a notarized compliance statement certifying  
3 compliance with this section.

4           3. A parent who provides instruction at home under  
5 this section must meet the notice requirements and maintain a  
6 portfolio as provided for in s. 1002.41. The portfolio must be  
7 annually reviewed by the eligible private school. The parent  
8 must also provide for an annual academic evaluation by the  
9 eligible private school or by one of the methods in s.  
10 1002.41(1)(c).

11           (c) Any student participating in the program must  
12 remain in attendance as provided for in the student's services  
13 plan.

14           (d) Each parent and each student has an obligation to  
15 the private school to comply with the private school's  
16 published policies.

17           (e) If the parent requests that the student  
18 participating in the program take all statewide assessments  
19 required under s. 1008.22, the parent is responsible for  
20 transporting the student to the assessment site designated by  
21 the school district.

22           (f) Upon receipt of a warrant, the parent to whom the  
23 warrant is made must restrictively endorse the warrant to the  
24 private school for deposit into the account of the private  
25 school. The parent may not designate any entity or individual  
26 associated with the participating private school as the  
27 parent's attorney in fact to endorse a warrant. A participant  
28 who fails to comply with this paragraph forfeits eligibility  
29 to participate in the program.

30           (10) FUNDING AND PAYMENT.--  
31

1           (a)1. The maximum funds granted under the program for  
2 an eligible student with disabilities shall be the amount  
3 received under s. 1002.39 for the 2005-2006 school year.

4           2. Payment shall be made from funds provided in the  
5 General Appropriations Act.

6           3. Funds may be used for the following:

7           a. For the student to receive instruction at the  
8 eligible private school and instruction at home by the parent  
9 or by an individual employed or under contract with the  
10 private school;

11           b. For the student to receive instruction at home by  
12 the parent or by an individual employed or under contract with  
13 the eligible private school; and

14           c. For the private school to coordinate the  
15 instruction of the student at home.

16           4. A parent must, in consultation with an eligible  
17 private school, develop, review, and revise a quarterly  
18 student services plan to ensure the continuity of instruction  
19 to the student. The plan must include, but is not limited to,  
20 the site for instruction, the specific instruction and  
21 services to be provided by the parent at home and by the  
22 private school and the number of hours of instruction to be  
23 provided by the parent at home and by the private school.

24           a. Payment for home instruction shall be made to the  
25 private school. The private school is responsible for  
26 reimbursing the parent who provides instruction to the student  
27 at home, as specified in the student's services plan.

28           b. Before each payment, a parent must provide the  
29 private school with documentation of the student's  
30 participation in home instruction.

31



1       (b) The amount of any assessment fee required by the  
2 participating private school may be paid from the total amount  
3 of the student's payment under the program.

4       (c) When a student enters the program, the department  
5 must receive all documentation required for the student's  
6 participation, including the private school's and student's  
7 fee schedules, the student services plan, and evidence of the  
8 student's attendance, at least 30 days before the first  
9 quarterly payment is made for the student.

10       (d) Upon notification by the department that it has  
11 received the documentation required under paragraph (d), the  
12 Chief Financial Officer shall make payments in four equal  
13 amounts no later than September 1, November 1, February 1, and  
14 April 1 of each academic year in which the student  
15 participates in the program. The initial payment shall be made  
16 after the department verifies that the student has been  
17 accepted by the private school, and subsequent payments shall  
18 be made upon verification of continued enrollment and  
19 attendance at the private school and at home. Payment must be  
20 by individual warrant made payable to the student's parent and  
21 mailed by the department to the private school of the parent's  
22 choice, and the parent shall restrictively endorse the warrant  
23 to the private school for deposit into the account of the  
24 private school.

25       (e) Subsequent to each payment, the department shall  
26 request from the Department of Financial Services a sample of  
27 endorsed warrants to review and confirm compliance with  
28 endorsement requirements.

29       (11) LIABILITY.--The state is not liable in any action  
30 that is based on the award or use of funds for a student to  
31 participate in the program.

1           (12) SCOPE OF AUTHORITY.--The inclusion of eligible  
2 private schools within options available to Florida public  
3 school students does not expand the regulatory authority of  
4 the state, its officers, or any school district to impose any  
5 additional regulation of private schools beyond those  
6 reasonably necessary to enforce requirements expressly set  
7 forth in this section.

8           (13) RULES.--The State Board of Education shall adopt  
9 rules pursuant to ss. 120.536(1) and 120.54 to administer this  
10 section.

11           Section 2. This act shall take effect upon becoming a  
12 law.

14           \*\*\*\*\*

15           SENATE SUMMARY

16           Creates the Transition Program to provide continuity in  
17 the education of students with disabilities who formerly  
18 received scholarships under the John M. McKay  
19 Scholarships for Students with Disabilities Program.  
20 Provides eligibility criteria for students and private  
21 schools to participate in the program. Provides duties of  
22 the school districts and the Department of Education with  
23 respect to determining the eligibility of students and  
24 private schools. Requires the Commissioner of Education  
25 to deny, suspend, or revoke a private school's  
26 eligibility to participate in the program under certain  
27 circumstances. Requires that employees and personnel  
28 having direct contact with students undergo background  
29 checks. Provides requirements for a parent whose child  
30 participates in the program. Requires that the State  
31 Board of Education adopt rules to administer the program.  
(See bill for details.)