

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1505 John M. McKay Scholarships for Students with Disabilities Program

SPONSOR(S): Flores and others

TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: PreK-12 Policy Committee, 12 Y, 0 N, As CS, Duncan, Ahearn.

SUMMARY ANALYSIS

The Committee Substitute for HB 1505 (CS/HB 1505) changes student eligibility requirements under the McKay Scholarship Program. More particularly, a student is eligible for the program if the student was enrolled and reported by a school district for funding during any previous October and February FEFP surveys during the same school year in kindergarten through grade 12 or was enrolled and reported by the Florida School for the Deaf and the Blind during the preceding October and February student membership surveys in kindergarten through grade 12.

The bill also opens eligibility to kindergarten students who would not previously have met the prior year in attendance requirement. The bill requires a child with a developmental delay and who has received early intervention services under the Voluntary Prekindergarten Education Program to be reevaluated before entering kindergarten. An Individual Education Plan must be developed if he or she is eligible for the Exceptional Student Education Program.

To conform with the provision in the bill that opens eligibility to kindergarten students, the bill deletes the stipulation for eligibility that requires a student to be at least 4 years old when enrolled and reported by a school district for funding in the October and February FEFP surveys.

The CS/HB 1505 provides an exception to the requirement that a McKay Scholarship recipient have regular and direct contact with his or her private school teachers at the school's physical location by authorizing the use of an alternative site for instruction and services if the student's parent provides a notarized statement from the licensed physician or psychologist treating the student's disability certifying that the student's welfare or the welfare of other students in the classroom will be jeopardized if the student is required to regularly attend class at the physical location of the school. The notarized statement must be provided annually to the Department of Education at least 60 days prior to the date of the first scholarship payment for each school year and based on an annual review of the student's disability by the student's physician or psychologist.

The bill authorizes the Commissioner of Education (COE) to deny, suspend, or revoke a private school's participation in the scholarship program if the COE determines that an owner or operator of the private school is operating, or has operated, an educational institution in this state or another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public. The bill states factors that the COE may consider in making such a determination.

This bill has an indeterminate fiscal impact on the state and school districts. See FISCAL COMMENTS section of this analysis.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Law**

##### **Educational Services for Students with Disabilities**

An exceptional student means any student who has been determined eligible for a special program in accordance with the rules adopted by the State Board of Education (SBE).<sup>1</sup> District school boards are statutorily required to provide exceptional students in grades K-12 with special education services, also known as exceptional student education (ESE), which include related services such as transportation, appropriate diagnosis, evaluation, special instruction, facilities, and services such as physical and occupational therapy.<sup>2</sup> Special instruction, classes, and services may be provided within the district school system, in cooperation with other district school systems, or through contractual arrangements with approved private schools or community facilities that meet certain standards.<sup>3</sup>

If a student is eligible for an ESE program, an education plan is developed for the student. This plan is referred to as an:

- Individual educational plan (IEP) for students with disabilities ages three through 21.<sup>4</sup>
- Individualized family support plan (IFSP) for children ages birth through two (and may also be used for children ages three through five years in lieu of an IEP).<sup>5</sup>
- Educational plan (EP) for gifted students.<sup>6</sup>

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<sup>1</sup>The term exceptional student includes students who are gifted and students with disabilities who have an intellectual disability; autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; an other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including, but not limited to dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ages birth through 5 years, or children, ages birth through 2 years, with established conditions identified in the SBE rules. s. 1003.01(3)(a), F.S.

<sup>2</sup> s. 1003.01(3)(b), F.S.

<sup>3</sup> s. 1003.57(1), F.S.

<sup>4</sup> Rule 6A-6.03028, F.A.C.

<sup>5</sup> Rule 6A-6.03029, F.A.C.

<sup>6</sup> Rule 6A-6.030191, F.A.C.

Parents participate in the development of the plans, which cannot be implemented until the parent provides written consent for initial placement in the ESE program.<sup>7</sup>

Within 30 days of determining a student's eligibility to receive ESE or related services by a school district or other state agency, an EP, IEP, or IFSP team must meet to develop a plan to address the student's needs.<sup>8</sup> The multidisciplinary team includes school and district staff, parents, and other experts, if necessary. The IEP must be reviewed at least annually and reevaluated at least once every three years, unless the school district, parent, or teacher requests a reevaluation, to ensure eligibility to receive special education and related services.<sup>9</sup>

### **The John M. McKay Scholarships for Students with Disabilities Program**

The John M. McKay Scholarships for Students with Disabilities Program was originally created in 1999 as a pilot program.<sup>10</sup> The program provides the option for a student with a disability for whom an IEP has been written in accordance with rules of the State Board of Education (SBE), to attend a public school other than the one to which the student is assigned, or to accept a scholarship to a private school of choice.

Students with disabilities include K-12 students who are documented as having: an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; an other health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay;<sup>11</sup> or autism spectrum disorder.<sup>12</sup>

#### *Student Eligibility and Prior-Year Public School Attendance*

Any parent of a public school student with a disability who is dissatisfied with the student's progress may request and receive a McKay Scholarship in order for the child to enroll in and attend a private school. The student must have spent "the prior school year in attendance" at a Florida public school or the Florida School for the Deaf and the Blind and be accepted for admission to an eligible private school. The parent must request a scholarship from the Department of Education (DOE) at least 60 days prior to the date of the first scholarship payment.<sup>13</sup> The DOE must notify the school district of the parent's intent upon the receipt of the parent's request and is required to, in cooperation with the school district, determine the student's eligibility for a McKay Scholarship.<sup>14</sup>

"Prior school year in attendance" means the student was enrolled and reported by:

- A school district for funding during the preceding October and February Florida Education Finance Program (FEFP) surveys<sup>15</sup> in kindergarten through grade 12, which must include time spent in a Department of Juvenile Justice commitment program if funded under the FEFP;

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<sup>7</sup> Rule 6A-6.0331(9), F.A.C.

<sup>8</sup> Rule 6A-6.03028(3)(f), F.A.C. and Rule 6A-6.030191(6)(b), F.A.C.

<sup>9</sup> Rule 6A-6.03028(3)(f), F.A.C. and Rule 6A-6.0331(7), F.A.C.

<sup>10</sup> s. 3, Ch. 99-398, L.O.F. The pilot program was in the Sarasota school district.

<sup>11</sup> A child who is developmentally delayed is 3 through 5 years of age and is delayed in one or more of the following areas: adaptive or self-help development, cognitive development, social or emotional development, and physical development including fine, or gross, or perceptual motor. Rule 6A-6.03027(1)(a)-(e), F.A.C.

<sup>12</sup> s. 1002.39(1), F.S.

<sup>13</sup> McKay Scholarship payments to an eligible private school are required to be made in four equal amounts no later than September 1, November 1, February 1, and April 1 of each academic year in which the scholarship is in force. s. 1002.39(10)(e), F.S. and Rule 6A-6.0970(5), F.A.C.

<sup>14</sup> s. 1002.39(2), F.S., and Rule 6A-6.0970(1)(b), F.A.C.

<sup>15</sup> The Florida Education Finance Program (FEFP) is the mechanism used by the state to fund the operating costs of Florida's school districts. The FEFP bases financial support for education upon individual students participating in certain education programs. FEFP funds are primarily generated by multiplying the number of full-time equivalent (FTE) students in each of the funded education

- The Florida School for the Deaf and the Blind during the preceding October and February student membership surveys in kindergarten through grade 12; or
- A school district for funding during the preceding October and February FEFP surveys, was at least 4 years old when the student was enrolled and reported, and was eligible for services under the school attendance requirements for certain children with disabilities.<sup>16</sup>

However, a dependent child of a member of the United States Armed Forces who transfers to a Florida school from out of state or from a foreign country pursuant to a parent's permanent change of station orders is exempt from these requirements, but must meet all other eligibility requirements to participate in the McKay Scholarship Program.

The "prior school year in attendance" requirement limits eligibility to students who are identified and confirmed by the school district as having a disability and have attended a public school and received special education services during the prior year.<sup>17</sup> During the September and November 2009 and February 2010 payment periods, 941 private schools serving 20,524 students participated in the McKay Scholarship Program. Of that number, 592 private schools are sectarian and 349 are non-sectarian.<sup>18</sup>

### *McKay Scholarship Prohibitions*

A student is not eligible for a McKay Scholarship while he or she is:<sup>19</sup>

- Enrolled in a Department of Juvenile Justice commitment program or the Florida School for the Deaf and the Blind;
- Receiving a Florida Tax Credit Scholarship;<sup>20</sup>
- Receiving an educational scholarship under chapter 1002, F.S.;

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programs by cost factors to obtain weighted FTE students. During each of several school weeks, including scheduled intercessions of a year-round school program during the fiscal year, a program membership survey of each school must be made by each district by aggregating the FTE student membership of each program by school and by district. The Department of Education establishes the number and interval of membership calculations. s. 1011.62(1)(a), F.S. For 2009-2010, the Florida Department of Education will conduct four surveys: July 2009, October 2009, February 2010, and June 2010. <http://www.fldoe.org/fefp> FTE Survey Dates (last visited February 22, 2010).

<sup>16</sup> Although not required to attend a public school, children with disabilities who have attained the age of 3 years are eligible for admission to public special education programs and related services. See s. 1003.21(1)(e), F.S.

<sup>17</sup> However, in a recent decision, *Forest Grove School District v. T.A.*, the United States Supreme Court ruled that, under certain circumstances, a court or hearing officer can require a school district to reimburse a parent of a student with a disability for the cost of private school, even if the student had not previously received special education services from the school district. *Forest Grove School District v. T.A.* 557 U.S. \_\_\_ (2009). The Individuals with Disabilities Education Act (IDEA) allows a court or hearing officer to require the school district to reimburse the parent for the cost of the private school if the court or hearing officer finds that the school district did not provide a free appropriate public education to the child in a timely manner. More particularly, 20 U.S.C. § 1412(a)(10)(C)(ii) provides: "If the parents of a child with a disability, *who previously received special education and related services under the authority of a public agency*, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment." The U.S. Supreme Court held that the provision relating to the student previously receiving special education services did not categorically bar students who had not received such services from receiving reimbursement, if the court or hearing officer determined that the school district had not appropriately provided services. In this case, the school district did not diagnose the student as having a disability and did not provide special education services. The student was subsequently diagnosed by a private specialist and provided special education services at a private school.

<sup>18</sup> Florida Department of Education, Office of Independent Education and School Choice, John M. McKay Scholarship Program Quarterly Report, February 2010. [http://www.floridaschoolchoice.org/Information/McKay/quarterly\\_reports.asp](http://www.floridaschoolchoice.org/Information/McKay/quarterly_reports.asp) (last visited February 22, 2010).

<sup>19</sup> s. 1002.39(3), F.S.

<sup>20</sup> s. 220.187, F.S.

- Participating in a home education program<sup>21</sup> or private tutoring program;<sup>22</sup>
- Participating in a state-funded virtual school, correspondence school, or distance learning program unless the participation is limited to no more than two courses per school year; or
- Not receiving *regular and direct contact*<sup>23</sup> with a classroom teacher at the private school's physical location.<sup>24</sup>

A McKay 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.<sup>25</sup>

### *Regular and Direct Contact*

In 2006, the Legislature made a number of changes to the McKay Scholarship Program in response to recommendations from the Senate Task Force on McKay Scholarship Program Accountability and Senate Interim Projects.<sup>26</sup> One of the changes was to require a student who receives a McKay Scholarship to have regular and direct contact with private school teachers at the school's physical location.<sup>27</sup>

The Coalition of McKay Scholarship Schools estimated that 50 to 90 students with disabilities who received McKay Scholarships during the 2005-2006 school year became ineligible for McKay Scholarships the following school year because of the "regular and direct contact" requirement.<sup>28</sup> In response, there has been some effort to provide an exception from this requirement for students who meet certain criteria.<sup>29</sup> The requirement for regular and direct contact prohibits students who are homebound or hospitalized from meeting the eligibility requirements for a McKay Scholarship.

### *Commissioner of Education Authority*

The Commissioner of Education (COE) has the authority to deny, suspend, or revoke a private school's participation in the McKay Scholarship Program if it is determined that the private school has failed to comply with the provisions governing the program. When noncompliance can be corrected within a reasonable amount of time and the health, safety, or welfare of the students is not threatened, the COE may issue a notice of noncompliance. The notice must give the private school a timeframe within which to provide evidence of compliance prior to the COE taking action to suspend or revoke the private

<sup>21</sup> A "home education program" means the sequentially progressive instruction of a student directed by his or her parent in order to satisfy specific attendance requirements. s. 1002.01(1), F.S.

<sup>22</sup> Regular school attendance as defined by state law may be achieved by attendance in a private tutoring program if the person tutoring holds a valid Florida certificate to teach the subjects or grades in which instruction is given, keeps all records and makes all reports required by the state and district school board, and makes regular reports on the attendance of students required under s. 1003.23(2), F.S.; and requires students to be in actual attendance for the minimum length of time prescribed by s. 1011.60(2), F.S. and s. 1002.43, F.S.

<sup>23</sup> "Regular and direct contact" is defined as "a program of instruction that provides for a minimum of 170 actual school instruction days with the required instructional hours under the direct instruction of the private school teacher." Rule 6A-6.03315(1)(c), F.A.C.

<sup>24</sup> "School's physical location" is defined as "the location where regular and direct contact with the private school teacher occurs and must meet applicable state and local health, safety, and welfare laws, codes, and rules." Rule 6A-6.03315(1)(d), F.A.C.

<sup>25</sup> s. 1002.39(4)(a), F.S.

<sup>26</sup> Senate Staff Analysis, CS/CS/SB 256 (2006), Government Efficiency Appropriations Committee.

<sup>27</sup> s. 1, Ch. 2006-75, L.O.F., *codified as* s. 1002.39(3)(h), F.S.

<sup>28</sup> House of Representatives Staff Analysis, HB 7153 (2008), Healthcare Council.

<sup>29</sup> In the 2009 Regular Session, HB 353 and HB 1385 both contained an exception allowing a student to receive special education and services at an alternate location if that student's parent submits a note from a medical doctor or psychologist certifying that the welfare of the student or other students in the classroom would be jeopardized by the student's regular attendance at the school's physical location. In addition, the bills required a private school to employ a case manager to monitor the student's instruction and required school personnel to submit documentation of any instruction or services provided to the student at the alternate location. Neither bill became law.

school's participation in the program.<sup>30</sup>

Since 2006, 61 schools have been removed from the McKay Scholarship Program. Most of those schools failed to provide compliance documentation by the statutory deadlines and some of those schools returned to the program after a year of removal.<sup>31</sup>

### *Private School Eligibility*

Participation in the McKay Scholarship Program is open to all sectarian and nonsectarian private schools that:

- Comply with all requirements for private schools participating in state school choice scholarship programs.<sup>32</sup>
- Annually provide the parent with a written explanation of the student's progress.
- Cooperate with a student whose parent chooses to have the student participate in the statewide assessment tests.
- Submit all documentation to the DOE required for a student's participation, including the private school's and student's fee schedules, at least 30 days prior to the first quarterly scholarship payment.
- Maintain a physical location in Florida where a scholarship student regularly attends classes.<sup>33</sup>

Failure to meet these requirements, as determined by the DOE, constitutes a basis for a private school to become ineligible to participate in the program.<sup>34</sup>

## **Effect of Proposed Changes**

### *Student Eligibility and Prior-Year Public School Attendance*

The bill changes the student eligibility requirements under the McKay Scholarship Program. More particularly, a student is eligible for the program if the student was enrolled and reported by a school district for funding during *any* previous October and February FEFP surveys during the same school year in kindergarten through grade 12 or was enrolled and reported by the Florida School for the Deaf and the Blind during the preceding October and February student membership surveys in kindergarten through grade 12.

The bill also opens eligibility to kindergarten students who would not previously have met the prior year in attendance requirement. To conform with this provision, the bill deletes the stipulation for eligibility that requires a student to be at least 4 years old when enrolled and reported by a school district for funding in the October and February FEFP surveys.

The bill requires a child with a developmental delay<sup>35</sup> who has received early intervention services under the Voluntary Prekindergarten Education Program to be reevaluated before entering kindergarten. An IEP must be developed if he or she is eligible for the Exceptional Student Education Program.<sup>36</sup>

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<sup>30</sup> s. 1002.39(7), F.S.

<sup>31</sup> Email correspondence from Department of Education staff, March 4, 2010.

<sup>32</sup> Private schools participating in state school choice scholarship programs are required to comply with statutorily-specified fiscal and operational accountability requirements. s. 1002.421, F.S.

<sup>33</sup> s. 1002.39(8), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> *See supra* note 11.

<sup>36</sup> *See supra* text accompanying fn 11 and s. 1003.57, F.S.

### *Regular and Direct Contact*

The bill provides an exception to the requirement that a McKay Scholarship recipient have regular and direct contact with his or her private school teachers at the school's physical location by authorizing the use of an alternative site for instruction and services. The bill does not identify any specific alternative location or sites which could include a hospital or home.<sup>37</sup>

Under the exception, the student eligible for a McKay Scholarship may receive direct instruction and services from a private school at a site other than the physical location of the school if:

- The student's parent provides a notarized statement from the licensed physician or psychologist treating the student's disability certifying that the student's welfare or the welfare of other students in the classroom will be jeopardized if the student is required to regularly attend class at the physical location of the school. The bill does not identify any specific criteria that the physician or psychologist must use in making this determination.
- The notarized statement is provided annually to the DOE at least 60 days prior to the date of the first scholarship payment for each school year and based on an annual review of the student's disability by the student's physician or psychologist.

The private school serving the student must:

- Employ or contract with a case manager<sup>38</sup> who coordinates and monitors the student's instruction and services, reviews and maintains documentation submitted by the student's physician or psychologist and provides the student's parent and private school with monthly reports on the student's progress.
- Require private school employees or contracted personnel who provide regular and direct instruction or services to a student at a site other than the private school's physical location to submit to the case manager documentation of the instruction, services, and progress of the student. It is not clear as to how a student's attendance would be recorded and monitored to ensure attendance requirements are being met.
- Notify the DOE of each student receiving instruction and services at an alternative site.

### *Commissioner of Education Authority*

For purposes of private school compliance, the bill provides that "owner or operator" includes an owner, operator, superintendent, or principal of, or a person with equivalent decision making authority over, a private school participating in the scholarship program.

The bill authorizes the COE to deny, suspend, or revoke a private school's participation in the scholarship program if the COE determines that an owner or operator of the private school is operating or has operated an educational institution in this state or another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public.

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<sup>37</sup> Students who are hospitalized or homebound are defined as exceptional students and eligible to receive exceptional student education. A homebound or hospitalized student is a student who has a medically diagnosed physical or psychiatric condition which is acute or catastrophic in nature, or a chronic illness, or a repeated intermittent illness due to a persisting medical problem and which confines the student to home or hospital, and restricts activities for an extended period of time. The medical diagnosis must be made by a licensed physician. s. 1003.01(3)(a) and (b), F.S., and Rule 6A-6.03020(1), F.A.C.

<sup>38</sup> "Case manager" is not defined in HB 1505; however, the term is defined in Florida law to mean an individual who works with clients, and their families and significant others, to provide case management (s. 394.4573, F.S.) or a person who is responsible for participating in the development of and implementing a services plan, linking service providers to a child or adolescent and his or her family, monitoring the delivery of services, providing advocacy services, and collecting information to determine the effect of services and treatment (s. 394.492, F.S.)

In making the determination, the COE may consider factors that include:

- Acts or omissions by an owner or operator that led to a previous denial or revocation of participation in an education scholarship program;
- An owner's or operator's failure to reimburse the DOE for scholarship funds improperly received or retained by a school;
- Imposition of a prior criminal sanction related to an owner's or operator's management or operation of an educational institution;
- Imposition of a civil fine, administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation related an owner's or operator's management or operation of an educational institution; or
- Other types of criminal proceedings in which the owner or operator was found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense involving fraud, deceit, dishonesty, or moral turpitude.

**B. SECTION DIRECTORY:**

**Section 1:** amends s. 1002.39, F.S., relating to the John M. McKay Scholarships for Students with Disabilities Program.

**Section 2:** provides an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

See FISCAL COMMENTS.

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

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

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

None.

**D. FISCAL COMMENTS:**

DOE Comments:

The bill would require school districts to reevaluate children who are developmentally delayed prior to entering kindergarten. It is not clear as to the extent to which districts may need to reevaluate and provide an updated IEP for students who have been homeschooled with learning disabilities and students

with disabilities currently in private school, without a McKay scholarship, who may have been in public school at some point and reported in an October and February FTE survey. However, there is the potential of increasing school district expenditures if it is necessary to hire more staff to conduct the evaluations and develop student IEPs. The fiscal impact on school districts is indeterminate since the number of students who would need to be evaluated is unknown.

It is anticipated that the proposed bill would increase the number of students who meet eligibility requirements for participation in the scholarship program. New eligible populations would include all currently homeschooled students with learning disabilities and all students with disabilities currently in private school, without a McKay scholarship, who may have at some point been reported in a public school in Florida in an October and February survey. Further, the exception to the “regular and direct contact” requirement to allow a student to attend a site other than a private school’s physical location could have a slight impact on program participation. However, the overall impact of the bill on scholarship program participation is currently indeterminate since there is no way to know for certain how many students in these groups exist or how many would choose to avail themselves of the scholarship option.

It is anticipated that the proposed bill would increase the number of students who meet eligibility requirements for participation in the scholarship program and then enroll in private schools. However, the number of students in this group is unknown and the fiscal impact on private schools is indeterminate.

The bill establishes a requirement that a child who is eligible to enter kindergarten, and is developmentally delayed, must have a re-evaluation to determine if a disability continues to exist that would require the development of an IEP and provision of special education services. This may establish a requirement that would result in conducting unnecessary evaluations – with associated fiscal and work load impact for school districts. [See (2)(a)1.] For example, if a child had an evaluation, was determined eligible, and had an IEP developed in December during the year prior to kindergarten, it would appear that another evaluation would be required closer to entry to kindergarten.

The bill extends eligibility for a McKay Scholarship to a student who was enrolled and reported for funding during any previous [rather than the preceding as currently established] October and February FEFP surveys during the same school year. This would create significant issues for students who have been withdrawn from public school for an extended period of time. Given that the student had been withdrawn from public school, eligibility for services as a student with a disability would need to be re-determined. For example, a student who may have received speech or language services as a kindergartener, may no longer meet eligibility requirements as a student with a disability as a fourth grader. Given recent revisions to State Board of Education Rules, determination of eligibility now requires the review of the research-based instruction and interventions provided to the student through a problem-solving process which has been implemented to address the struggling learner’s needs. This framework requires significantly greater data gathering and analysis on the part of staff and presents some unique challenges when the student is enrolled in a private school or is home schooled. No longer is the determination of eligibility based solely upon administration of formal testing instruments.

Additionally, the matrix of service would have to be developed and aligned to the current IEP in order to establish the amount of funding.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

No new specific authority is granted. However, the State Board of Education would have to modify the McKay Scholarship Program rule if the bill becomes law.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### DOE Comments:

The bill allows a physician or psychologist to provide a notarized statement certifying that the student's welfare or the welfare of other students in the classroom will be jeopardized if the student is required to regularly attend class at the school's physical location; however, the language does not develop a framework or identify factors necessary for physicians or psychologists to consider when making such decisions.

Private schools are required to meet all applicable state and local health, safety, and welfare laws for fire safety and building safety. This legislation does not require other locations where students are educated to meet the same health and safety requirements. While it is likely that the other location will be a residential home or apartment where the child lives, that has not been clarified.

Private schools are subject to the compulsory attendance requirements for children between the ages of 6 and 16 years old. Rule 6A-1.09512, Florida Administrative Code, provides that in order to meet the compulsory attendance requirements, a child must maintain regular attendance for a minimum of 170 actual school days with the required instructional hours as determined by grade level. If instruction and services are provided to students at alternative sites instead of at the school's physical location, there is concern that an adequate number of school days and instructional hours may not be provided.

The bill also does not specify whether the "contracted personnel" providing the child's education could include the child's parents which would allow the school to pay the parents some of the scholarship money for home schooling the child.

The bill provisions regarding contracting with a case manager who will document instruction and services and provide monthly progress reports to the student's parent will require rulemaking to establish a procedure for private schools to follow in annually notifying the department of each student subject to this exception and providing a notarized statement.

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the PreK-12 Policy Committee adopted two amendments and reported the bill favorably as a Committee Substitute (CS). The difference between the CS and the House Bill is as follows:

HB 1505 included the phrase “has spent the prior year in attendance at a Florida Public school or the Florida School for the Deaf and the Blind” regarding student eligibility for a McKay Scholarship. The CS clarifies that a student “has attended a Florida Public school or the Florida School for the Deaf and the Blind” regarding student eligibility for a McKay Scholarship.

HB 1505 required a private school to notify DOE of “each student subject to this subsection.” The CS clarifies that a private school must notify DOE of “each student *receiving services* under this subsection.”