

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/CS/SB 2746

INTRODUCER: Policy and Steering Committee on Ways and Means, Education Pre-K Committee, and Senator Gardiner

SUBJECT: Education Programs for Children with Disabilities

DATE: April 21, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.	Armstrong	Coburn	WPSC	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

For the John M. McKay Scholarships for Students with Disabilities Program, the bill allows the parent of a student with a disability to receive a scholarship if the student received specialized instructional services under the Voluntary Prekindergarten (VPK) Education Program during the previous school year and has an individual education plan (IEP) developed by the school district. The bill also authorizes the Commissioner of Education to deny, suspend, or revoke the participation of any private school determined to be operating or have operated an educational institution in Florida or another state that jeopardizes the health, safety, or welfare of the public.

For the Voluntary Prekindergarten Education (VPK) program, the bill creates a prekindergarten program option for children with disabilities, which:

- Allows parents of eligible children to select one or more services that are consistent with the child’s individual education plan;
- Requires specialized instructional services to be provided according to professionally accepted standards and those adopted by the Department of Education;
- Specifies the responsibilities of the Department of Education;

- Provides for payment to specialized instructional service providers by early learning coalitions;
- Allows parents who have not expended more than 70 percent of the funds for services to withdraw their children from the specialized instructional services program option for good cause and reenroll in the VPK school-year or summer program; and
- Provides that the Agency for Workforce Innovation (AWI), in collaboration with the Department of Education (DOE) and subject to DOE approval, must develop procedures governing the determination of eligibility, enrollment of children, and payment of specialized instructional services providers.

This bill substantially amends sections 1002.39, 1002.51, 1002.53, 1002.71, 1002.73, and 1002.75 and creates section 1002.66 of the Florida Statutes.

II. Present Situation:

John M. McKay Scholarships for Students with Disabilities Program (McKay program)¹

Current law sets forth the requirements for parental placement of a student with disabilities in an eligible private school or another public school. The law also establishes requirements for student eligibility for scholarships to attend an eligible private school or to provide transportation to another public school and provides eligibility requirements for private schools participating in the program. As well, the law establishes responsibilities for school districts and the Department of Education (DOE). The State Board of Education (SBE) may adopt rules to administer the program.²

Eligible Students³

Eligible 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; another 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; or autism spectrum disorder.⁴

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;⁵ and
- Have spent the prior school year in attendance at a Florida public school.⁶

¹ s. 1002.39, F.S.

² s. 1002.39(13), F.S.

³ s. 1002.39(2), F.S.

⁴ s. 1002.39(1), F.S.

⁵ s. 1002.39(1), F.S. Rule 6A-6.03028, F.A.C., addresses the development of IEPs and requires school districts to provide a copy of an IEP to parents, upon request. Students whose parents choose the option of attending another public school must have an IEP.

⁶ Prior school year in attendance means that the student was enrolled and reported by a school district or the Florida School for the Deaf and the Blind for funding during the preceding October and February Florida Education Finance Program (FEFP) surveys in kindergarten through grade 12. This includes a child who was at least 4 years old when so enrolled and

At any time, the student's parent may remove the student from the private school and place the student in another eligible private school or in a public school.⁷

*Parent and Student Obligations*⁸

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. Parents are responsible for the following:

- Requesting the scholarship at least 60 days prior to the first scholarship payment;
- Selecting the private school and applying for the admission of the student;
- Complying fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause;
- Restrictively endorsing the warrant to the private school for deposit into the account of the private school, upon receipt of a scholarship warrant;⁹ and
- Transporting the student to:¹⁰
 - 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.

Students participating in the scholarship program must:

- Remain in attendance throughout the school year, unless excused by the school for illness or other good cause; and¹¹
- Comply fully with the school's published policies.¹²

*Term of Scholarship*¹³

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.

*Scholarship Funding and Payment*¹⁴

The scholarship amount is either a calculated amount or the amount of the private school's tuition and fees, whichever is less. Until the school district completes a matrix, the scholarship calculation is based on the lowest level of service. Payments must be made by individual warrant

reported, and was eligible for services under s. 1003.21(1)(e), F.S. Chapter 2004-230, L.O.F., waived the requirement that the student must have spent the prior year in attendance at a Florida public school for otherwise qualifying military students who relocate to Florida pursuant to a parent's military orders. Under this provision, transferring military students are still required to submit an IEP and evaluation data necessary to establish program eligibility.

⁷ s. 1002.39(4)(d), F.S.

⁸ s. 1002.39(9), F.S.

⁹ s. 1002.39(9)(f), F.S. A participant who fails to comply with this requirement forfeits the scholarship.

¹⁰ s. 1002.39(5)(e), F.S.

¹¹ s. 1002.39(9)(c), F.S.

¹² s. 1002.39(9)(d), F.S.

¹³ s. 1002.39(3), F.S.

¹⁴ s. 1002.39(10), F.S.

payable to the student's parent for his or her endorsement and for deposit into the private school's account.

Matrix of Services

When a parent indicates that he or she intends to place the child in a private school, the child may or may not have a matrix of services. Under current law, only students with Florida Education Finance Program exceptional student education cost factors for Support Levels IV and V must have a matrix of services that documents the services that each student will receive.¹⁵ Consequently, students who are at exceptional student education support levels I, II, and III will need a matrix of services. There are no specific administrative rules that address matrices. Rather, various DOE publications address the implementation of matrices.

*Eligible Private Schools*¹⁶

Current law provides for the obligations of private schools. These responsibilities include:

- Complying with all state laws relating to the general regulation of private schools, including ss. 1002.42¹⁷ and 1002.421,¹⁸ F.S.;
- Providing the DOE with all documentation for each scholarship student's participation in the program, including the private school's fees for services, tuition, and instructional materials, and each scholarship student's schedule of fees and charges at least 30 days prior to the first quarterly scholarship payment;
- Demonstrating academic accountability to the parent for meeting the educational needs of the student;
- Maintaining a physical location in Florida where the scholarship student regularly attends classes;
- Demonstrating fiscal soundness and accountability;
- Meeting applicable state and local health, safety, and welfare laws, codes, and rules;
- Disqualifying instructional personnel and school administrators from employment in any position that requires direct contact with students if the personnel or administrators are ineligible for such employment under s. 1012.315, F.S.; and
- Adopting policies establishing standards of ethical conduct for instructional personnel and school administrators.

Currently, there are 941 participating private schools and 20,524 students receiving McKay scholarships.¹⁹

¹⁵ s. 1011.62(1)(e), F.S.

¹⁶ ss. 1002.39 and 1002.421, F.S.

¹⁷ Private schools must register with the DOE and comply with requirements that include compulsory attendance, immunizations, and school health exams.

¹⁸ Under s. 1002.421, F.S., private schools that fail to meet the requirements in this section are ineligible to participate in the program. The DOE must suspend the payment of scholarship funds to a private school that knowingly fails to comply with this section and must prohibit the school from enrolling new scholarship students, for one fiscal year and until the school complies. These provisions also apply to private schools that participate in the Florida Tax Credit Scholarship Program.

¹⁹ *DOE February Quarterly Report, 2010*, for the 2009-2010 school year, payment periods September, November, and February. See https://www.floridaschoolchoice.org/Information/McKay/quarterly_reports.asp. Of the participating private schools, 37.1 percent were non-religious and 62.9 percent were religious.

Voluntary Prekindergarten (VPK) Education Program

In 2002, the State Constitution was amended to require the establishment of a prekindergarten program for every 4-year-old child in the state which is voluntary, high-quality, free, and delivered according to professionally accepted standards.²⁰ The Legislature created the VPK program, which became effective in the 2005 school year, and provided the parents of eligible children a choice among three program options:²¹ a school-year VPK program delivered by a private prekindergarten provider; a school-year VPK program delivered by a public school; or a summer VPK program delivered by a public school or private prekindergarten provider.

The VPK program is administered at the local level by school districts and early learning coalitions.²² At the state level, the Department of Education (DOE) administers the educational accountability requirements of the program and the Agency for Workforce Innovation (AWI) administers the operational requirements of the program.²³ The AWI's specific operational requirements are enumerated in s. 1002.75, F.S., and include determining the eligibility of private providers to deliver the VPK program.

All VPK providers must register with an early learning coalition, comply with federal antidiscrimination requirements, and may not discriminate against a parent or child, including the refusal to admit a child for enrollment in the VPK program, in violation of the antidiscrimination requirements.²⁴

In 2008-2009, there were 5,660 providers that participated in the VPK program, 657 offered the summer program and 5,472 offered the school year program.²⁵ Most of the VPK providers (84 percent) were private centers.²⁶ For 2008-2009, the VPK program enrollment is estimated to be 63.5 percent of the 4-year old population.²⁷ The projected participation rate for 2009-2010 is 168,622 or 68.41 percent of all four-year-olds.²⁸

Children with disabilities, as defined by s. 1003.01(3)(a), F.S., are eligible to receive their special education and related services from their local school district, based upon their IEP, and are also eligible to participate in the VPK program. Based on 2009-2010 data, at least four percent of the children enrolled in the VPK program were children with disabilities, as defined by s. 1003.01(3)(a), F.S.²⁹

²⁰ Art. IX, s. 1(b) and (c) of the State Constitution.

²¹ ch. 2004-484, L.O.F. See ss. 1002.55, 1002.61, and 1002.63, F.S.

²² Pursuant to s. 1002.51(2), F.S., early learning coalitions are created under s. 411.01(5), F.S.

²³ ss. 1002.73 and 1002.75, F.S.

²⁴ ss. 1002.53(6)(c) and 1002.75(2), F.S., and 42 U.S.C. s. 2000d.

²⁵ Correspondence with AWI, March 12, 2010, on file with the Education Pre-K – 12 Committee.

²⁶ *Id.*

²⁷ DOE bill analysis, April 8, 2010.

²⁸ *Id.*, based on the March 8, 2010 VPK Estimating Conference.

²⁹ DOE bill analysis, April 8, 2010. Data was obtained via the matching process of 2008-2009 Coalition/AWI VPK data and the DOE's Survey 2 data.

III. Effect of Proposed Changes:

McKay Scholarship Program

The parent of a student with a disability who received specialized instructional services under the new VPK Education Program option during the previous school year and who has an individualized education plan (IEP) developed by a school district may request and receive a McKay Scholarship to enroll his or her child in a private school without having to spend the prior year in attendance at a public school.

The Commissioner of Education is authorized to deny, suspend, or revoke participation of any private school that operated an educational institution in Florida or another state that jeopardizes the health, safety, or welfare of the public.

VPK Prekindergarten Program for Children with Disabilities

Beginning in the 2012-2013 school year, the bill creates a new VPK program option for eligible students with disabilities whereby a student may receive specialized instructional services from a DOE-approved service provider in lieu of the traditional school-year or summer VPK program. The services must be consistent with the student's IEP. Currently, students with disabilities, who receive their exceptional student education (ESE) services from their local school district are eligible for either the school-year or summer VPK program.³⁰

The bill specifies that the specialized instructional services must be delivered according to accepted professional standards and the VPK performance standards adopted by the DOE. It also requires the DOE to approve specialized instructional service providers, maintain an approved list of providers, and notify school districts and early coalitions of the approved provider list. Upon the request of a parent, the DOE may approve a specialized instructional service provider not on the approved list if the provider meets the applicable standards and the services are consistent with the child's IEP.

The bill requires the early learning coalitions to reimburse an approved specialized instructional service provider for the services provided to an eligible child. The reimbursement may not exceed the VPK base student allocation.

The bill allows parents of a child receiving specialized instructional services in the VPK program to withdraw from that program option for good cause if they have not expended more than 70 percent of the funds allotted. The parents may choose to participate in the school-year or the summer VPK program.

The bill authorizes AWI, in collaboration with the DOE, to adopt procedures for the determination of eligibility, the enrollment of children, and the payment of specialized instructional service providers. The procedures are subject to DOE approval.

³⁰ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Children who meet the eligibility requirements for the new program will be able to participate.

C. Government Sector Impact:

According to the DOE, in 2012-2013, the estimated fiscal impact of serving children with disabilities in the new VPK program option is \$11,432,674, based on the following assumptions:

2012-2013 Fiscal Impact on the VPK Program	
Projected Total Population of Four-Year Olds ³¹	233,541
Estimated Participation Rate - 75% ³²	175,156
Estimated Number of Unserved Four-Year Olds	58,385
Estimated Percent of Kindergarten Children With Disabilities ³³	9.67%
Increase in the Number of Children with Disabilities Anticipated to be Served in the New VPK Option (58,385 x 9.67%)	5,646
2009-2010 Base Student Allocation	\$2,575
2009-2010 Administrative Cost	4.85%
Projected Fiscal Impact (\$2,575 x 75% x 1.0485)	\$11,432,674

³¹ The projected number of four-year-olds determined by the VPK estimating conference on March 8, 2010.

³² The participation rate in the calculation (75%) is the percentage adopted by the VPK estimating conference.

³³ Based on the 2009-2010 percentage of kindergarten children with disabilities from the October 2009 FEFP survey.

The DOE notes that the calculations do not assume changes in student enrollment or in the base student allocation.³⁴

According to the DOE, in 2013-2014, the estimated fiscal impact to the FEFP is \$5,722,786³⁵ using the value of the average McKay Scholarship in 2009-2010 (\$7,240). This analysis is based on the following assumptions. According to the October 2009 FEFP survey, 86 percent of all five-year olds currently attend kindergarten in public school and generate funds for school districts or McKay scholarships in the FEFP.³⁶ In 2013-2014, the students in the new VPK program for children with disabilities may enter public school kindergarten. Eighty-six percent of the 5,646 additional VPK students would already have attended public school. However, the balance, or 790 children served in the previous year in the new VPK program who would not otherwise have attended public school (14 percent of 5,646) may be provided a McKay Scholarship from FEFP funds.

The DOE notes that it would also incur an indeterminate workload impact to approve service providers, maintain a list of such approved providers, and notify school districts and coalitions of the approved list.³⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Policy and Steering Committee on Ways and Means on April 20, 2010:

The committee substitute:

- Replaces the term “early intervention services” with “specialized instructional services”;
- Revises the new eligibility criteria for receiving a McKay scholarship to require an IEP that is developed by the school district;
- Revises the eligibility criteria for enrollment in the specialized instructional VPK program option to require an evaluation and an IEP that is developed by the school district;
- Provides that a parent may select specialized instructional services that are consistent with the child’s IEP;

³⁴ DOE bill analysis, April 8, 2010.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

- Allows the DOE to approve a specialized instructional services provider that is not on the approved list if requested by the parent, standards are met, and the services are consistent with the child's IEP; and
- Provides that AWI's procedures for determining eligibility, enrolling children, and paying for services in the specialized instructional VPK program option are subject to DOE approval.

CS by Education Pre-K – 12 Committee on April 14, 2010:

The committee substitute:

- Cross-references the practice acts for applied behavior analysis, speech language pathology, and physical therapy; and
- Authorizes the Commissioner of Education to deny, suspend, or revoke participation of any private school determined to be operating or have operated an educational institution in Florida or in another state or jurisdiction that jeopardizes the health, safety, or welfare of the public.

B. Amendments:

None.