

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 Budget Committee

BILL: CS/SB 1656

INTRODUCER: Education Pre-K Committee and Senator Wise

SUBJECT: McKay Scholarships/Students With Disabilities

DATE: April 14, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.	Hamon	Meyer, C.	BC	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill allows a student with a disability to be eligible for a John M. McKay Scholarship for Students with Disabilities if he or she has a 504 accommodation plan. However, the student would be ineligible if his or her plan was for six months or less.

The bill requires school districts to notify the parent of a student with a 504 accommodation plan about available school choice options by April 1 of each year and within ten days after a 504 accommodation plan is issued.

The bill allows parents of a student with a 504 accommodation plan to enroll their children in a public school in an adjacent school district which has available space, if the school has a program with the services agreed to in the 504 accommodation plan. Parents would be responsible for transportation.

The scholarship amount for the student would be based on the current student program cost factor generated by the student under the Florida Education Finance Program (FEFP).

This bill substantially amends section 1002.39 of the Florida Statutes.

II. Present Situation:

John M. McKay Scholarships for Students with Disabilities Program

Current law sets forth the requirements for parental placement of a student with disabilities in an eligible private school or another public school, using a John M. McKay Scholarships for Students with Disabilities Program.¹ To be eligible for a McKay scholarship to attend a private school, a K-12 student with a disability² must have an individual education plan (IEP) and have spent the prior school year in attendance at a Florida public school.³

A student is ineligible to receive a McKay scholarship if he or she is enrolled in a Department of Juvenile Justice commitment program or enrolled in the Florida School for the Deaf and the Blind; receives a Florida Tax Credit Scholarship;⁴ receives an Opportunity Scholarship;⁵ participates in a home education program; participates in a private tutoring program; participates in a virtual school, correspondence school, or distance learning program that receives state funding unless the student's participation is limited to no more than two courses per school year; or does not have regular and direct contact with their private school teachers at the school's physical location.⁶

The scholarship amount is based in part on a matrix of services. A matrix of services is developed for students with disabilities who are funded at the highest level of need, support levels 4 and 5, based on needs identified in a student's IEP. Consistent with the services identified through the IEP, a matrix of services is used to determine which one of two cost factors would apply to each eligible exceptional education student and the support level needed.⁷ If a matrix of services has not yet been assigned, the scholarship amount must be based on the matrix that assigns the student to support level I of service as it existed prior to the 2000-2001 school year until the school district completes the matrix for that student.⁸

For FY 2009-2010, there were 985 participating schools and 21,054 scholarship recipients, with a total of \$72,885,767 in scholarship awards.⁹

504 Accommodation Plans

The Rehabilitation Act of 1973 (Rehabilitation Act) defines the an "individual with a disability" to include individuals who have a physical or mental impairment that substantially limits one or

¹ s. 1002.39, F.S.

² s. 1002.39(1), F.S. 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; or autism spectrum disorder.

³ s. 1002.39(2), F.S. There are two exceptions to the requirement for prior year in attendance.

⁴ s. 1002.395, F.S.

⁵ s. 1002.38, F.S.

⁶ s. 1002.39(3), F.S.

⁷ The matrix document contains checklists of services in each of the five domains (curriculum and learning environment; social/emotional behavior; independent functioning; health care; and communication) and a special considerations section. The sum of these domain ratings and any special considerations points corresponds to one of the two cost factors.

⁸ s. 1002.39(10)(a)4., F.S.

⁹ DOE, *John M. McKay Scholarships for Students with Disabilities Program Quarterly Report*, November 2010. See https://www.floridaschoolchoice.org/Information/McKay/quarterly_reports/mckay_report_nov2010.pdf.

more major life activities of the individual; who have a record of such impairment; or who are regarded as having such an impairment.¹⁰ Section 504 of the Rehabilitation Act specifies that “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”¹¹ The Rehabilitation Act provides individuals with disabilities the opportunity to participate in any activity receiving federal funding, including public education.¹²

A 504 Accommodation Plan is developed by a team of parents, teachers, and other staff members for a student identified as an individual with a disability under the Rehabilitation Act. The plan provides a description of the accommodations the school will provide to the student.¹³ According to the DOE, students who have 504 plans do not have individual educational plans or matrixes.¹⁴

According to the DOE, there has been a 64 percent increase in the number of eligible section 504 students since the 2006-2007 school year: 2006-2007—32,610 students; 2007-2008—36,425 students; 2008-2009—44,582 students; and 2009-2010—51,069 students.¹⁵ The DOE also notes that a student eligible for a section 504 plan does not require the level of instruction (specialized instruction) required for a student with IEPs. Section 504 plans identify accommodations that allow access to programs.

III. Effect of Proposed Changes:

A student with a disability would be eligible for a McKay Scholarship if he or she has a 504 accommodation plan. However, the student would be ineligible if his or her plan was for six months or less.

The parent of a student with a 504 accommodation plan would receive the same notification from a school district about available school choice options as is provided to a student with an IEP (i.e., by April 1 of each year). Parents would also be notified about available options within ten days after a 504 accommodation plan is issued.

The bill allows parents of a student with a 504 accommodation plan to enroll their children in a public school in an adjacent school district which has available space, if the school has a program with the services agreed to in the 504 accommodation plan. Parents would be responsible for transportation.

¹⁰ 29 U.S.C. § 705(20)(B), *incorporating* 42 U.S.C. § 12102 (1); 34 C.F.R. § 104.3(j).

¹¹ 29 U.S.C. § 794(a); *see also* 34 C.F.R. § 104.4.

¹² 34 C.F.R. § 104.2

¹³ Florida Department of Education, *A Parent and Teacher Guide to Section 504: Frequently Asked Questions*, *See* www.fldoe.org/ese/pdf/504bro.pdf. Examples of such accommodations include: permission to self-administer diabetes medication, special dietary considerations for allergies, and assistance with carrying books. Florida Department of Education, Bureau of Exceptional Education & Student Services, *Section 504*.

¹⁴ DOE, April 6, 2011, on file with the committee.

¹⁵ *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:

Additional students may be eligible for a McKay scholarship.

C. Government Sector Impact:

The DOE notes that Section 504, unlike IDEA, does not provide any additional federal funding assistance to state or schools.¹⁶ Students eligible under Section 504 are funded at basic weight in the FEFP.

The scholarship amount for the student would be based on the program cost factor currently generated by the student under the FEFP. The amount of the scholarship for a student with a 504 accommodation plans would be equal to the amount of funding the school district currently receives for the student through the FEFP.

The bill has little or no state fiscal impact resulting from inclusion of “504” students in the McKay scholarship program. Currently, eligible “504” students are funded in the FEFP and will continue to be funded through the FEFP with no additional resources necessary for those students to take McKay scholarships. Students who receive specialized instructional services as part of the Voluntary Prekindergarten program and have a current IEP are already eligible for a McKay scholarship upon entry to Kindergarten. The inclusion of any of these students who may also have a 504 plan would not increase the number of students eligible for a McKay scholarship and therefore, would have no state fiscal impact. There would be a fiscal impact to school districts because current district students with 504 plan eligibility would leave the district and the Basic FEFP funds would follow.

¹⁶ DOE, April 6, 2011, on file with the committee.

VI. Technical Deficiencies:

Students who receive specialized instructional services as part of the Voluntary Prekindergarten program (VPK) and have a current IEP are already eligible for a McKay scholarship upon entry to Kindergarten. It is not clear how the addition of the 504 plan criteria for the McKay eligibility of such students would have an effect, if they are already eligible by virtue of their eligibility under s. 1002.66, F.S. The DOE indicates that is not likely that these VPK students with an IEP will also have a 504 plan.

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 Education Pre-K – 12 on April 14, 2011:**

The committee substitute:

- Deletes the provision allowing a student with a Tier I Response to Intervention plan to be eligible for a McKay Scholarship;
- Requires school districts to notify a parent of a student with a 504 accommodation plan about available school choice options;
- Allows parents of students with a 504 accommodation plan to enroll their children in a public school in an adjacent school district which has available space; and
- Revises the scholarship amount for an eligible student with a 504 accommodation plan.

B. Amendments:

None.