

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 Education Pre-K - 12 Committee

BILL: SB 1656

INTRODUCER: Senator Wise

SUBJECT: McKay Scholarships/Students With Disabilities

DATE: April 12, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Pre-meeting
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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 or a Tier 3 Response to Intervention plan. The bill provides that the scholarship amount for a student eligible under a 504 plan or Tier I plan would be based on the matrix that assigns the student to support level I of services as it existed prior to the 2000-2001 school year.

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

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.

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 term individual with a disability to include individuals who have a physical or mental impairment that substantially limits one or 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.

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.

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

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 or are receiving Tier 3 interventions 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 s. 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 students eligible for a Section 504 plan do not require the level of instruction (specialized instruction) required for students with IEPs. Section 504 plans identify accommodations that allow access to programs.

Tier 3 Response to Intervention Plan¹⁶

Problem-solving/Response to Intervention is Florida's framework for ensuring that instructional and intervention resources are matched to student needs. It is an integrated system where students receive Tier 3 interventions concurrently with Tier 1 and Tier 2 interventions and supports. It is based on a three-tier model that integrates core instruction (Tier 1), supplemental instruction/interventions (Tier 2), and intensive interventions (Tier 3). This 3-tiered approach provides all students with the opportunity for effective core instruction and the provision of supplemental and intensive instruction.

According to the DOE, Tier 3 does not refer to a finite category of students, rather it refers to the level of support necessary to foster success for all students and reflects the most intensive (amount of time and focus of instruction) level of intervention in Florida's multi-tiered system of support.¹⁷

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 or a Tier 3 response to Intervention plan. However, the student would be ineligible if his or her 504 plan was for six months or less or if his or her Tier I Response to Intervention plan was less than 90 days.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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.*

¹⁶ *Id.*

¹⁷ *Id.*

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.¹⁸ Students eligible under Section 504 are funded at basic Florida Education Finance Program (FEFP) levels. Students receiving Tier 3 interventions are funded at the basic FEFP level.

The bill provides that the scholarship amount for a student eligible under a 504 plan or Tier I plan would be based on the matrix that assigns the student to support level I of services as it existed prior to the 2000-2001 school year. The fiscal impact is indeterminate, since the number of eligible students who would receive a scholarship is unknown.

The bill has an indeterminate fiscal in that it expands the number of students who are eligible for the McKay Scholarship Program if the students received specialized instructional services under the Voluntary Prekindergarten Program during the previous school year and had a 504 accommodation plan.

VI. Technical Deficiencies:

On lines 218 and 223, the reference to support level I should be changed to 251, the base level of support for a student with a disability. According to the DOE, there is no Tier 3 Plan in the current implementation framework.¹⁹ The framework is characterized by a continuum of academic and behavior supports reflecting the need for students to have fluid access to instruction of varying intensity levels. The three tiers (Tier 1, Tier 2, and Tier 3) describe the level and intensity of the instruction/interventions provided across the continuum.²⁰ The

¹⁸ DOE, April 6, 2011, on file with the committee.

¹⁹ DOE, April 6, 2011, on file with the committee.

²⁰ *Id.*

intervention plan associated with an individual student addresses the supports and interventions the student is receiving in the multi-tiered system of support, not just Tier 3.

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.)

None.

B. Amendments:

None.

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