

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 Appropriations Subcommittee on Education

BILL: CS/CS/SB 1512

INTRODUCER: Appropriations Subcommittee on Education; Education Committee, and Senator Stargel and others

SUBJECT: Students with Disabilities

DATE: April 4, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>Klebacha</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1512 creates a new scholarship program called “Personal Learning Scholarship Accounts” for kindergarten through grade 12 students with a disability, repeals the Special Diploma, and creates new pathways for students with disabilities who meet the requirements to earn a standard diploma.

The new scholarship program created by the bill:

- Specifies parent and student eligibility requirements, prohibitions, responsibilities and obligations;
- Delineates allowable expenditures related to elementary, secondary and postsecondary education expenses; and
- Provides funding, payment, and accountability responsibilities.

In addition to repealing the Special Diploma and Special Certificate of Completion as options for public school students effective July 1, 2015, the bill:

- Requires postsecondary goals and career transition planning processes begin before a student with a disability turns age 14.
- Provides students with disabilities with an additional opportunity to satisfy the requirements for a standard high school diploma.

Additionally, the bill allows a student with a disability to defer receipt of the standard high school diploma if the individual education plan (IEP) prescribes special education or services through age 21 and the student meets high school graduation and other requirements.

Under the bill, the Commissioner of Education must grant a permanent exemption to a student who suffers from such a severe cognitive disability or physical disability that the student permanently lacks the capacity to take statewide, standardized assessments. The State Board of Education must adopt rules that include expediting the exemption process.

The bill prohibits a school district from imposing any additional requirements and from charging fees associated with private instructional personnel who are employed by the parent or under contract to observe a student in a public school setting or provide services in the educational setting.

Finally, the bill provides that parents of a student with a substantial reading deficiency must be provided with specific information related to the criteria, policies, and evidence used to review a portfolio. The bill also creates a new, good cause exemption from retaining a 3rd grade student and prohibits a student from being retained more than once in the 3rd grade.

Senate Bill 2500, the Fiscal Year 2014-2015 proposed General Appropriations Bill, appropriates \$18.4 million for this program based on the estimated number of students who would meet the eligibility requirements for this program and the specified funding levels for those students.

The bill takes effect upon becoming a law, unless otherwise provided.

II. Present Situation:

Individuals with Disabilities Education Act (IDEA)¹

Federal law requires states to make a free appropriate public education available to all children with disabilities residing in the state between the ages of 3 and 21, including children with disabilities who have been suspended or expelled from school.² As the state educational agency, the Florida Department of Education (DOE) must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.³

For each eligible student or child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, an individual educational plan (IEP) or individual family support plan must be developed, reviewed, and revised.⁴ In developing an IEP, the IEP team is required to consider a child's strengths, concerns of the parents for enhancing education, results of the

¹ 20 U.S.C. §.1400 et. seq., as amended by P.L. 108-446; 34 C.F.R. § 300.17.

² 20 U.S.C. § 1412(a)(1).

³ 20 U.S.C. § 1412(a)(11). 34 C.F.R. § 300.149.

⁴ Rule 6A-6.03028(3), F.A.C.

initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child, as well as special factors.⁵

States receiving Individuals with Disabilities Education (IDEA) funds must comply with detailed procedural requirements, including identifying, evaluating, and making placements for students with disabilities and for developing an individualized education program for each student.⁶

Transition to Postsecondary Education and the Workforce

Citing research that students with disabilities are less likely than their peers to successfully transition from high school to postsecondary education or the workforce, the U.S. General Accounting Office (GAO) notes that those students face several longstanding challenges accessing services that may assist them, including services such as tutoring, vocational training, and assistive technology.⁷ Eligible students with disabilities are entitled to transition planning services during high school, but after leaving high school, to receive services that facilitate their transition they must apply as adults and establish eligibility for programs administered by multiple federal agencies.⁸ Students with disabilities may face delays in service and end up on waitlists if these programs are full.⁹

The IDEA requires that beginning not later than the first IEP to be in effect when the student turns 16, school officials must include in the IEP measurable postsecondary goals related to training, education, employment, and where appropriate, independent living skills.¹⁰ The IEP also must specify the transition services¹¹ needed to assist the student in reaching those goals.¹² School officials are required to invite the student to a meeting where the transition services

⁵ 20 U.S.C. s. 1414(d)(3)(A) and (B).

⁶ 20 U.S.C. § 1415.

⁷ *Students with Disabilities, Better Coordination Could Lessen Challenges in the Transition from High School*, U.S. Government Accounting Office (GAO), GAO-12-594, July 12, 2012. See <http://gao.gov/products/GAO-12-594> (last visited February 22, 2014). Florida participated in the GAO review of federal programs.

⁸ *Id.* Students remain eligible for transition planning and services, as well as other IDEA services, until they graduate from high school with a regular high school diploma or exceed the earlier of age 21 or the eligibility age for a free appropriate public education under state law. 20 U.S.C. § 1412(a)(1)(B)-(C), 34 C.F.R. § 300.102(a)(3)(i) and (ii), and Rule 6A-6.03028(1)(a), F.A.C. While federal law authorizes students to receive a free appropriate public education up until age 22, eligibility for students aged 18-21 is determined by states. 20 U.S.C. § 1412(a)(1) and 34 C.F.R. § 300.102. In addition to IDEA, there are a range of services to support students with disabilities in their transition out of high school. The programs vary in the target population served, services provided, grant funding amounts, and other characteristics. In addition, they are administered through various federal agencies, each with its own eligibility requirements and application processes. GAO-12-594, July 12, 2012. Federally funded programs that provide transition services, as defined in the GAO report, are often delivered through state and local entities that have flexibility on how to administer services. *Id.*

⁹ *Students with Disabilities, Better Coordination Could Lessen Challenges in the Transition from High School*, U.S. Government Accounting Office (GAO), GAO-12-594, July 12, 2012.

¹⁰ 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

¹¹ Under IDEA, transition services are defined as a coordinated set of activities that (1) is designed to be within a results-oriented process focused on improving the academic and functional achievement of a child with a disability to facilitate the child's movement from school to post-school activities; (2) is based on the individual child's needs, strengths, preferences, and interests; and (3) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation. 20 U.S.C. § 1401(34). Transition services are also defined in Rule 6A-6.03411(1)(nn), F.A.C.

¹² 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

detailed in the IEP are discussed.¹³ When appropriate, they also must invite a representative of any participating outside agency that is likely to be responsible for providing or paying for services, with the prior consent of the parent or student who has reached the age of majority.¹⁴

During a Florida student's eighth grade year or during the school year of the student's 14th birthday, whichever occurs first, the IEP for a student with a disability must contain a statement of whether he or she is pursuing a course of study leading to a standard high school diploma or a special diploma.¹⁵ Current law provides that nothing limits or restricts the right of an exceptional student solely to a special diploma or special certificate of completion.¹⁶ A student must, upon proper request, be afforded the opportunity to fully meet all requirements and procedures in law¹⁷ and qualify for a standard diploma upon graduation.¹⁸

Florida High School Diploma

Currently Florida public high school students have four options for obtaining a standard high school diploma -- a traditional 4-year, 24-credit option;¹⁹ an 18-credit graduation option;²⁰ or completion of an International Baccalaureate (IB) or Advanced International Certificate of Education (AICE) curriculum.²¹ In addition, current law requires each school district to adopt an early graduation policy allowing a high school student who completes 24 credits in less than eight semesters and meets the GPA and assessment requirements to graduate early.²² A student who fails to meet the required credits or achieve a 2.0 GPA must be awarded a certificate of completion.²³ The state is not obligated to provide special education and related services to a student with a disability who has graduated from high school with a standard diploma.²⁴ This provision does not apply to a student who has graduated from high school, but has not been awarded a regular high school diploma.²⁵ A standard diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate of completion or a general educational development credential (GED).²⁶

¹³ 20 U.S.C. § 1414(d)(1)(B)(vi), 34 C.F.R. § 300.321, and Rule 6A-6.03028(3)(c)7., F.A.C.

¹⁴ 20 U.S.C. § 1414(d)(1)(B)(vi), 34 C.F.R. § 300.321(b)(3), and Rule 6A-6.03028(3)(c)8., F.A.C. At the discretion of the parent or the agency, the IEP team may include other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. 20 U.S.C. § 1414(d)(1)(B)(vi), 34 C.F.R. § 300.321(a)(6) and (c), and Rule 6A-6-6.03028(3)(c)6., F.A.C.

¹⁵ Rule 6A-1.09961(2)(b), F.A.C., and Rule 6A-6.03028(3)(h)8., F.A.C.

¹⁶ Section 1003.438, F.S.

¹⁷ Sections 1003.428 or 1003.4282, F.S., as applicable.

¹⁸ Section 1003.438, F.S.

¹⁹ Section 1003.428, F.S., established high school graduation requirements beginning with students entering grade 9 in the 2007-2008 school year. Section 1003.4282, F.S., established high school graduation requirements for students entering grade 9 in the 2013-2014 school year and thereafter.

²⁰ Section 1002.3105(5), F.S. Effective July 1, 2013, students may earn a standard high school diploma in 18 credits by achieving a 2.0 GPA; earning credit in the same 15 English Language Arts, mathematics, science, social studies, and fine and performing arts courses required under the traditional 24-credit option; and earning 3 elective credits, instead of the 6 electives required by the 24-credit option.

²¹ Sections 1003.428 and 1003.4282, F.S.

²² Section 1003.4281, F.S.,

²³ Section 1003.4282(7), F.S.

²⁴ 20 U.S.C. § 1412(a)(1)(B)-(C), 34 C.F.R. § 300.102(a)(3)(i), and Rule 6A-6.03028(1)(a), F.A.C.

²⁵ 34 C.F.R. § 300.102(a)(3)(ii).

²⁶ 20 U.S.C. § 1412(a)(1)(B)-(C), 34 C.F.R. § 300.102(a)(3)(i), and Rule 6A-6.03028(1)(a), F.A.C.

Florida Special Diploma

A student with a disability²⁷ must be awarded a special diploma upon meeting a combination of state and district school board requirements that are included in the district-adopted student progression plan.²⁸ School boards may award special diplomas based on two options.²⁹ For students entering ninth grade in or after 1999-2000, special diploma requirements for the first option must include:³⁰

- Demonstration of proficiency at the independent, supported, or participatory level of each Florida academic standard for a special diploma, as determined through the IEP process;³¹ or
- Mastery of Florida's academic standards through successful completion of courses that meet graduation requirements for a standard diploma;³² and
- Completion of the minimum number of course credits for a special diploma as prescribed by the school board.³³

The second option requires district school boards to include procedures for determining and certifying mastery of demonstrated employment and community competencies to ensure that the student:³⁴

- Has achieved all the annual goals and short-term objectives which were specified on the IEP related to the employment and community competencies;
- Is employed in a community-based job, for the number of hours per week specified in the student's training plan, for the equivalent of one semester, and paid a minimum wage in compliance with the requirements of the Fair Labor Standards Act; and
- Has mastered the employment and community competencies specified in a training plan. The training plan must be developed and signed by the student, parent, teacher, and employer prior to placement in employment.

Each school board must develop procedures for ensuring that students may select and move between the special diploma options, if both options are provided by the school district, and between courses of study leading to standard or special diplomas, as appropriate.³⁵ A student who meets all special requirements of the district school board, but fails to meet the appropriate special state minimum requirements must be awarded a special certificate of completion.³⁶

²⁷ Section 1003.438, F.S., applies to a student who has been identified, in accordance with State Board of Education rules, as a student with a disability who has an intellectual disability; an autism spectrum disorder; a language impairment; an orthopedic impairment; and other health impairment; a traumatic brain injury; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; or a student who is deaf or hard of hearing or dual sensory impaired.

²⁸ Section 1003.438, F.S., Rule 6A-1.09401(1) and (3), F.A.C., and Rule 6A-1.09961(2)(c), F.A.C.

²⁹ Rule 6A-1.09961(1), F.A.C.

³⁰ Rule 6A-1.09961(1), F.A.C.

³¹ Rule 6A-1.09961(12)(a), F.A.C.

³² Rule 6A-1.09961(13), F.A.C.

³³ Rule 6A-1.09961(12)(b), F.A.C.

³⁴ Rule 6A-1.09961(14), F.A.C. The DOE notes that students seeking this option may also earn course credits, which are determined by the school board. The DOE also notes that in 2012, eight districts reported that they did not offer this option. DOE correspondence, February 24, 2014. On file with the Senate Education committee.

³⁵ Rule 6A-1.09961(2)(a), F.A.C.

³⁶ Section 1003.438, F.S.

Extraordinary Exemption

Current law provides a process for granting an extraordinary exemption from administration of a statewide, standardized assessment for a student with a disability who is prevented by a circumstance or condition from physically demonstrating the mastery of acquired skills that are measured by a statewide standardized assessment.³⁷ The IEP team may request an exemption from testing during a particular testing window.³⁸ The request must be made to the district superintendent who must make a recommendation to the Commissioner of Education. A parent is permitted to appeal the Commissioner's decision.³⁹

III. Effect of Proposed Changes:

Personal Learning Scholarship Accounts

The bill creates a Personal Learning Scholarship Accounts program for kindergarten through grade 12 students who have a disability. The bill authorizes creation of personalized accounts for individual students, specifies parent and student obligations, delineates allowable expenditures related to elementary, secondary and postsecondary education, and provides funding and payment responsibilities.⁴⁰

Student Eligibility

A parent may establish and maintain a personal account if his or her child:

- Is a resident of this state;
- Is eligible to enroll in kindergarten through grade 12 in a Florida public school;
- Has a disability that meets the Agency for Persons with Disabilities (APD) eligibility criteria;
- Is meeting "regular school attendance" requirements;
- Is the subject of an Individual Learning Services Plan (ILSP);⁴¹ and
- Is a public school student, private school student, home education program student, a student receiving a McKay or FTC scholarship, or a student participating in a private tutoring program.

Students are not eligible if:

- The student or student's parent has accepted any payment, refund, or rebate from a provider of any services received while participating in the program;

³⁷ Section 1008.212, F.S.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Disability means autism, as defined in s. 393.063(3), F.S.; cerebral palsy, as defined in s. 393.063(4), F.S.; Down syndrome, as defined in s. 393.063(13), F.S.; an intellectual disability, as defined in s. 393.063(21), F.S.; Prader-Willi syndrome, as defined in s. 393.063(25), F.S.; or Spina bifida, as defined in s. 393.063(36), F.S.; Williams syndrome; and, for a student in kindergarten, being a high-risk child, as defined in s. 393.063(20)(a), F.S.

⁴¹ The ILSP is developed by APD, in consultation with the parent, for each student and documents the following: the student has an eligible disability; learning goals and objectives for the student that are linked directly to how program funds will be spent; how attendance requirements will be met (public school, private school, home education program, or a private tutoring program); and how progress towards meeting the individual learning goals and objectives specified in the plan will be assessed and documented for purposes of continued participation in the program.

- The student’s participation in the program has been denied or revoked by the Executive Director for the Agency for Persons with Disabilities; or
- The student’s parent has forfeited participation in the program for failure to comply with the program’s requirements.

Parent and Student Obligations

A parent who applies for program participation is exercising his or her parental option to determine the appropriate placement or services that best meet the needs of his or her child. Parents are responsible for the following:

- Signing an agreement with the APD and annually submitting a notarized, sworn compliance statement to the department to:
 - Affirm that the student meets minimum student attendance requirements;⁴²
 - Use funds only for authorized purposes to meet the student’s goals and objectives in the ILSP;
 - Affirm that the student takes all appropriate assessments, in accordance with the academic program selected by the parent who enrolls the student in a private school, a home education program, or a scholarship program pursuant to ss. 1002.39 or 1002.395, F.S.;
- Requesting participation in the program at least 60 days before the date of the first program payment;
- Affirming that the student remains in good standing with the provider or school if those options are selected by the parent;
- Affirming that the parent will not transfer any college savings funds to another beneficiary and will not take possession of any funding contributed by the state;
- Applying for admission of his or her child to a private school if this option is selected by the parent;
- Annually renewing participation in the program;
- Be responsible for payment of eligible expenses in excess of the amount of the personal account; and
- Maintaining a portfolio of records for two years to document student learning and requiring it to be available for inspection upon 15 days written notice from the district school superintendent.

A parent who fails to comply with these requirements forfeits the personal account.

Allowable Expenditures

Funds from the personalized account may be used for the following, as specified in the student’s ILSP:

⁴² Pursuant to s. 1003.01, F.S., “regular school attendance” means the actual attendance of a student during the school day as defined by law and rules of the State Board of Education. Regular attendance within the intent of s. 1003.21, F.S., may be achieved by attendance in: a public school supported by public funds; a parochial, religious, or denominational school; a private school supported in whole or in part by tuition charges or by endowments or gifts; a home education program that meets the requirements of chapter 1002, F.S.; or a private tutoring program that meets the requirements of chapter 1002, F.S. *See also* ss. 1003.21 and 1003.24, F.S.

- Instructional materials, including digital devices, digital periphery devices, and assistive technology devices that allow a student to access instruction or instructional content;
- Curriculum;
- Specialized services selected by the parent and specified in the student's ILSP, including, but not limited to applied behavior analysis services⁴³ and services provided by speech-language pathologists,⁴⁴ occupational therapists,⁴⁵ physical therapists,⁴⁶ and listening and spoken language specialists;⁴⁷
- Enrollment in, or tuition or fees associated with enrollment in, an eligible private school, an eligible postsecondary educational institution, a private tutoring program,⁴⁸ a virtual program offered by a DOE-approved private online provider,⁴⁹ or an approved online course;⁵⁰
- Fees for assessments specified in the student's ILSP;
- Contributions to a Coverdell education savings account for the benefit of the eligible student;⁵¹ and
- Contracted services provided by a public school or school district, including classes and extracurricular programs for the services specified in the ILSP or additional services.

A student who receives services under a contract is not considered to be enrolled in a public school for eligibility purposes.

A specialized service provider, eligible private school, eligible postsecondary educational institution, private tutoring program provider, online or virtual program provider, public school, school district, or other entity receiving payments may not share, refund, or rebate any moneys from the personalized account to the parent or participating student.

Term of the Program

Under the bill, the payments made remain in force until a student fails to comply with the program requirements, has funds revoked by the APD Executive Director, graduates from high school, or reaches 22 years of age, whichever occurs first.

⁴³ See ss. 627.6686 and 641.31098, F.S.

⁴⁴ See s. 468.1125, F.S.

⁴⁵ See s. 468.203, F.S.

⁴⁶ See s. 486.021, F.S.

⁴⁷ Providers must be approved by the DOE or the Agency for Persons with Disabilities (APD). The DOE maintains a list of approved providers. Providers may request approval from the department. If a provider is not on the current DOE-approved list, parents may request approval of a specified provider who must meet criteria (e.g., licensure or certification in an applicable field of study and delivery of services according to professionally accepted standards). Rule 6A-6.03033, F.A.C. See also http://www.floridaearlylearning.com/providers/provider_menu/specialized_instructional_services_providers.aspx (last visited March 19, 2014). All APD iBudget Waiver providers must be enrolled by the Agency for Healthcare Administration as a Medicaid provider and also sign a contract with APD to render waiver services. E-mail, APD, March 13, 2014. On file with the Senate Committee on Education. Service descriptions and a list eligible providers are available at http://www.flddresources.org/html/service_descriptions.htm (last visited March 19, 2014).

⁴⁸ See s. 1002.43, F.S.

⁴⁹ See s. 1002.45(2)(a), F.S.

⁵⁰ See ss. 1003.499 or 1004.0961, F.S.

⁵¹ 26 U.S.C. § 530 of the Internal Revenue Code.

APD Executive Director

The bill requires the Executive Director to deny, suspend, or revoke a student's participation in the program or the use of program funds, if the student's health, safety, or welfare is in jeopardy or fraud is suspected. The Executive Director may also deny, suspend, or revoke the use of program funds for material noncompliance with law and rules.

APD

The bill authorizes the APD to perform direct program oversight and contract for some services. Under the bill, the APD may receive an administrative fee of up to ten percent from the appropriation for the program. The agency responsibilities include:

- Receiving applications and determines student eligibility;
- Developing individual learning services plans in consultation with the parent;
- Assigning a level of service category for each student that documents the nature and intensity of services needed to meet the learning outcomes specified in the plan;⁵²
- Establishing and maintaining a separate Personal Learning Account for each eligible student;
- Verifying qualifying expenditures;
- Establishing a list of eligible providers;
- Requiring working with an Advisory Work Group to develop a newly created Individual Learning Services Plan, levels of services requirements, a system for payment of claims and providers, and a system to document and assess progress toward meeting the individual learning goals and objectives in the services plan; and
- Requiring rules to implement the program and enroll the first students in a statewide pilot program on a first-come, first-served basis no later than January 31, 2015.

Department of Education

The DOE's responsibilities are to maintain a list of eligible private schools and compare the list of students participating in the program with the public school enrollment lists before each program payment to avoid duplicate payments.

Florida K-20 Education Code

The Commissioner of Education, the Department of Education, and the school districts retain all current duties, authority, and responsibilities as specified in the Florida K-20 Education Code.

Auditor General

The Auditor General must conduct an annual financial and operational audit related to the program. As a part of this audit, the Auditor General must verify, at a minimum, the total amount of students served and eligibility of reimbursement made by the APD and transmit that information to the APD.

⁵² The level of service category will be used to determine the amount of the award for the student.

Transition Planning

Under the bill, the postsecondary goals and career transition planning process begins before a student with a disability turns 14 so that a plan is in place by the time he or she turns 16. The IEP must include specific components, including a statement of measurable, long term postsecondary and career education goals, a statement of intent to pursue a standard high school diploma, as determined by the parent, and a description of how the student will fully meet the standard high school diploma requirements. Any change in goals must be approved by the parent and is subject to an independent review.

High School Graduation⁵³

The bill repeals the special diploma and the special certificate of completion as graduation options for students with disabilities, effective July 1, 2015.⁵⁴

The bill provides a student who has a disability and for whom the Florida Alternate Assessment (FAA) is the most appropriate measure of the student's skills with the opportunity to satisfy the requirements for a standard high school diploma through the following:⁵⁵

- A combination of appropriate course substitutions, assessments, industry certifications, and other options that meet the criteria specified in State Board of Education rule.
- A portfolio of quantifiable evidence documenting a student's mastery of academic standards using rigorous metrics that are specified in State Board of Education rule.⁵⁶

These provisions apply to students entering grade 9 in the 2014-2015 school year and thereafter.

The bill allows a student to defer receipt of the standard high school diploma if the IEP prescribes special education or services through age 21, the student meets the high school graduation requirements, and is enrolled in accelerated college credit instruction, industry certification courses that lead to college credit, a collegiate high school program, courses necessary to satisfy the Scholar designation requirements, or a structured work-study, internship, or pre-apprenticeship program. Additionally, the bill allows a student who receives a certificate of completion and has an IEP that prescribes special education, transition planning, transition

⁵³ The importance of making informed decisions about diploma options for students with disabilities has been underscored in recent reports by the National Center for Learning Disabilities, *A Critical Look at the Graduation Rate of Students with Disabilities*, 2013, and the National Center on Educational Outcomes, *Diploma Options, Graduation Requirements, and Exit Exams for Youth with Disabilities*, 2012. See

[http://www.nclد.org/?_utma=56814325.123698153.1394924720.1394924720.1394924720.1&_utmb=56814325.1.10.1394924720&_utmc=56814325&_utmz=56814325.1394924720.1.1.utmcsr=bing|utmccn=\(organic\)|utmcmd=organic|utmctr=National%20Center%20for%20Learning%20Disabilities%20Critical%20Look%20at%20the%20Graduation%20Rate%20of%20Students%20with%20Disabilities%202013%20See&_utmv=-&_utmz=227182617http://ici.umn.edu/index.php/products/view/460](http://www.nclد.org/?_utma=56814325.123698153.1394924720.1394924720.1394924720.1&_utmb=56814325.1.10.1394924720&_utmc=56814325&_utmz=56814325.1394924720.1.1.utmcsr=bing|utmccn=(organic)|utmcmd=organic|utmctr=National%20Center%20for%20Learning%20Disabilities%20Critical%20Look%20at%20the%20Graduation%20Rate%20of%20Students%20with%20Disabilities%202013%20See&_utmv=-&_utmz=227182617http://ici.umn.edu/index.php/products/view/460) (last visited March 15, 2014).

⁵⁴ The 2013 K-20 Students with Disabilities Education Pathway Task Force recommended the repeal of Florida's special diploma. The task force was created pursuant to Special Appropriation 129 in the General Appropriations Act, chapter 2013-40, L.O.F.

⁵⁵ According to the DOE, the percent of students assessed on the FAA, as compared to students assessed on other statewide, standardized assessments (i.e., FCAT, FCAT 2.0, and end-of-course assessments) was 1.2 percent for 2009-2010, 2010-2011, and 2011-2012. DOE e-mail, April 3, 2014. On file with the Senate Education Committee.

⁵⁶ A portfolio may consist of documented work experience, internships, and community service.

services, or related services through 21 years of age to continue to receive the specified instruction and services.

Statewide, Standardized Assessments

A student who has a disability and for whom the IEP team determines that the statewide, standardized assessments cannot accurately measure the student's abilities, taking into consideration all allowable accommodations, must have assessment results waived for the purpose of receiving a course grade and a standard high school diploma.⁵⁷ The waiver must be designated on the student's transcript.

Based on information that a reasonably prudent person would rely upon, the Commissioner of Education must grant a permanent exemption to a student who suffers from such a severe cognitive disability or physical disability that the student permanently lacks the capacity to take statewide, standardized assessments. The State Board of Education must adopt rules that include expediting the exemption process.

Other

Current law authorizes private instructional personnel who are employed by the parent or under contract to observe a student in a public school setting or provide services in the educational setting at a time agreed upon by the private instructional personnel and the school.⁵⁸ The bill prohibits a school district from imposing any additional requirements and from charging fees in such circumstances.

Any third-grade student scoring Level 1 on a statewide, standardized assessment for grade 3 students must be retained in third grade.⁵⁹ Some students may qualify for a good cause exemption and be promoted to fourth grade.⁶⁰ Through a student portfolio, a student may be promoted to fourth grade if he or she demonstrates at least a Level 2 performance on the statewide standardized assessment.⁶¹

The bill provides that parents of a student with a substantial reading deficiency must be provided with specific information related to the criteria, policies and evidence used to review a portfolio. The bill allows the parent of a third grade student who is at risk of retention to request that the school immediately start compiling a portfolio. The bill also requires that a student who was granted a good cause exemption be provided with intensive reading instruction and intervention. The bill creates a new good cause exemption from retention of a 3rd grade student who was previously retained in kindergarten, grade 1, grade 2, or grade 3 for a total of two years and

⁵⁷ Section 1008.22(3)(c)2., F.S. This applies to any student who is documented as having an intellectual disability; a hearing impairment, including deafness; a speech or language impairment; a visual impairment, including blindness; an emotional or behavioral disability; an orthopedic or other health impairment; an autism spectrum disorder; a traumatic brain injury; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia. Section 1007.02(2), F.S.

⁵⁸ Section 1003.572(3), F.S. These personnel include licensed speech-language pathologists, occupational therapists, physical therapists, and psychologists and must meet the background screening requirements in s. 1012.32 or s. 1012.321, F.S.

⁵⁹ Section 1008.25(5)(b), F.S.

⁶⁰ Section 1008.25(6)(b), F.S.

⁶¹ Section 1008.25(6)(b)4., F.S.

received intensive reading intervention for two or more years, but still demonstrates a deficiency in reading. Additionally, the bill prohibits a student from being retained in 3rd grade more than once.

The bill takes effect upon becoming a law, unless otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article IX, s. 1, Fla. Const., provides in part that “[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people require.” The Opportunity Scholarship Program (OSP) was found unconstitutional as fostering plural, nonuniform systems of education in direct violation of the constitutional mandate for a uniform system of free public schools in *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006). However, the Florida Supreme Court also noted that “[w]e reject the suggestion by the State and amici that other publicly funded educational and welfare programs would necessarily be affected by our decision. Other educational programs, such as the program for exceptional students at issue in *Scavella*, are structurally different from the OSP, which provides a systematic private school alternative to the public school system mandated by our constitution.” *Id.* at 412.

Article I, s. 3., Fla. Const., provides in that that “[n]o revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.” The Opportunity Scholarship Program was found unconstitutional under the no-aid provision to the extent that the program authorized state funds to be paid to sectarian schools. *See, Bush v. Holmes*, 886 So.2d 340 (Fla. 1st DCA 2004). The First District Court of Appeal also noted in dicta in that decision that “nothing in the Florida no-aid provision would create a constitutional bar to state aid to a nonprofit institution that was not itself sectarian, even if the institution is affiliated with a religious order or religious organization.” *Id.* at 362. Likewise, “[a] government program that merely purchase at market prices secular services or products from a church, synagogue, or mosque would not, by itself, violate the no-aid provision”, but “does not remove such

social services program from examination under the no-aid provision.” *Council For Secular Humanism v. McNeil*, 44 So.3d 112, 119 (Fla. 1st DCA 2010).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A family of a student with a disability eligible to participate in this program would decide which services would best meet their student’s needs and spend funds accordingly, within the limitations of the personal account established under CS/CS/SB 1512. Families of students not currently enrolled in a public school would be eligible for funding for authorized services, making those services more accessible and affordable.

C. Government Sector Impact:

Student eligibility for funding under the Personal Learning Scholarship Accounts for program is determined based on the student having a disability as defined in the bill and meeting the APD eligibility requirements.

Senate Bill 2500, the Fiscal Year 2014-2015 proposed General Appropriations Bill, appropriates \$18.4 million for this program based on the specified funding levels and the estimated number of students who would meet the eligibility requirements for this program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.81, 409.1451, 1003.4282, 1003.572, 1007.263, and 1008.25.

This bill creates the following sections of the Florida Statutes: 1002.385, 1003.5716, and 1008.2121.

This bill repeals section 1003.438 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Education on April 2, 2014:

The Committee Substitute:

- Reassigns the major responsibilities for the program from the school districts, the Department of Education, and the Commissioner of Education to the Agency for Persons with Disabilities;
- Revises the eligibility requirements for students whose parents choose to participate in the program;
- Revises the source of funding for the program;
- Requires the APD to work with an Advisory Work Group to develop a newly created Individual Learning Service Plan, levels of services requirements, a system for payment of claims and providers, and a system to document and assess progress toward meeting the individual learning goals and objectives in the services plan;
- Requires rules to implement the program and enroll the first students in a statewide pilot program on a first-come, first-served basis no later than January 31, 2015; and
- Provides that the new requirements for attaining a standard high school diploma apply to students for whom the Florida Alternate Assessment is the most appropriate measure of the student's skills.

CS by Education on March 18, 2014:

The committee substitute:

- Adds a definition of an “approved provider” to mean a provider approved by the Agency for Persons with Disabilities or approved by the Department of Education pursuant to s. 1002.66, F.S.;
- Adds that a student having Williams syndrome is eligible to participate in the program;
- Adds a new requirement that parents maintain a portfolio of records for two years to document student learning and further requires the portfolio to be available for inspection upon 15 days written notice from the district school superintendent;
- Adds a requirement for the State Board of Education to adopt rules to administer an electronic system of payment for authorized expenditures;
- Re-assigns to the Department of Education the Chief Financial Officer's responsibility for payments to fund personalized accounts;
- Clarifies that only a student who has an intellectual or cognitive disability and who takes the Florida Alternate Assessment may use new criteria to satisfy standard high school diploma requirements;
- Adds a provision allowing the parent of a third grade student who is at risk of retention to request that the school immediately start compiling a portfolio;
- Adds a requirement that a student who was granted a good cause exemption be provided with intensive reading instruction and intervention and requires the school district to help schools and teachers meet this requirement;

- Creates a new good cause exemption from retaining a 3rd grade student who:
 - Received intensive reading intervention for two or more years, but still demonstrates a deficiency in reading; and
 - Was previously retained in kindergarten, grade 1, grade 2, or grade 3 for a total of two years;
- Adds a provision that prohibits a student from being retained in 3rd grade more than once;
- Eliminates the specialty high school diploma designation; and
- Makes technical and conforming changes.

B. Amendments:

None.