

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/SB 1088

INTRODUCER: Education Pre-K - 12 Committee and Senator Stargel and others

SUBJECT: Education Programs for Individuals with Disabilities

DATE: February 18, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	Fav/CS
2.	Sikes	Elwell	AED	Pre-meeting
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1088 expands eligibility requirements for students enrolled in education programs for students with disabilities. Specifically, the bill:

- Amends the John M. McKay Scholarship for Students with Disabilities Program (McKay) to:
 - Exempt foster children from the prior school year attendance requirement for determining student eligibility.
 - Authorize a private school to establish a transition-to-work program for McKay students.
 - Enable McKay students to take virtual courses without reducing the scholarship amount.
- Saves from repeal the Adults with Disabilities Workforce Education Pilot Program, and renames the program the “Adults with Disabilities Workforce Education Program.”

According to the Department of Education, the estimated fiscal impact to the Florida Education Finance Program (FEFP) of exempting the McKay scholarship amount from the 1.0 FTE requirement is approximately \$309,000, based on the virtual course enrollments of current McKay students.

The bill provides an effective date of July 1, 2016, except where otherwise expressly provided.

II. Present Situation:

McKay Scholarship For Students With Disabilities Program

The John M. McKay Scholarship Program For Students With Disabilities Program (McKay) provides the option to attend an eligible public or private school for students with disabilities that have an individual education plan (IEP) or an accommodation plan that has been issued under s. 504 of the Rehabilitation Act of 1973 (504 accommodation plan).¹

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; and other health impairments; 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.²

Eligibility Requirements

The parent of a student with a disability may request and receive a McKay scholarship for the child to enroll in and attend a private school if:³

- The student has:
 - Spent the prior school year in attendance at a Florida public school or the Florida School for the Deaf and the Blind; or
 - Received specialized instructional services under the Voluntary Prekindergarten Education Program⁴ during the previous school year and has a current IEP or 504 accommodation plan.
- The parent has obtained acceptance for admission of the student to a private school that is eligible for the program, and has requested a McKay scholarship from the Department of Education (DOE) at least 60 days before the date of the first scholarship payment.

Prior School Year Attendance

For purposes of scholarship eligibility, the term “prior school year in attendance” means the student was enrolled and reported by:⁵

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

¹ Section 1002.39(1), F.S.

² Section 1002.39(1), F.S.

³ Section 1002.39(2), F.S. The public school option is discussed in the McKay Public School Option portion of this analysis.

⁴ In 2010, the Legislature established a specialized instructional services program for children with disabilities as an option under the Voluntary Prekindergarten Education (VPK) Program. Beginning with the 2012-13 academic year, a child who has a disability is eligible for specialized instructional services if the child is eligible for the VPK Program and has a current IEP developed by the district school board. Section 1002.66, F.S.; see also s. 1002.53, F.S.

⁵ Section 1002.39(2)(a)2., F.S. 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. Section 1003.21(1)(e), F.S.

- 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 and the student was at least 4 years old when enrolled and reported and eligible for services under the school attendance requirements for prekindergarten aged children with disabilities.

The Legislature has authorized one exception to the prior school year attendance requirement. 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 due to a parent's permanent change of station orders is exempt from the prior school year attendance requirements, but must meet all other eligibility requirements to participate in the McKay Scholarship Program.⁶

Scholarship Funding and Payments

The amount of a McKay scholarship is a statutorily calculated amount or the amount of the private school's tuition and fees, whichever is less.⁷ Until a school district completes a matrix of services, the calculation must be based on the matrix that assigns the student to support Level I of services.⁸ When the school district completes the matrix, the amount of the payment is adjusted as needed.⁹

State funding per student may not exceed 1.0 FTE, including traditional and virtual courses.¹⁰ If a student's course load exceeds 1.0 FTE, the funding for each course is reduced proportionately to equal 1.0 FTE.¹¹ For example, although McKay students are authorized to take up to two virtual courses,¹² the scholarship amount is reduced in order to accommodate the additional courses and still comply with the 1.0 FTE requirement.

Public School Transition to Postsecondary Education and Career Opportunities

To ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities, an IEP team must develop an IEP for identifying the need for transition services.¹³

The plan must:¹⁴

⁶ Section 1002.39(2)(a), F.S. (flush left provision at the end of the paragraph).

⁷ Section 1002.39(10)(b), F.S. The McKay scholarship has a maximum cap, which is equivalent to the base student allocation in the Florida Education Finance Program (FEFP) multiplied by the appropriate cost factor for the educational program that would have been provided for the student in the district school to which the student was assigned, multiplied by the district cost differential. Section 1002.39(10)(a), F.S.

⁸ Section 1002.39(10)(a)4., F.S.

⁹ *Id.*

¹⁰ Section 1011.61(4)(a), F.S.

¹¹ *Id.*

¹² Section 1002.39(3)(f), F.S., states that a student is not eligible for McKay while participating in a virtual school, correspondence school, or distance learning program that receives state funding pursuant to the student's participation, unless the participation is limited to no more than two courses per school year.

¹³ Section 1003.5716(1), F.S. Any change in the IEP goals must be approved by the parent is subject to verification for appropriateness by an independent reviewer selected by the parent. Section 1003.5716(3), F.S.

¹⁴ Section 1003.5716, F.S.

- Be developed by the time the student is 14, in order for the student’s postsecondary goals and career goals to be identified and in place when the student turns 16 years old.¹⁵
- Consider the student’s need for instruction in the area of self-determination and self-advocacy to assist the student’s active and effective participation in an IEP meeting.
- Prepare the student to graduate from high school with a standard high school diploma with a Scholar designation, unless the parent chooses a Merit designation.
- Include a statement of appropriate measurable long-term postsecondary education and career goals based upon age-appropriate transition assessments related to training, education, employment, and if appropriate, independent living skills and the transition services, including courses of study needed to assist the student in reaching those goals.
- Include a statement, when the student turns 16,¹⁶ of:
 - Intent to pursue a standard high school diploma and Scholar or Merit designation, as determined by the parent.
 - Intent to receive a standard high school diploma before the student turns 22. The statement must include a description of how the student will fully meet the requirement for receiving a standard high school diploma, including a portfolio.
 - Outcomes and additional benefits expected by the parent and the IEP team at the time of the student’s graduation.

If a participating agency responsible for transition services fails to provide the transition services described in the IEP, the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student that are specified in the IEP.¹⁷ The participating agency is not relieved of the responsibility to provide for or pay for any transition services that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.¹⁸

Adults with Disabilities Workforce Education Pilot Program

The Adults with Disabilities Workforce Education Pilot Program (pilot program) was established by the Legislature in 2012 as a Department of Education (DOE) pilot program in Hardee, DeSoto, Manatee, and Sarasota counties.¹⁹

Student Eligibility

The Pilot Program provides the option of receiving a scholarship for instruction at private schools for up to 30 students who:²⁰

- Have a disability;²¹

¹⁵ *Id.*

¹⁶ Sixteen or younger if determined appropriate by the parent and the IEP team. *Id.* The statement must be updated annually. *Id.*

¹⁷ Section 1003.5716(4), F.S.

¹⁸ *Id.*

¹⁹ Section 12, ch. 2012-134, L.O.F.; Section 1004.935, F.S.

²⁰ Section 1004.395(1), F.S.

²¹ The term “student with a disability” includes a student who is 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

- Are 22 years of age;
- Are receiving instruction from an instructor in a private school to meet high school graduation requirements;
- Do not have a standard high school diploma or a special high school diploma; and
- Receive supported employment services.²²

A student may participate in the pilot program until the student graduates from high school or reaches the age of 40 years, whichever occurs first.²³

If the student chooses to participate in the pilot program and is accepted by the provider of supported employment services, the student must notify DOE 60 days before the first scholarship payment and before participating in the pilot program.²⁴

Private School Eligibility

To be eligible to participate in the pilot program, a private school must meet certain requirements.²⁵ The private school must:²⁶

- Be academically accountable for meeting the educational needs of the student by annually providing to the provider of supported employment services a written explanation of the student's progress.
- Comply with federal nondiscrimination requirements.
- Meet state and local health and safety laws and codes.
- Supply to the provider of supported employment services all documentation required for a student's participation at least 30 days before any scholarship payment is made for the student.

The pilot program is scheduled to be repealed June 30, 2016.²⁷

III. Effect of Proposed Changes:

CS/SB 1088 expands eligibility requirements for students enrolled in education programs for students with disabilities. Specifically, the bill:

- Amends the John M. McKay Scholarship for Students with Disabilities Program (McKay) to:
 - Exempt foster children from the prior school year attendance requirement for determining student eligibility.
 - Authorize a private school to establish a transition-to-work program for McKay students.

specific learning disability, including but not limited to dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder. Section 1004.935(1), F.S.

²² Supported employment services means employment that is located or provided in an integrated work setting with earnings paid on a commensurate wage basis and for which continued support is needed for job maintenance. Section 1004.935(1)(e), F.S. These services may be provided at more than one site. S. 1004.935(3), F.S. The provider of these services must be a nonprofit 501(c)(3) corporation which services the respective pilot counties, and must contract with an eligible private school. S. 1004.935(4), F.S.

²³ Section 1004.935(2), F.S.

²⁴ Section 1004.935(6)(a), F.S.

²⁵ Section 1004.935(5), F.S. The private school may be sectarian or nonsectarian. *Id.*

²⁶ *Id.*

²⁷ Section 55, ch. 2014-39, L.O.F.; Section 1004.395(1), F.S.

- Enable McKay students to take virtual courses without reducing the scholarship amount.
- Saves from repeal the Adults with Disabilities Workforce Education Pilot Program, and renames the program the “Adults with Disabilities Workforce Education Program.”

Foster Children

The bill adds foster children to the existing exemption from the prior school year attendance requirement for determining McKay eligibility.

Transition-To-Work Program

The bill authorizes a private school to establish a transition-to-work program for private school McKay students. The transition-to-work program consists of academic instruction, work skills training, and a volunteer or paid work experience.

To participate in the transition-to-work program, McKay students:

- Must be between 17 and 22 years of age, and have not yet received a high school diploma or certificate of completion.
- Must receive 15 hours of academic instruction and work skills training at a private school.
- Must participate in 10 hours of work at the student’s work experience program.

To offer a transition-to-work program, a private school in the McKay Scholarship Program must:

- Develop and submit to the Department of Education (DOE) a transition-to-work program plan that includes a description of the academic instruction and work skills training the students will receive.
- Develop a personalized transition-to-work program plan for each student in the program, which must be signed by the student, the student’s parent, and the school principal. A personalized plan must be submitted to DOE upon request.
- Provide a liability release form signed by the student, the student’s parent, and the business offering the work experience.
- Assign a case manager to visit the student’s job site on a weekly basis, observe the student, and provide support.
- Provide to the student and parent a quarterly report documenting the student’s progress and performance.
- Maintain accurate attendance and performance records for the student.

To participate in a transition-to work-program, a business must:

- Maintain and provide accurate records of the student’s performance and hours worked.
- Comply with all state and federal child labor laws.

As compared to the public school transition to postsecondary education and career opportunities statutory requirements, the McKay transition to work program primarily differs in that it:

- Is agreed to in a signed plan between the parent, student and principal, rather than being included in the student’s individual education plan (IEP).

- Contains specific accountability requirements for required weekly visits by an assigned case manager or job coach, and acquired quarterly progress reports be provided to the parent and student.
- Identifies specific instructional and work hour requirements.
- Requires a release of liability that the parent, student, and business must sign.

Scholarship Proportional Reduction for Virtual Courses

The bill provides that the McKay scholarship amount is not subject to the maximum value for funding a student under the Florida Education Finance Program (FEFP).²⁸ In effect, McKay students taking virtual courses will not have their scholarship amount reduced in order to comply with the 1.0 FTE requirement.

Adults with Disabilities Workforce Education Pilot Program

The bill saves from repeal the Adults with Disabilities Workforce Education Pilot Program, and renames the program the “Adults with Disabilities Workforce Education Program.”

The bill takes effect July 1, 2016, except where otherwise expressly provided.

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:

None.

²⁸ Sections 1011.62; 1011.61(4), F.S.

C. **Government Sector Impact:**

According to the Department of Education, the annual fiscal impact to the Florida Education Finance Program (FEFP) of exempting the McKay scholarship amount from the 1.0 FTE requirement is approximately \$309,000, based on the virtual course enrollments of current McKay students.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1002.39, 1004.935, and 1011.61.

IX. **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 January 27, 2016:

The CS includes provisions that:

- Save from repeal the Adults with Disabilities Workforce Education Pilot Program.
- Rename the program the “Adults with Disabilities Workforce Education Program.”

- B. **Amendments:**

None.