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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2017	.	
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The Committee on Education (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (d) and (h) of subsection (2) of
section 1002.385, Florida Statutes, are amended, present
paragraphs (i) and (j) of that subsection are redesignated as
paragraphs (j) and (k), respectively, a new paragraph (i) is
added to that subsection, paragraph (a) of subsection (3) of
that section is amended, paragraph (e) is added to subsection
(4) of that section, and subsection (5), paragraph (b) of



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12 subsection (6), subsection (8), paragraph (f) of subsection
13 (11), and paragraph (j) of subsection (12) of that section are
14 amended, to read:

15 1002.385 The Gardiner Scholarship.—

16 (2) DEFINITIONS.—As used in this section, the term:

17 (d) "Disability" means, for a 3- or 4-year-old child or for
18 a student in kindergarten to grade 12, autism spectrum disorder,
19 as defined in the Diagnostic and Statistical Manual of Mental
20 Disorders, Fifth Edition, published by the American Psychiatric
21 Association; cerebral palsy, as defined in s. 393.063(6); Down
22 syndrome, as defined in s. 393.063(15); an intellectual
23 disability, as defined in s. 393.063(24); Phelan-McDermid
24 syndrome, as defined in s. 393.063(28); Prader-Willi syndrome,
25 as defined in s. 393.063(29); spina bifida, as defined in s.
26 393.063(40); being a high-risk child, as defined in s.
27 393.063(23) (a); muscular dystrophy; ~~and~~ Williams syndrome; rare
28 diseases which affect patient populations of fewer than 200,000
29 individuals in the United States; anaphylaxis; or identification
30 as deaf, visually impaired, hospital or homebound, dual sensory
31 impaired, or traumatic brain injured, as defined by rules of the
32 State Board of Education and evidenced by reports from local
33 school districts. The term "hospital or homebound" includes a
34 student who has a medically diagnosed physical or psychiatric
35 condition or illness, as defined by the state board in rule, and
36 who is confined to the home or hospital for more than 6 months.

37 (h) "IEP" means individual education plan, regardless of
38 whether the plan has been reviewed or revised within the last 12
39 months.

40 (i) "Inactive" means that eligible expenditures have not



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41 been made from an account funded pursuant to paragraph (13)(d).

42 (3) PROGRAM ELIGIBILITY.—A parent of a student with a
43 disability may request and receive from the state a Gardiner
44 Scholarship for the purposes specified in subsection (5) if:

45 (a) The student:

46 1. Is a resident of this state;

47 2. Is 3 or 4 years of age on or before September 1 of the
48 year in which the student applies for program participation, or
49 is eligible to enroll in kindergarten through grade 12 in a
50 public school in this state;

51 3. Has a disability as defined in paragraph (2)(d); and

52 4. Is the subject of an IEP written in accordance with
53 rules of the State Board of Education or with the applicable
54 rules of another state or has received a diagnosis of a
55 disability from a physician who is licensed under chapter 458 or
56 chapter 459, ~~or~~ a psychologist who is licensed under chapter
57 490, or a physician who holds an active license issued by
58 another state or territory of the United States, the District of
59 Columbia, or the Commonwealth of Puerto Rico.

60 (4) PROGRAM PROHIBITIONS.—A student is not eligible for the
61 program if he or she is:

62 (e) Enrolled in the Florida School for the Deaf and the
63 Blind.

64 (5) AUTHORIZED USES OF PROGRAM FUNDS.—Program funds must be
65 used to meet the individual educational needs of an eligible
66 student and may be spent for the following purposes:

67 (a) Instructional materials, including digital devices,
68 digital periphery devices, and assistive technology devices that
69 allow a student to access instruction or instructional content



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70 and training on the use of and maintenance agreements for these
71 devices.

72 (b) Curriculum as defined in paragraph (2)(b).

73 (c) Specialized services by approved providers or by a
74 hospital in this state which ~~that~~ are selected by the parent.

75 These specialized services may include, but are not limited to:

76 1. Applied behavior analysis services as provided in ss.
77 627.6686 and 641.31098.

78 2. Services provided by speech-language pathologists as
79 defined in s. 468.1125.

80 3. Occupational therapy services as defined in s. 468.203.

81 4. Services provided by physical therapists as defined in
82 s. 486.021.

83 5. Services provided by listening and spoken language
84 specialists and an appropriate acoustical environment for a
85 child who is deaf or hard of hearing and who has received an
86 implant or assistive hearing device.

87 (d) Enrollment in, or tuition or fees associated with
88 enrollment in, a home education program, an eligible private
89 school, an eligible postsecondary educational institution or a
90 program offered by the institution, a private tutoring program
91 authorized under s. 1002.43, a virtual program offered by a
92 department-approved private online provider that meets the
93 provider qualifications specified in s. 1002.45(2)(a), the
94 Florida Virtual School as a private paying student, or an
95 approved online course offered pursuant to s. 1003.499 or s.
96 1004.0961.

97 (e) Fees for nationally standardized, norm-referenced
98 achievement tests, Advanced Placement Examinations, industry



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99 certification examinations, assessments related to postsecondary
100 education, or other assessments.

101 (f) Contributions to the Stanley G. Tate Florida Prepaid
102 College Program pursuant to s. 1009.98 or the Florida College
103 Savings Program pursuant to s. 1009.981, for the benefit of the
104 eligible student.

105 (g) Contracted services provided by a public school or
106 school district, including classes. A student who receives
107 services under a contract under this paragraph is not considered
108 enrolled in a public school for eligibility purposes as
109 specified in subsection (4).

110 (h) Tuition and fees for part-time tutoring services
111 provided by a person who holds a valid Florida educator's
112 certificate pursuant to s. 1012.56; a person who holds an
113 adjunct teaching certificate pursuant to s. 1012.57; or a person
114 who has demonstrated a mastery of subject area knowledge
115 pursuant to s. 1012.56(5). As used in this paragraph, the term
116 "part-time tutoring services" does not qualify as regular school
117 attendance as defined in s. 1003.01(13)(e).

118 (i) Fees for specialized summer education programs.

119 (j) Fees for specialized after-school education programs.

120 (k) Transition services provided by job coaches.

121 (l) Fees for an annual evaluation of educational progress
122 by a state-certified teacher under s. 1002.41(1)(c), if this
123 option is chosen for a home education student.

124 (m) Tuition and fees associated with programs offered by
125 Voluntary Prekindergarten Education Program providers approved
126 pursuant to s. 1002.55 and school readiness providers approved
127 pursuant to s. 1002.88.



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128 (n) Fees for services provided at a center that is a member
129 of the Professional Association of Therapeutic Horsemanship
130 International.

131 (o) Fees for services provided by a therapist who is
132 certified by the Certification Board for Music Therapists or
133 credentialed by the Art Therapy Credentials Board.

134
135 A provider of any services receiving payments pursuant to this
136 subsection may not share, refund, or rebate any moneys from the
137 Gardiner Scholarship with the parent or participating student in
138 any manner. A parent, student, or provider of any services may
139 not bill an insurance company, Medicaid, or any other agency for
140 the same services that are paid through the Gardiner Scholarship
141 funds.

142 (6) TERM OF THE PROGRAM.—For purposes of continuity of
143 educational choice and program integrity:

144 (b)1. A student's scholarship account must be closed and
145 any remaining funds, including, but not limited to,
146 contributions made to the Stanley G. Tate Florida Prepaid
147 College Program or earnings from or contributions made to the
148 Florida College Savings Program using program funds pursuant to
149 paragraph (5)(f), shall revert to the state after ~~upon~~:

150 a. Denial or revocation of program eligibility by the
151 commissioner for fraud or abuse, including, but not limited to,
152 the student or student's parent accepting any payment, refund,
153 or rebate, in any manner, from a provider of any services
154 received pursuant to subsection (5); ~~or~~

155 b. ~~After~~ Any period of 3 consecutive years after high
156 school completion or graduation during which the student has not



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157 been enrolled in an eligible postsecondary educational
158 institution or a program offered by the institution; or-
159 c. Three consecutive fiscal years in which an account has
160 been inactive.

161 2. The commissioner must notify the parent and the
162 organization when a Gardiner Scholarship account is closed and
163 program funds revert to the state.

164 (8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An eligible
165 private school may be sectarian or nonsectarian and shall:

166 (a) Comply with all requirements for private schools
167 participating in state school choice scholarship programs
168 pursuant to s. 1002.421.

169 (b) Provide to the organization, upon request, all
170 documentation required for the student's participation,
171 including the private school's and student's fee schedules.

172 (c) Be academically accountable to the parent for meeting
173 the educational needs of the student by:

174 1. At a minimum, annually providing to the parent a written
175 explanation of the student's progress.

176 2. Annually administering or making provision for students
177 participating in the program in grades 3 through 10 to take one
178 of the nationally norm-referenced tests identified by the
179 Department of Education or the statewide assessments pursuant to
180 s. 1008.22. Students with disabilities for whom standardized
181 testing is not appropriate are exempt from this requirement. A
182 participating private school shall report a student's scores to
183 the parent.

184 3. Cooperating with the scholarship student whose parent
185 chooses to have the student participate in the statewide



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186 assessments pursuant to s. 1008.22 or, if a private school
187 chooses to offer the statewide assessments, administering the
188 assessments at the school.

189 a. A participating private school may choose to offer and
190 administer the statewide assessments to all students who attend
191 the private school in grades 3 through 10.

192 b. A participating private school shall submit a request in
193 writing to the Department of Education by March 1 of each year
194 in order to administer the statewide assessments in the
195 subsequent school year.

196 (d) Employ or contract with teachers who have regular and
197 direct contact with each student receiving a scholarship under
198 this section at the school's physical location.

199 (e) Annually contract with an independent certified public
200 accountant to perform the agreed-upon procedures developed under
201 s. 1002.395(6)(o) and produce a report of the results if the
202 private school receives more than \$250,000 in funds from
203 scholarships awarded under this section in the 2014-2015 state
204 fiscal year or a state fiscal year thereafter. A private school
205 subject to this paragraph must submit the report by September
206 15, 2015, and annually thereafter by August 15 to the
207 organization that awarded the majority of the school's
208 scholarship funds. The agreed-upon procedures must be conducted
209 in accordance with attestation standards established by the
210 American Institute of Certified Public Accountants.

211
212 If ~~The inability of~~ a private school is unable to meet the
213 requirements of this subsection or has in consecutive years had
214 material exceptions listed in its agreed-upon procedures



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215 reports, there is ~~constitutes~~ a basis for the ineligibility of
216 the private school to participate in the program as determined
217 by the commissioner.

218 (11) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM
219 PARTICIPATION.—A parent who applies for program participation
220 under this section is exercising his or her parental option to
221 determine the appropriate placement or the services that best
222 meet the needs of his or her child. The scholarship award for a
223 student is based on a matrix that assigns the student to support
224 Level III services. If a parent receives an IEP and a matrix of
225 services from the school district pursuant to subsection (7),
226 the amount of the payment shall be adjusted as needed, when the
227 school district completes the matrix.

228 (f) The parent is responsible for procuring the services
229 necessary to educate the student. If a parent does not procure
230 the necessary educational services for the student and the
231 student's account has been inactive for 2 consecutive fiscal
232 years, the student is ineligible for additional scholarship
233 payments until the scholarship-funding organization verifies
234 that expenditures from the account have occurred. When the
235 student receives a Gardiner Scholarship, the district school
236 board is not obligated to provide the student with a free
237 appropriate public education. For purposes of s. 1003.57 and the
238 Individuals with Disabilities in Education Act, a participating
239 student has only those rights that apply to all other
240 unilaterally parentally placed students, except that, when
241 requested by the parent, school district personnel must develop
242 an individual education plan or matrix level of services.

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244 A parent who fails to comply with this subsection forfeits the
245 Gardiner Scholarship.

246 (12) OBLIGATIONS OF SCHOLARSHIP-FUNDING ORGANIZATIONS.—An
247 organization may establish Gardiner Scholarships for eligible
248 students by:

249 (j) Documenting each scholarship student's eligibility for
250 a fiscal year before granting a scholarship for that fiscal year
251 pursuant to paragraph (3) (b). A student is ineligible for a
252 scholarship if the student's account has been inactive for 2
253 consecutive fiscal years. However, once an eligible expenditure
254 is made pursuant to paragraph (11) (f), the student is eligible
255 for a scholarship, based on available funds.

256 Section 2. This act shall take effect July 1, 2017.

257
258 ===== T I T L E A M E N D M E N T =====

259 And the title is amended as follows:

260 Delete everything before the enacting clause
261 and insert:

262 A bill to be entitled
263 An act relating to the Gardiner Scholarship Program;
264 amending s. 1002.385, F.S.; redefining the terms
265 "disability" and "IEP"; defining the term "inactive";
266 prohibiting a student who is enrolled in the Florida
267 School for the Deaf and the Blind from being eligible
268 for the program; revising the purposes for which
269 program funds may be used; requiring that a student's
270 account be closed and program funds revert to the
271 state after the account is inactive for a specified
272 number of years; revising the date upon which certain



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273 private schools must submit a required report;
274 specifying that certain actions of the private school
275 are a basis for program ineligibility; revising parent
276 and student responsibilities for program
277 participation; revising obligations of scholarship-
278 funding organizations; providing an effective date.