

**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.)

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Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

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BILL: CS/SB 2746

INTRODUCER: Education Pre-K Committee and Senator Gardiner

SUBJECT: Education Programs for Children with Disabilities

DATE: April 14, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	<b>Fav/CS</b>
2.			CM	
3.			EA	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>                   | Technical amendments were recommended   |
|                              | <input type="checkbox"/>                   | Amendments were recommended             |
|                              | <input type="checkbox"/>                   | Significant amendments were recommended |

**I. Summary:**

For the John M. McKay Scholarships for Students with Disabilities Program, the bill allows the parent of a student with a disability to receive a scholarship if the student received early intervention services under the Voluntary Prekindergarten (VPK) Education Program during the previous school year and has a current individual education plan (IEP). The bill also authorizes the Commissioner of Education to deny, suspend, or revoke the participation of any private school determined to be operating or have operated an educational institution in Florida or another state that jeopardizes the health, safety, or welfare of the public.

For the Voluntary Prekindergarten Education (VPK) program, the bill:

- Creates a prekindergarten program for children with disabilities, which:
  - Allows parents of eligible children to select one or more early intervention services that are consistent with the child's individual education plan;
  - Requires early intervention services to be provided according to professional accepted standards and those adopted by the Department of Education;
  - Specifies the responsibilities of the Department of Education;
  - Provides for payment to early intervention service providers by early learning coalitions;

- Authorizes parents who have not expended more than 70 percent of the funds for early intervention services to withdraw their children from the early intervention services program and reenroll in the VPK school-year or summer program; and
- Requires the Agency for Workforce Innovation (AWI) to adopt procedures governing the payment of early interventions service providers.

This bill substantially amends sections 1002.39, 1002.51, 1002.53, 1002.71, and 1002.75 and creates section 1002.66 of the Florida Statutes.

## II. Present Situation:

### **John M. McKay Scholarships for Students with Disabilities Program (McKay program)<sup>1</sup>**

Current law sets forth the requirements for parental placement of a student with disabilities in an eligible private school or another public school. The law also establishes requirements for student eligibility for scholarships to attend an eligible private school or to provide transportation to another public school and provides eligibility requirements for private schools participating in the program. As well, the law establishes responsibilities for school districts and the Department of Education (DOE). The State Board of Education (SBE) may adopt rules to administer the program.<sup>2</sup>

#### *Eligible Students<sup>3</sup>*

Eligible 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; another 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.<sup>4</sup>

To be eligible for a McKay scholarship to attend a private school, a student with a disability must meet the following requirements:

- Have an individual education plan (IEP) written in accordance with SBE rules;<sup>5</sup> and
- Have spent the prior school year in attendance at a Florida public school.<sup>6</sup>

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<sup>1</sup> s. 1002.39, F.S.

<sup>2</sup> s. 1002.39(13), F.S.

<sup>3</sup> s. 1002.39(2), F.S.

<sup>4</sup> s. 1002.39(1), F.S.

<sup>5</sup> s. 1002.39(1), F.S. Rule 6A-6.03028, F.A.C., addresses the development of IEPs and requires school districts to provide a copy of an IEP to parents, upon request. Students whose parents choose the option of attending another public school must have an IEP.

<sup>6</sup> Prior school year in attendance means that the student was enrolled and reported by a school district or the Florida School for the Deaf and the Blind for funding during the preceding October and February Florida Education Finance Program (FEFP) surveys in kindergarten through grade 12. This includes a child who was at least 4 years old when so enrolled and reported, and was eligible for services under s. 1003.21(1)(e), F.S. Chapter 2004-230, L.O.F., waived the requirement that the student must have spent the prior year in attendance at a Florida public school for otherwise qualifying military students who relocate to Florida pursuant to a parent's military orders. Under this provision, transferring military students are still required to submit an IEP and evaluation data necessary to establish program eligibility.

At any time, the student's parent may remove the student from the private school and place the student in another eligible private school or in a public school.<sup>7</sup>

*Parent and Student Obligations*<sup>8</sup>

A parent who applies for a McKay scholarship is exercising his or her parental option to place his or her child in a private school. Parents are responsible for the following:

- Requesting the scholarship at least 60 days prior to the first scholarship payment;
- Selecting the private school and applying for the admission of the student;
- Complying fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause;
- Restrictively endorsing the warrant to the private school for deposit into the account of the private school, upon receipt of a scholarship warrant;<sup>9</sup> and
- Transporting the student to:<sup>10</sup>
  - A public school in an adjacent school district with available space and a program with the services agreed to in the student's IEP already in place; and
  - A designated assessment site, if he or she requests that the student take all statewide assessments.

Students participating in the scholarship program must:

- Remain in attendance throughout the school year, unless excused by the school for illness or other good cause; and<sup>11</sup>
- Comply fully with the school's published policies.<sup>12</sup>

*Term of Scholarship*<sup>13</sup>

For purposes of continuity of educational choice, the scholarship remains in force until the student returns to a public school, graduates from high school, or reaches the age of 22, whichever occurs first.

*Scholarship Funding and Payment*<sup>14</sup>

The scholarship amount is either a calculated amount or the amount of the private school's tuition and fees, whichever is less. Until the school district completes a matrix, the scholarship calculation is based on the lowest level of service. Payments must be made by individual warrant payable to the student's parent for his or her endorsement and for deposit into the private school's account.

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<sup>7</sup> s. 1002.39(4)(d), F.S.

<sup>8</sup> s. 1002.39(9), F.S.

<sup>9</sup> s. 1002.39(9)(f), F.S. A participant who fails to comply with this requirement forfeits the scholarship.

<sup>10</sup> s. 1002.39(5)(e), F.S.

<sup>11</sup> s. 1002.39(9)(c), F.S.

<sup>12</sup> s. 1002.39(9)(d), F.S.

<sup>13</sup> s. 1002.39(3), F.S.

<sup>14</sup> s. 1002.39(10), F.S.

*Matrix of Services*

When a parent indicates that he or she intends to place the child in a private school, the child may or may not have a matrix of services. Under current law, only students with exceptional education cost factors for Support Levels IV and V must have a matrix of services that documents the services that each student will receive.<sup>15</sup> Consequently, students who are at support levels I, II, and III will need a matrix of services. There are no specific administrative rules that address matrices. Rather, various DOE publications address the implementation of matrices.

Current law relating to determining the annual allocation to each district for operations and requires the General Appropriations Act (GAA) to establish cost factors based on desired relative cost differences between specific programs.<sup>16</sup> The Commissioner of Education must specify a matrix of services and intensity levels to be used by districts in the determination of the two weighted cost factors for exceptional students with the highest levels of need (i.e., levels IV and V). The funding model for exceptional student education programs uses specified FEFP cost factors, including support levels IV and V for exceptional students and a guaranteed allocation for exceptional student education programs.

*Eligible Private Schools<sup>17</sup>*

Current law provides for the obligations of private schools. These responsibilities include:

- Complying with all state laws relating to the general regulation of private schools, including ss. 1002.42<sup>18</sup> and 1002.421,<sup>19</sup> F.S.;
- Providing the DOE with all documentation for each scholarship student's participation in the program, including the private school's fees for services, tuition, and instructional materials, and each scholarship student's schedule of fees and charges at least 30 days prior to the first quarterly scholarship payment;
- Demonstrating academic accountability to the parent for meeting the educational needs of the student;
- Maintaining a physical location in Florida where the scholarship student regularly attends classes;
- Demonstrating fiscal soundness and accountability;
- Meeting applicable state and local health, safety, and welfare laws, codes, and rules;
- Disqualifying instructional personnel and school administrators from employment in any position that requires direct contact with students if the personnel or administrators are ineligible for such employment under s. 1012.315, F.S.; and
- Adopting policies establishing standards of ethical conduct for instructional personnel and school administrators.

<sup>15</sup> s. 1011.62(1)(e), F.S.

<sup>16</sup> s. 1011.62, F.S.

<sup>17</sup> ss. 1002.39 and 1002.421, F.S.

<sup>18</sup> Private schools must register with the DOE and comply with requirements that include compulsory attendance, immunizations, and school health exams.

<sup>19</sup> Under s. 1002.421, F.S., private schools that fail to meet the requirements in this section are ineligible to participate in the program. The DOE must suspend the payment of scholarship funds to a private school that knowingly fails to comply with this section and must prohibit the school from enrolling new scholarship students, for one fiscal year and until the school complies. These provisions also apply to private schools that participate in the Florida Tax credit Scholarship Program.

Currently, there are 941 participating private schools and 20,524 students receiving McKay scholarships.<sup>20</sup>

### **Voluntary Prekindergarten (VPK) Education Program**

In 2002, the State Constitution was amended to require the establishment of a prekindergarten program for every 4-year-old child in the state which is voluntary, high-quality, free, and delivered according to professionally accepted standards.<sup>21</sup> The Legislature created the VPK program, which became effective in the 2005 school year, and provided the parents of eligible children a choice among three program options:<sup>22</sup> a school-year VPK program delivered by a private prekindergarten provider; a school-year VPK program delivered by a public school; or a summer VPK program delivered by a public school or private prekindergarten provider.

The VPK program is administered at the local level by school districts and early learning coalitions.<sup>23</sup> At the state level, the Department of Education (DOE) administers the educational accountability requirements of the program and the Agency for Workforce Innovation (AWI) administers the operational requirements of the program.<sup>24</sup> The AWI's specific operational requirements are enumerated in s. 1002.75, F.S., and include determining the eligibility of private providers to deliver the VPK program.

All VPK providers must register with an early learning coalition, comply with federal antidiscrimination requirements, and may not discriminate against a parent or child, including the refusal to admit a child for enrollment in the VPK program, in violation of the antidiscrimination requirements.<sup>25</sup>

In 2008-2009, there were 5,660 providers that participated in the VPK program, 657 offered the summer program and 5,472 offered the school year program.<sup>26</sup> Most of the VPK providers (84 percent) were private centers.<sup>27</sup> For 2008-2009, the VPK program enrollment is estimated to be 63.5 percent of the 4-year old population.<sup>28</sup> The projected participation rate for 2009-2010 is 168,622 or 68.41 percent of all four-year-olds.<sup>29</sup>

Children with disabilities, as defined by s. 1003.01(3)(a), F.S., are eligible to receive their special education and related services from their local school district, based upon their IEP, and are also eligible to participate in the VPK program. Based on 2009-2010 data, at least four percent of the

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<sup>20</sup> DOE February Quarterly Report, 2010, for the 2009-2010 school year, payment periods September, November, and February. See [https://www.floridaschoolchoice.org/Information/McKay/quarterly\\_reports.asp](https://www.floridaschoolchoice.org/Information/McKay/quarterly_reports.asp). Of the participating private schools, 37.1 percent were non-religious and 62.9 percent were religious.

<sup>21</sup> Art. IX, s. 1(b) and (c) of the State Constitution.

<sup>22</sup> ch. 2004-484, L.O.F. See ss. 1002.55, 1002.61, and 1002.63, F.S.

<sup>23</sup> Pursuant to s. 1002.51(2), F.S., early learning coalitions are created under s. 411.01(5), F.S.

<sup>24</sup> ss. 1002.73 and 1002.75, F.S.

<sup>25</sup> ss. 1002.53(6)(c) and 1002.75(2), F.S., and 42 U.S.C. s. 2000d.

<sup>26</sup> Correspondence with AWI, March 12, 2010, on file with the Education Pre-K – 12 Committee.

<sup>27</sup> *Id.*

<sup>28</sup> DOE bill analysis, April 8, 2010.

<sup>29</sup> *Id.*, based on the March 8, 2010 VPK Estimating Conference.

children enrolled in the VPK program were children with disabilities, as defined by s. 1003.01(3)(a), F.S.<sup>30</sup>

### **III. Effect of Proposed Changes:**

#### **McKay Scholarship Program**

The parent of a student with a disability who received early intervention services under the new VPK Education Program option during the previous school year and who has a current individualized education plan (IEP) could request and receive a McKay Scholarship to enroll his or her child in a private school without having to spend the prior year in attendance at a public school.

The Commissioner of Education is authorized to deny, suspend, or revoke participation of any private school that operated an educational institution in Florida or another state that jeopardizes the health, safety, or welfare of the public.

#### **VPK Prekindergarten Program for Children with Disabilities**

Beginning in the 2012-2013 school year, the bill creates a new VPK program option for eligible students with disabilities whereby a student may receive early intervention services as indicated by the student's IEP, as appropriate from a DOE-approved service provider in lieu of the traditional school-year or summer VPK program. Currently, students with disabilities, who receive their exceptional student education (ESE) services from their local school district are eligible for either the school-year or summer VPK program.<sup>31</sup>

The bill specifies that the early intervention services must be delivered according to accepted professional standards and the VPK performance standards adopted by the DOE. It also requires the DOE to approve early intervention service providers, maintain an approved list of providers, and notify school districts and early coalitions of the approved provider list. Upon the request of a parent, the DOE may approve an early intervention service provider not on the approved list if they meet the applicable standards and the child's IEP indicates that such services are appropriate. It is unclear if this is intended to be an exception, whereby on a case-by-case basis the DOE can allow a provider to provide services to a particular child, or if the intent is that the provider is approved to provide services to any child and is added to the approved list.

The bill requires the early learning coalitions to reimburse an approved early intervention service provider for the services provided to an eligible child. The reimbursement may not exceed the VPK base student allocation.

The bill allows a parent of a child receiving early intervention services in the VPK program to withdraw from that program option for good cause if they have not expended more than 70 percent of the funds allotted. The parent may choose to participate in the school-year or the summer VPK program.

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<sup>30</sup> DOE bill analysis, April 8, 2010. Data was obtained via the matching process of 2008-2009 Coalition/AWI VPK data and the DOE's Survey 2 data.

<sup>31</sup> *Id.*

The bill authorizes the AWI to adopt procedures for the payment of early intervention service providers.

#### 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:

Children who meet the eligibility requirements for the new program would be able to participate.

##### C. Government Sector Impact:

The fiscal impact of the bill is indeterminate. However, according to the DOE, the maximum fiscal impact of serving all children with disabilities in the new VPK program option is \$11,432,674, based on the following assumptions:

2012-2013 Fiscal Impact on the VPK Program	
Projected Total Population of Four-Year Olds <sup>32</sup>	233,541
Current Participation Rate - 75% <sup>33</sup>	175,156
Estimated Number of Unserved Four-Year Olds	58,385
Estimated Percent of Kindergarten Children With Disabilities <sup>34</sup>	9.67%
Increase in the Number of Children with Disabilities Anticipated to be Served in the New VPK Option (58,385 x 9.67%)	5,646
2009-2010 Base Student Allocation	\$2,575
2009-2010 Administrative Cost	4.85%
Projected Fiscal Impact (\$2,575 x 75% x 1.0485)	\$11,432,674

<sup>32</sup> The projected number of four-year-olds as of the VPK estimating conference on March 8, 2010.

<sup>33</sup> The participation rate in the calculation (75%) is the percentage used by the Office of Economic and Demographic Research (EDR) VPK estimating conference to project enrollments.

<sup>34</sup> Based on the 2009-2010 percentage of kindergarten children with disabilities.

The DOE notes that none of the calculations include projected student enrollment growth or increases in the base student allocation.<sup>35</sup>

According to the 2009 October public school enrollment data, 86 percent of all five-year olds attend kindergarten in public school.<sup>36</sup> The DOE notes that these children would be included in the base calculation of the FEFP. If the parents of the 790 children served in the previous year who would not otherwise go to public school (14 percent of 5,646) receive a McKay Scholarship at the value of the average McKay Scholarship in 2009-2010 (\$7,240), the maximum fiscal impact is \$5,722,786.<sup>37</sup>

The DOE notes that it would also incur an indeterminate workload impact to approve early intervention service providers, maintain a list of such approved providers, and notify school districts and coalitions of the approved list.<sup>38</sup>

#### **VI. Technical Deficiencies:**

None.

#### **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 Committee on April 14, 2010:**

The committee substitute:

- Cross-references the practice acts for applied behavior analysis, speech language pathology, and physical therapy; and
- Authorizes the Commissioner of Education to deny, suspend, or revoke participation of any private school determined to be operating or have operated an educational institution in Florida or in another state or jurisdiction that jeopardizes the health, safety, or welfare of the public.

##### **B. Amendments:**

None.

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

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<sup>35</sup> DOE bill analysis, April 8, 2010.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*