

CHAPTER 2010-227

Committee Substitute for House Bill No. 1505

An act relating to education programs for children with disabilities; amending s. 1002.39, F.S.; revising provisions relating to the John M. McKay Scholarships for Students with Disabilities Program; authorizing students who receive certain services under the Voluntary Prekindergarten Education Program to receive a John M. McKay Scholarship; authorizing the Commissioner of Education to deny, suspend, or revoke a private school's participation in the scholarship program if the owner or operator of such school has operated an educational institution in this state or another in a manner contrary to the health, safety, or welfare of the public; providing factors for the commissioner to consider in making a determination; providing a definition for the term "owner or operator"; conforming cross-references; amending s. 1002.51, F.S.; providing definitions for the terms "disability" and "specialized instructional services provider" for purposes of the Voluntary Prekindergarten Education Program; amending s. 1002.53, F.S.; providing that a parent may enroll his or her child in a specialized instructional services program for children who have disabilities if the child is eligible for the Voluntary Prekindergarten Education Program; creating s. 1002.66, F.S.; establishing specialized instructional services for children with disabilities; providing eligibility criteria for such services; requiring that such services be delivered in accordance with certain standards; requiring that the Department of Education approve specialized instructional service providers; authorizing the expenditure of funds for specialized instructional services; amending s. 1002.71, F.S.; revising provisions for the funding of a child receiving specialized instructional services to conform to changes made by the act; amending s. 1002.73, F.S.; requiring that the Department of Education adopt procedures for approving specialized instructional services providers; amending s. 1002.75, F.S.; requiring that the Agency for Workforce Innovation adopt procedures for enrolling children in and determining the eligibility of children for the Voluntary Prekindergarten Education Program and paying specialized instructional services providers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2), paragraph (a) of subsection (7), and paragraphs (a), (c), and (d) of subsection (10) of section 1002.39, Florida Statutes, are amended to read:

1002.39 The John M. McKay Scholarships for Students with Disabilities Program.—There is established a program that is separate and distinct from the Opportunity Scholarship Program and is named the John M. McKay Scholarships for Students with Disabilities Program.

(2) JOHN M. MCKAY SCHOLARSHIP ELIGIBILITY.—The parent of a public school student with a disability who is dissatisfied with the student's progress may request and receive from the state a John M. McKay Scholarship for the child to enroll in and attend a private school in accordance with this section if:

(a) The student has:

1. Received specialized instructional services under the Voluntary Prekindergarten Education Program pursuant to s. 1002.66 during the previous school year and the student has a current individual educational plan developed by the local school board in accordance with rules of the State Board of Education for the John M. McKay Scholarships for Students with Disabilities Program;

2. Spent the prior school year in attendance at a Florida public school or the Florida School for the Deaf and the Blind. For purposes of this subparagraph, prior school year in attendance means that the student was:

1. enrolled and reported by:

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

b.2. Enrolled and reported by The Florida School for the Deaf and the Blind during the preceding October and February student membership surveys in kindergarten through grade 12; or

c.3. Enrolled and reported by A school district for funding during the preceding October and February Florida Education Finance Program surveys, was at least 4 years of age old when so enrolled and reported, and was eligible for services under s. 1003.21(1)(e); or;

3. Been enrolled and reported by a school district for funding, during the October and February Florida Education Finance Program surveys, in any of the 5 years prior to the 2010-2011 fiscal year; has a current individualized educational plan developed by the district school board in accordance with rules of the State Board of Education for the John M. McKay Scholarship Program no later than June 30, 2011; and receives a first-time John M. McKay scholarship for the 2011-2012 school year. Upon request of the parent, the local school district shall complete a matrix of services as required in subparagraph (5)(b)1. for a student requesting a current individualized educational plan in accordance with the provisions of this subparagraph.

However, a dependent child of a member of the United States Armed Forces who transfers to a school in this state from out of state or from a foreign country due to pursuant to a parent's permanent change of station orders is

exempt from this paragraph but must meet all other eligibility requirements to participate in the program.

(b) The parent has obtained acceptance for admission of the student to a private school that is eligible for the program under subsection (8) and has requested from the department a scholarship at least 60 days before ~~prior to~~ the date of the first scholarship payment. The request must be communicated through a communication directly to the department in a manner that creates a written or electronic record of the request and the date of receipt of the request. The department of Education must notify the district of the parent’s intent upon receipt of the parent’s request.

(7) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—

(a) The Commissioner of Education:

1. Shall deny, suspend, or revoke a private school’s participation in the scholarship program if it is determined that the private school has failed to comply with the provisions of this section. However, ~~if in instances in which~~ the noncompliance is correctable within a reasonable amount of time and ~~if in~~ which the health, safety, or welfare of the students is not threatened, the commissioner may issue a notice of noncompliance which provides ~~shall provide~~ the private school with a timeframe within which to provide evidence of compliance ~~before prior to~~ taking action to suspend or revoke the private school’s participation in the scholarship program.

2. May deny, suspend, or revoke a private school’s participation in the scholarship program if the commissioner determines that an owner or operator of the private school is operating or has operated an educational institution in this state or in another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public.

a. In making such a determination, the commissioner may consider factors that include, but are not limited to, acts or omissions by an owner or operator which led to a previous denial or revocation of participation in an education scholarship program; an owner’s or operator’s failure to reimburse the Department of Education for scholarship funds improperly received or retained by a school; imposition of a prior criminal sanction related to an owner’s or operator’s management or operation of an educational institution; imposition of a civil fine or administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation related to an owner’s or operator’s management or operation of an educational institution; or other types of criminal proceedings in which an owner or operator was found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense involving fraud, deceit, dishonesty, or moral turpitude.

b. For purposes of this subparagraph, the term “owner or operator” includes an owner, operator, superintendent, or principal of, or a person who

has equivalent decisionmaking authority over, a private school participating in the scholarship program.

(10) JOHN M. MCKAY SCHOLARSHIP FUNDING AND PAYMENT.

(a)1. The maximum scholarship granted for an eligible student with disabilities shall be ~~a calculated amount~~ equivalent to the base student allocation in the Florida Education Finance Program multiplied by the appropriate cost factor for the educational program that would have been provided for the student in the district school to which he or she was assigned, multiplied by the district cost differential.

2. In addition, a share of the guaranteed allocation for exceptional students shall be determined and added to the ~~calculated~~ amount in subparagraph 1. The calculation shall be based on the methodology and the data used to calculate the guaranteed allocation for exceptional students for each district in chapter 2000-166, Laws of Florida. Except as provided in subparagraphs 3. and 4., the calculation shall be based on the student's grade, matrix level of services, and the difference between the 2000-2001 basic program and the appropriate level of services cost factor, multiplied by the 2000-2001 base student allocation and the 2000-2001 district cost differential for the sending district. ~~Also,~~ The calculated amount shall include the per-student share of supplemental academic instruction funds, instructional materials funds, technology funds, and other categorical funds as provided ~~for such purposes~~ in the General Appropriations Act.

3. The ~~calculated~~ scholarship amount for a student who is eligible under sub-subparagraph (2)(a)2.b. subparagraph (2)(a)2. shall be calculated as provided in subparagraphs 1. and 2. However, the calculation shall be based on the school district in which the parent resides at the time of the scholarship request.

4. Until the school district completes the matrix required by paragraph (5)(b), the calculation shall be based on the matrix that assigns the student to support level I of service as it existed prior to the 2000-2001 school year. When the school district completes the matrix, the amount of the payment shall be adjusted as needed.

(c)1. The school district shall report all students who are attending a private school under this program. The students with disabilities attending private schools on John M. McKay Scholarships shall be reported separately from other students reported for purposes of the Florida Education Finance Program.

2. For program participants who are eligible under sub-subparagraph (2)(a)2.b. subparagraph (2)(a)2., the school district that is used as the basis for the calculation of the scholarship amount as provided in subparagraph (a) 3. shall:

a. Report to the department all such students who are attending a private school under this program.

b. Be held harmless for such students from the weighted enrollment ceiling for group 2 programs in s. 1011.62(1)(d)3.b. during the first school year in which the students are reported.

(d) Following notification on July 1, September 1, December 1, or February 1 of the number of program participants, the department shall transfer, from General Revenue funds only, the amount calculated under paragraph (b) from the school district’s total funding entitlement under the Florida Education Finance Program and from authorized categorical accounts to a separate account for the scholarship program for quarterly disbursement to the parents of participating students. Funds may not be transferred from any funding provided to the Florida School for the Deaf and the Blind for program participants who are eligible under sub-subparagraph (2)(a)2.b. ~~subparagraph (2)(a)2.~~ For a student exiting a Department of Juvenile Justice commitment program who chooses to participate in the scholarship program, the amount of the John M. McKay Scholarship calculated pursuant to paragraph (b) shall be transferred from the school district in which the student last attended a public school before ~~prior to~~ commitment to the Department of Juvenile Justice. When a student enters the scholarship program, the department must receive all documentation required for the student’s participation, including the private school’s and the student’s fee schedules, at least 30 days before the first quarterly scholarship payment is made for the student.

Section 2. Present subsections (2) through (5) of section 1002.51, Florida Statutes, are redesignated as subsections (4) through (7), respectively, and new subsections (2) and (3) are added to that section, to read:

1002.51 Definitions.—As used in this part, the term:

(2) “Disability” means any disability listed in the definition of exceptional student in s. 1003.01.

(3) “Specialized instructional services provider” means a provider delivering specialized instructional services under s. 1002.66.

Section 3. Subsections (1) and (3) of section 1002.53, Florida Statutes, are amended to read:

1002.53 Voluntary Prekindergarten Education Program; eligibility and enrollment.—

(1) There is created The Voluntary Prekindergarten Education Program is created and. The program shall take effect in each county at the beginning of the 2005-2006 school year and shall be organized, designed, and delivered in accordance with s. 1(b) and (c), Art. IX of the State Constitution.

(3) The parent of each child eligible under subsection (2) may enroll the child in one of the following programs:

(a) A school-year prekindergarten program delivered by a private prekindergarten provider under s. 1002.55;

(b) A summer prekindergarten program delivered by a public school or private prekindergarten provider under s. 1002.61; or

(c) A school-year prekindergarten program delivered by a public school; or

(d) A specialized instructional services program for children who have disabilities, if the child has been evaluated and determined as eligible, has a current individual educational plan developed by the local school board, and is eligible for the program under s. 1002.66.

Except as provided in s. 1002.71(4), a child may not enroll in more than one of these programs.

Section 4. Section 1002.66, Florida Statutes, is created to read:

1002.66 Specialized instructional services for children with disabilities.

(1) Beginning with the 2012-2013 school year, a child who has a disability and enrolls with the early learning coalition under s. 1002.53(3)(d) is eligible for specialized instructional services if:

(a) The child is eligible for the Voluntary Prekindergarten Education Program under s. 1002.53; and

(b) A current individual educational plan has been developed for the child by the local school board in accordance with rules of the State Board of Education.

(2) The parent of a child who is eligible for the prekindergarten program for children with disabilities may select one or more specialized instructional services that are consistent with the child's individual educational plan. These specialized instructional services may include, but are not limited to:

(a) Applied behavior analysis as defined in ss. 627.6686 and 641.31098.

(b) Speech-language pathology as defined in s. 468.1125.

(c) Occupational therapy as defined in s. 468.203.

(d) Physical therapy as defined in s. 486.021.

(3) The specialized instructional services provided for a child under this section must be delivered according to professionally accepted standards; must be in accordance with the performance standards adopted by the department under s. 1002.67; and must address the age-appropriate

progress of the child in the development of the capabilities, capacities, and skills required under s. 1(b), Art. IX of the State Constitution.

(4) The department shall approve specialized instructional service providers whose services meet the standards in subsection (3), maintain a list of approved providers, and notify each school district and early learning coalition of the approved provider list. Upon the request of a child's parent, the department may approve a specialized instructional service provider that is not on the approved list if the provider's services meet the standards in subsection (3) and the service is consistent with the child's individual educational plan.

(5) The coalition shall reimburse an approved specialized instructional service provider for authorized services provided to an eligible child; however, the cumulative total of services reimbursed for a child may not exceed the amount of the base student allocation provided in the Voluntary Prekindergarten Education Program in the General Appropriations Act. Providers shall be reimbursed from funds allocated to the early learning coalition for the Voluntary Prekindergarten Education Program.

Section 5. Paragraph (a) of subsection (4) of section 1002.71, Florida Statutes, is amended to read:

1002.71 Funding; financial and attendance reporting.—

(4) Notwithstanding s. 1002.53(3) and subsection (2):

(a) A child who, for any of the prekindergarten programs listed in s. 1002.53(3), has not completed more than 70 percent of the hours authorized to be reported for funding under subsection (2), or has not expended more than 70 percent of the funds authorized for the child under s. 1002.66, may withdraw from the program for good cause and reenroll in one of the programs. The total funding for a child who reenrolls in one of the programs for good cause may not exceed one full-time equivalent student. Funding for a child who withdraws and reenrolls in one of the programs for good cause shall be issued in accordance with the agency's uniform attendance policy adopted pursuant to paragraph (6)(d).

A child may reenroll only once in a prekindergarten program under this section. A child who reenrolls in a prekindergarten program under this subsection may not subsequently withdraw from the program and reenroll. The Agency for Workforce Innovation shall establish criteria specifying whether a good cause exists for a child to withdraw from a program under paragraph (a), whether a child has substantially completed a program under paragraph (b), and whether an extreme hardship exists which is beyond the child's or parent's control under paragraph (b).

Section 6. Subsection (2) of section 1002.73, Florida Statutes, is amended to read:

1002.73 Department of Education; powers and duties; accountability requirements.—

(2) The department shall adopt procedures for ~~its the department's~~:

(a) Approval of prekindergarten director credentials under ss. 1002.55 and 1002.57.

(b) Approval of emergent literacy training courses under ss. 1002.55 and 1002.59.

(c) Administration of the statewide kindergarten screening and calculation of kindergarten readiness rates under s. 1002.69.

(d) Approval of specialized instructional services providers under s. 1002.66.

Section 7. Subsection (3) of section 1002.75, Florida Statutes, is amended to read:

1002.75 Agency for Workforce Innovation; powers and duties; operational requirements.—

(3) The Agency for Workforce Innovation shall adopt, in consultation with and subject to approval by the department, procedures governing the administration of the Voluntary Prekindergarten Education Program by the early learning coalitions and school districts for:

(a) Approving improvement plans of private prekindergarten providers and public schools under s. 1002.67.

(b) Placing private prekindergarten providers and public schools on probation and requiring corrective actions under s. 1002.67.

(c) Removing a private prekindergarten provider or public school from eligibility to deliver the program due to the provider's or school's remaining on probation beyond the time permitted under s. 1002.67.

(d) Enrolling children in and determining the eligibility of children for the Voluntary Prekindergarten Education Program under s. 1002.66.

(e) Paying specialized instructional services providers under s. 1002.66.

Section 8. This act shall take effect July 1, 2010.

Approved by the Governor June 4, 2010.

Filed in Office Secretary of State June 4, 2010.