

## CHAPTER 2011-128

### Committee Substitute for House Bill No. 1331

An act relating to school choice; amending s. 1002.38, F.S.; revising legislative intent and eligibility requirements for participation in the Opportunity Scholarship Program; deleting provisions that authorize an opportunity scholarship for attendance at a private school; requiring that an opportunity scholarship remain in force until the student graduates from high school; revising school district obligations and deleting provisions relating to private schools to conform to changes made by the act; amending ss. 1001.42 and 1002.20, F.S.; conforming provisions to changes made by the act; deleting an obsolete provision relating to the John M. McKay Scholarships for Students with Disabilities Program; providing an effective date.

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

Section 1. Section 1002.38, Florida Statutes, is amended to read:

1002.38 Opportunity Scholarship Program.—

(1) FINDINGS AND INTENT.—The purpose of this section is to provide enhanced opportunity for students in this state to gain the knowledge and skills necessary for postsecondary education, a career education, or the world of work. The Legislature recognizes that the voters of the State of Florida, in the November 1998 general election, amended s. 1, Art. IX of the Florida Constitution so as to make education a paramount duty of the state. The Legislature finds that the State Constitution requires the state to provide a uniform, safe, secure, efficient, and high-quality system which allows the opportunity to obtain a high-quality education. The Legislature further finds that a student should not be compelled, against the wishes of the student's parent, to remain in a school found by the state to be failing for ~~2 years in a 4-year period~~. The Legislature shall make available opportunity scholarships in order to give parents the opportunity for their children to attend a public school that is performing satisfactorily ~~or to attend an eligible private school when the parent chooses to apply the equivalent of the public education funds generated by his or her child to the cost of tuition in the eligible private school as provided in paragraph (6)(a)~~. Eligibility of a private school shall include the control and accountability requirements that, coupled with the exercise of parental choice, are reasonably necessary to secure the educational public purpose, as delineated in subsection (4).

(2) OPPORTUNITY SCHOLARSHIP ELIGIBILITY.—

(a) A public school student's parent may request and receive ~~from the state~~ an opportunity scholarship for the student to enroll in and attend a public private school in accordance with the provisions of this section if:

(a)1. By assigned school attendance area or by special assignment, the student has spent the prior school year in attendance at a public school that has been designated pursuant to s. 1008.34 as performance grade category “D” or “F,” ~~failing to make adequate progress, and that is in one of the two lowest-performing categories pursuant to s. 1008.33 has had 2 school years in a 4-year period of such low performance,~~ and the student’s attendance occurred during a school year in which such designation was in effect;

2. The student has been in attendance elsewhere in the public school system and has been assigned to such school for the next school year; or

3. The student ~~is entering kindergarten or first grade and has been notified that he or she~~ the student has been assigned to such school for the next school year.

(b) ~~The parent has obtained acceptance for admission of the student to a private school eligible for the program pursuant to subsection (4), and has notified the Department of Education and the school district of the request for an opportunity scholarship no later than July 1 of the first year in which the student intends to use the scholarship.~~

(b) The provisions of This section does shall not apply to a student who is enrolled in a school operating for the purpose of providing educational services to youth in Department of Juvenile Justice commitment programs. For purposes of continuity of educational choice, the opportunity scholarship shall remain in force until the student graduates from high school returns to a public school or, if the student chooses to attend a private school the highest grade of which is grade 8, until the student matriculates to high school and the public high school to which the student is assigned is an accredited school with a performance grade category designation of “C” or better. However, at any time upon reasonable notice to the Department of Education and the school district, the student’s parent may remove the student from the private school and place the student in a public school, as provided in subparagraph (3)(a)2.

### (3) SCHOOL DISTRICT OBLIGATIONS.—

(a) A school district shall, for each student enrolled in or assigned to a school that has been designated as provided in subsection (2) performance grade category “F” for 2 school years in a 4-year period:

1. Timely notify the parent of the student as soon as such designation is made of all options available pursuant to this section.

2. Offer that student’s parent an opportunity to enroll the student in a ~~the~~ public school within the district that has been designated by the state pursuant to s. 1008.34 as a school performing higher than that in which the student is currently enrolled or to which the student has been assigned, but not less than performance grade category “C.” ~~The parent is not required to accept this offer in lieu of requesting a state opportunity scholarship to a~~

~~private school. The student shall have the opportunity to continue attendance in attending the higher-performing higher performing public school feeder pattern shall remain in force until the student graduates from high school.~~

(b) The parent of a student enrolled in or assigned to a school that has been designated as provided in subsection (2) ~~performance grade category “F” for 2 school years in a 4-year period~~ may choose as an alternative to subparagraph (a)2. to enroll the student in and transport the student to a higher-performing public school that has available space in any other an adjacent school district in the state, and that school district shall accept the student and report the student for purposes of the district’s funding pursuant to the Florida Education Finance Program.

(c) For students in the school district who are participating in the state Opportunity Scholarship Program, the school district shall provide locations and times to take all statewide assessments required pursuant to s. 1008.22.

(d) Students with disabilities who are eligible to receive services from the school district under federal or state law, and who participate in this program, remain eligible to receive services from the school district as provided by federal or state law.

~~(e) If for any reason a qualified private school is not available for the student or~~ If the parent chooses to request that the student be enrolled in a higher-performing the higher performing public school in the school district, rather than choosing to request the state opportunity scholarship, transportation costs to the higher-performing higher performing public school shall be the responsibility of the school district. The district may utilize state categorical transportation funds or state-appropriated public school choice incentive funds for this purpose.

~~(4) PRIVATE SCHOOL ELIGIBILITY.—To be eligible to participate in the Opportunity Scholarship Program, a private school must be a Florida private school, may be sectarian or nonsectarian, and must:~~

~~(a)—Demonstrate fiscal soundness by being in operation for 1 school year or provide the Department of Education with a statement by a certified public accountant confirming that the private school desiring to participate is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming year serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected. In lieu of such a statement, a surety bond or letter of credit for the amount equal to the opportunity scholarship funds for any quarter may be filed with the department.~~

~~(b)—Notify the Department of Education and the school district in whose service area the school is located of its intent to participate in the program under this section by May 1 of the school year preceding the school year in which it intends to participate. The notice shall specify the grade levels and~~

services that the private school has available for the Opportunity Scholarship Program.

~~(c) Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d.~~

~~(d) Meet state and local health and safety laws and codes.~~

~~(e) Accept scholarship students on an entirely random and religious-neutral basis without regard to the student's past academic history; however, the private school may give preference in accepting applications to siblings of students who have already been accepted on a random and religious-neutral basis.~~

~~(f) Be subject to the instruction, curriculum, and attendance criteria adopted by an appropriate nonpublic school accrediting body and be academically accountable to the parent for meeting the educational needs of the student. The private school must furnish a school profile which includes student performance.~~

~~(g) Employ or contract with teachers who hold a baccalaureate or higher degree, or have at least 3 years of teaching experience in public or private schools, or have special skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught.~~

~~(h) Comply with all state statutes relating to private schools.~~

~~(i) Accept as full tuition and fees the amount provided by the state for each student.~~

~~(j) Agree not to compel any student attending the private school on an opportunity scholarship to profess a specific ideological belief, to pray, or to worship.~~

~~(k) Adhere to the tenets of its published disciplinary procedures prior to the expulsion of any opportunity scholarship student.~~

~~(5) OBLIGATION OF PROGRAM PARTICIPATION.—~~

~~(a) Any student participating in the Opportunity Scholarship Program must remain in attendance throughout the school year, unless excused by the school for illness or other good cause, and must comply fully with the school's code of conduct.~~

~~(b) The parent of each student participating in the Opportunity Scholarship Program must comply fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause.~~

~~(c) The parent shall ensure that the student participating in the Opportunity Scholarship Program takes all statewide assessments required pursuant to s. 1008.22.~~

~~(d)—A participant who fails to comply with this subsection shall forfeit the opportunity scholarship.~~

~~(6) — OPPORTUNITY SCHOLARSHIP FUNDING AND PAYMENT. —~~

~~(a)—The maximum opportunity scholarship granted for an eligible student 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. In addition, the calculated amount shall include the per-student share of instructional materials funds, technology funds, and other categorical funds as provided for this purpose in the General Appropriations Act.~~

~~(b)—The amount of the opportunity scholarship shall be the calculated amount or the amount of the private school's tuition and fees, whichever is less. Fees eligible shall include textbook fees, lab fees, and other fees related to instruction, including transportation.~~

~~(c)—The school district shall report all students who are attending a private school under this program. The students attending private schools on opportunity scholarships shall be reported separately from those students reported for purposes of the Florida Education Finance Program.~~

~~(d)—The public or private school that provides services to students with disabilities shall receive the weighted funding for such services at the appropriate funding level consistent with the provisions of s. 1011.62(1)(c).~~

~~(e)—For purposes of calculating the opportunity scholarship, a student will be eligible for the amount of the appropriate basic cost factor if:~~

~~1. The student currently participates in a Group I program funded at the basic cost factor and is not subsequently identified as having a disability; or~~

~~2. The student currently participates in a Group II program and the parent has chosen a private school that does not provide the additional services funded by the Group II program.~~

~~(f)—Following annual notification on July 1 of the number of participants, the Department of Education shall transfer from each school district's appropriated funds the calculated amount from the Florida Education Finance Program and authorized categorical accounts to a separate account for the Opportunity Scholarship Program for quarterly disbursement to the parents of participating students.~~

~~(g)—Upon proper documentation reviewed and approved by the Department of Education, the Chief Financial Officer shall make opportunity scholarship payments in four equal amounts no later than September 1, November 1, February 1, and April 1 of each academic year in which the opportunity scholarship is in force. The initial payment shall be made after~~

~~Department of Education verification of admission acceptance, and subsequent payments shall be made upon verification of continued enrollment and attendance at the private school. Payment must be by individual warrant made payable to the student's parent and mailed by the Department of Education to the private school of the parent's choice, and the parent shall restrictively endorse the warrant to the private school.~~

~~(7) LIABILITY.—No liability shall arise on the part of the state based on any grant or use of an opportunity scholarship.~~

~~(4)(8) RULES.—The State Board of Education may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section. Rules shall include penalties for noncompliance with subsections (3) and (5). However, the inclusion of eligible private schools within options available to Florida public school students does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of private schools beyond those reasonably necessary to enforce requirements expressly set forth in this section.~~

Section 2. Subsection (20) of section 1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(20) OPPORTUNITY SCHOLARSHIPS.—Adopt policies allowing students attending schools that have been designated with a grade of “D” or “F,” pursuant to s. 1008.34 and that are in one of the two lowest-performing categories pursuant to s. 1008.33 failing to make adequate progress, for 2 school years in a 4-year period to attend a higher-performing higher performing school in the district or any other an adjoining district in the state or be granted a state opportunity scholarship to a private school, in conformance with s. 1002.38 and State Board of Education rule.

Section 3. Paragraph (b) of subsection (6) of section 1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(6) EDUCATIONAL CHOICE.—

(b) Private school choices.—Parents of public school students may seek private school choice options under certain programs.

~~1.—Under the Opportunity Scholarship Program, the parent of a student in a failing public school may request and receive an opportunity scholarship~~

~~for the student to attend a private school in accordance with the provisions of s. 1002.38.~~

1.2. Under the McKay Scholarships for Students with Disabilities Program, the parent of a public school student with a disability ~~who is dissatisfied with the student's progress~~ may request and receive a McKay Scholarship for the student to attend a private school in accordance with the provisions of s. 1002.39.

2.3. Under the Florida Tax Credit Scholarship Program, the parent of a student who qualifies for free or reduced-price school lunch may seek a scholarship from an eligible nonprofit scholarship-funding organization in accordance with the provisions of s. 1002.395.

Section 4. This act shall take effect July 1, 2011.

Approved by the Governor June 2, 2011.

Filed in Office Secretary of State June 2, 2011.