

CHAPTER 2012-22

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 859

An act relating to the Florida Tax Credit Scholarship Program; amending s. 1002.395, F.S.; revising student eligibility requirements for participation in the program; increasing the tax credit cap amount applicable to the program; revising provisions relating to the reporting of test scores by private schools participating in the program; providing that a private school may choose to offer and administer statewide assessments at the school; revising Department of Education duties relating to site visits; requiring the department to provide at no cost statewide assessments and related materials to a school that makes such a request; providing conditions under which statewide assessments may be administered at a private school; requiring a private school to follow statutory requirements, State Board of Education rules, and district testing policies; requiring a school district to coordinate with the department to provide statewide assessments and related materials to a private school upon the department's request; providing school district responsibilities; revising the conditions upon which the Commissioner of Education may base the denial, suspension, or revocation of a private school's participation in the program or the suspension of scholarship fund payment; amending s. 1002.20, F.S.; conforming provisions; providing an effective date.

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

Section 1. Subsection (3), paragraph (a) of subsection (5), paragraph (e) of subsection (7), paragraph (c) of subsection (8), paragraphs (j) and (n) of subsection (9), subsection (10), and paragraphs (a) and (c) of subsection (11) of section 1002.395, Florida Statutes, are amended, and paragraph (p) is added to subsection (9) of that section, to read:

1002.395 Florida Tax Credit Scholarship Program.—

(3) PROGRAM; SCHOLARSHIP ELIGIBILITY.—

(a) The Florida Tax Credit Scholarship Program is established.

(b) Contingent upon available funds,:

~~1.~~ a student is eligible for a Florida tax credit scholarship under this section if the student meets one or more of the following criteria:

1. The student qualifies for free or reduced-price school lunches under the National School Lunch Act or is on the direct certification list and:

a. Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;

b. Received a scholarship from an eligible nonprofit scholarship-funding organization or from the State of Florida during the previous school year; or

c. Is eligible to enter kindergarten through fifth ~~or first grade~~; or

2.d. ~~The student~~ is currently placed, or during the previous state fiscal year was placed, in foster care as defined in s. 39.01.

3.2. ~~The A student~~ continues ~~may continue~~ in the scholarship program as long as the student’s household income level does not exceed 230 percent of the federal poverty level.

4.3. ~~The student, who is a first-time tax credit scholarship recipient, is a sibling of a student who is continuing in the scholarship program and who resides in the same household as the student shall also be eligible as a first-time tax credit scholarship recipient~~ if the sibling meets one or more of the criteria specified in ~~subparagraphs~~ subparagraph 1. and 2. and as long as the student’s and sibling’s household income level does not exceed 230 percent of the federal poverty level.

~~(c) Household income for purposes of a student who is currently in foster care as defined in s. 39.01 shall consist only of the income that may be considered in determining whether he or she qualifies for free or reduced-price school lunches under the National School Lunch Act.~~

(5) SCHOLARSHIP FUNDING TAX CREDITS; LIMITATIONS.—

(a)1. The tax credit cap amount is \$229 ~~\$140~~ million in the 2012-2013 ~~2010-2011~~ state fiscal year.

2. In the 2013-2014 ~~2011-2012~~ state fiscal year and each state fiscal year thereafter, the tax credit cap amount is the tax credit cap amount in the prior state fiscal year. However, in any state fiscal year when the annual tax credit amount for the prior state fiscal year is equal to or greater than 90 percent of the tax credit cap amount applicable to that state fiscal year, the tax credit cap amount shall increase by 25 percent. The department shall publish on its website information identifying the tax credit cap amount when it is increased pursuant to this subparagraph.

(7) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM PARTICIPATION.—

(e) The parent shall ensure that the student participating in the scholarship program takes the norm-referenced assessment offered by the private school. The parent may also choose to have the student participate in the statewide assessments pursuant to s. 1008.22. If the parent requests that the student participating in the scholarship program take statewide assessments pursuant to s. 1008.22 and the private school has not chosen to offer and administer the statewide assessments, the parent is responsible for transporting the student to the assessment site designated by the school district.

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

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

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

2. Annually administering or making provision for students participating in the scholarship program in grades 3 through 10 to take one of the nationally norm-referenced tests identified by the Department of Education or the statewide assessments pursuant to s. 1008.22. Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement. A participating private school must report a student's scores to the parent. A participating private school must annually report by August 15 the scores of all participating students ~~and to the independent research organization selected by the Department of Education as described in paragraph (9)(j).~~

3. Cooperating with the scholarship student whose parent chooses to have the student participate in the statewide assessments pursuant to s. 1008.22 or, if a private school chooses to offer the statewide assessments, administering the assessments at the school.

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

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

The inability of a private school to meet the requirements of this subsection shall constitute a basis for the ineligibility of the private school to participate in the scholarship program as determined by the Department of Education.

(9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of Education shall:

(j) Select an independent research organization, which may be a public or private entity or university, to which participating private schools must report the scores of participating students on the nationally norm-referenced tests or the statewide assessments administered by the private school in grades 3 through 10.

1. The independent research organization must annually report to the Department of Education on the year-to-year learning gains of participating students:

a. On a statewide basis. The report shall also include, to the extent possible, a comparison of these learning gains to the statewide learning gains of public school students with socioeconomic backgrounds similar to those of students participating in the scholarship program. To minimize costs and reduce time required for the independent research organization's analysis and evaluation, the Department of Education shall conduct analyses of matched students from public school assessment data and calculate control group learning gains using an agreed-upon methodology outlined in the contract with the independent research organization; and

b. According to each participating private school in which there are at least 30 participating students who have scores for tests administered during or after the 2009-2010 school year for 2 consecutive years at that private school.

2. The sharing and reporting of student learning gain data under this paragraph must be in accordance with requirements of 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act, and shall be for the sole purpose of creating the annual report required by subparagraph 1. All parties must preserve the confidentiality of such information as required by law. The annual report must not disaggregate data to a level that will identify individual participating schools, except as required under subparagraph 1.b., or disclose the academic level of individual students.

3. The annual report required by subparagraph 1. shall be published by the Department of Education on its website.

(n)1. Conduct ~~random~~ site visits to private schools participating in the Florida Tax Credit Scholarship Program. The purpose of the site visits is solely to verify the information reported by the schools concerning the enrollment and attendance of students, the credentials of teachers, background screening of teachers, and teachers' fingerprinting results. The Department of Education may not make more than seven ~~random~~ site visits each year; however, the department may make additional site visits at any time to any school that has received a notice of noncompliance or a notice of proposed action within the previous 2 years and may not make more than one random site visit each year to the same private school.

2. Annually, by December 15, report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the Department of Education's actions with respect to implementing accountability in the scholarship program under this section and s. 1002.421, any substantiated allegations or violations of law or rule by an eligible private school under this program concerning the enrollment and attendance of students, the credentials of teachers, background screening of teachers, and teachers' fingerprinting results and the corrective action taken by the Department of Education.

(p) Upon the request of a participating private school, provide at no cost to the school the statewide assessments administered under s. 1008.22 and

any related materials for administering the assessments. Students at a private school may be assessed using the statewide assessments if the addition of those students and the school does not cause the state to exceed its contractual caps for the number of students tested and the number of testing sites. The state shall provide the same materials and support to a private school that it provides to a public school. A private school that chooses to administer statewide assessments under s. 1008.22 shall follow the requirements set forth in ss. 1008.22 and 1008.24, rules adopted by the State Board of Education to implement those sections, and district-level testing policies established by the district school board.

(10) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—

(a) Upon the request of any eligible nonprofit scholarship-funding organization, a school district shall inform all households within the district receiving free or reduced-priced meals under the National School Lunch Act of their eligibility to apply for a tax credit scholarship. The form of such notice shall be provided by the eligible nonprofit scholarship-funding organization, and the district shall include the provided form, if requested by the organization, in any normal correspondence with eligible households. If an eligible nonprofit scholarship-funding organization requests a special communication to be issued to households within the district receiving free or reduced-price meals under the National School Lunch Act, the organization shall reimburse the district for the cost of postage. Such notice is limited to once a year.

(b) Upon the request of the Department of Education, a school district shall coordinate with the department to provide to a participating private school the statewide assessments administered under s. 1008.22 and any related materials for administering the assessments. A school district is responsible for implementing test administrations at a participating private school, including the:

- 1. Provision of training for private school staff on test security and assessment administration procedures;
- 2. Distribution of testing materials to a private school;
- 3. Retrieval of testing materials from a private school;
- 4. Provision of the required format for a private school to submit information to the district for test administration and enrollment purposes; and
- 5. Provision of any required assistance, monitoring, or investigation at a private school.

(11) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—

(a)1. The Commissioner of Education 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, in instances in which the noncompliance is correctable within a reasonable amount of time and in which the health, safety, or welfare of the students is not threatened, the commissioner may issue a notice of noncompliance that shall provide the private school with a timeframe within which to provide evidence of compliance prior to taking action to suspend or revoke the private school's participation in the scholarship program.

2. The Commissioner of Education may deny, suspend, or revoke a private school's participation in the scholarship program if the commissioner determines that:

a. An owner or operator of a private school has exhibited a previous pattern of failure to comply with this section or s. 1002.421; or

b. An owner or operator of the private school is operating or has operated an educational institution in this state or another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public.

In making ~~the~~ this determination under this subparagraph, the commissioner may consider factors that include, but are not limited to, acts or omissions by an owner or operator that 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 or a nonprofit scholarship-funding organization for scholarship funds improperly received or retained by a school; imposition of a prior criminal sanction, ~~or~~ civil fine, administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation ~~sanction~~ related to an owner's or operator's management or operation of an educational institution; or other types of criminal proceedings in which the 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.

(c) The commissioner may immediately (c) suspend payment of scholarship funds if it is determined that there is probable cause to believe that there is:

1. An imminent threat to the health, safety, and welfare of the students;

2. A previous pattern of failure to comply with this section or s. 1002.421;
or

3.2. Fraudulent activity on the part of the private school. Notwithstanding s. 1002.22, in incidents of alleged fraudulent activity pursuant to this section, the Department of Education's Office of Inspector General is authorized to release personally identifiable records or reports of students to the following persons or organizations:

a. A court of competent jurisdiction in compliance with an order of that court or the attorney of record in accordance with a lawfully issued subpoena,

consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

b. A person or entity authorized by a court of competent jurisdiction in compliance with an order of that court or the attorney of record pursuant to a lawfully issued subpoena, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

c. Any person, entity, or authority issuing a subpoena for law enforcement purposes when the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and 34 C.F.R. s. 99.31.

The commissioner’s order suspending payment pursuant to this paragraph may be appealed pursuant to the same procedures and timelines as the notice of proposed action set forth in paragraph (b).

Section 2. 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 McKay Scholarships for Students with Disabilities Program, the parent of a public school student with a disability 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. Under the Florida Tax Credit Scholarship Program, the parent of a student who qualifies for free or reduced-price school lunch or who is currently placed, or during the previous state fiscal year was placed, in foster care as defined in s. 39.01 may seek a scholarship from an eligible nonprofit scholarship-funding organization in accordance with ~~the provisions of s. 1002.395.~~

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor March 23, 2012.

Filed in Office Secretary of State March 23, 2012.