

CHAPTER 2017-166

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 15

An act relating to educational options; amending s. 1002.385, F.S.; redefining the terms “disability” and “IEP”; defining the term “inactive”; prohibiting a student who is enrolled in the Florida School for the Deaf and the Blind from being eligible for the Gardiner Scholarship Program; revising the purposes for which program funds may be used; requiring that a student’s account be closed and program funds revert to the state after the account is inactive for a specified number of years; specifying that certain actions of a private school are a basis for program ineligibility; revising parent and student responsibilities for program participation; revising obligations of scholarship-funding organizations; amending s. 1002.395, F.S.; revising student eligibility criteria for the Florida Tax Credit Scholarship Program; requiring the Department of Education to provide a letter of denial to participate in the program to a specified entity within a certain period; requiring the department to provide a letter of acceptance or denial of specified actions related to a tax credit to a specified entity and include that entity on certain letters and correspondence; authorizing a child of a parent who is a member of the United States Armed Forces to apply for a scholarship at any time; requiring a parent to approve each payment made by funds transfer; prohibiting a parent from designating certain entities or individuals to approve a funds transfer; providing that consecutive years of certain material exceptions constitutes program ineligibility for certain private schools; revising the annual limits of a scholarship awarded to certain students; authorizing payment of the scholarship to be made by funds transfer; specifying approved means of funds transfer; requiring a parent to approve a funds transfer before funds are deposited; providing an effective date.

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

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

1002.385 The Gardiner Scholarship.—

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

(d) “Disability” means, for a 3- or 4-year-old child or for a student in kindergarten to grade 12, autism spectrum disorder, as defined in the

Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association; cerebral palsy, as defined in s. 393.063(6); Down syndrome, as defined in s. 393.063(15); an intellectual disability, as defined in s. 393.063(24); Phelan-McDermid syndrome, as defined in s. 393.063(28); Prader-Willi syndrome, as defined in s. 393.063(29); spina bifida, as defined in s. 393.063(40); being a high-risk child, as defined in s. 393.063(23)(a); muscular dystrophy; and Williams syndrome; rare diseases which affect patient populations of fewer than 200,000 individuals in the United States, as defined by the National Organization for Rare Disorders; anaphylaxis; deaf; visually impaired; dual sensory impaired; traumatic brain injured; or hospital or homebound, as defined by rules of the State Board of Education and evidenced by reports from local school districts. The term “hospital or homebound” includes a student who has a medically diagnosed physical or psychiatric condition or illness, as defined by the state board in rule, and who is confined to the home or hospital for more than 6 months.

(h) “IEP” means individual education plan, regardless of whether the plan has been reviewed or revised within the last 12 months.

(i) “Inactive” means that eligible expenditures have not been made from an account funded pursuant to paragraph (13)(d).

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

(a) The student:

1. Is a resident of this state;
2. Is 3 or 4 years of age on or before September 1 of the year in which the student applies for program participation, or is eligible to enroll in kindergarten through grade 12 in a public school in this state;
3. Has a disability as defined in paragraph (2)(d); and
4. Is the subject of an IEP written in accordance with rules of the State Board of Education or with the applicable rules of another state or has received a diagnosis of a disability from a physician who is licensed under chapter 458 or chapter 459, or a psychologist who is licensed under chapter 490, or a physician who holds an active license issued by another state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

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

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

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

(a) Instructional materials, including digital devices, digital periphery devices, and assistive technology devices that allow a student to access instruction or instructional content and training on the use of and maintenance agreements for these devices.

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

(c) Specialized services by approved providers or by a hospital in this state which ~~that~~ are selected by the parent. These specialized services may include, but are not limited to:

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

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

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

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

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

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

(e) Fees for nationally standardized, norm-referenced achievement tests, Advanced Placement Examinations, industry certification examinations, assessments related to postsecondary education, or other assessments.

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

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

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

(i) Fees for specialized summer education programs.

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

(k) Transition services provided by job coaches.

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

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

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

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

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

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

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

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

b. After Any period of 3 consecutive years after high school completion or graduation during which the student has not been enrolled in an eligible postsecondary educational institution or a program offered by the institution; or-

c. Three consecutive fiscal years in which an account has been inactive.

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

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

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

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

(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 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 shall report a student’s scores to the parent.

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 shall 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.

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

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

~~If the inability of a private school is unable to meet the requirements of this subsection or has in consecutive years had material exceptions listed in its agreed-upon procedures reports, there is~~ constitutes a basis for the ineligibility of the private school to participate in the program as determined by the commissioner.

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

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

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

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

(j) Documenting each scholarship student's eligibility for a fiscal year before granting a scholarship for that fiscal year pursuant to paragraph

(3)(b). A student is ineligible for scholarship funding if the student’s account has been inactive for 2 consecutive fiscal years. However, once an eligible expenditure is made pursuant to paragraph (11)(f), the student may resume scholarship funding, based on available funds.

Section 2. Paragraph (f) of subsection (5) of section 1002.395, Florida Statutes, is redesignated as paragraph (g), subsection (3), paragraph (b) of subsection (5), paragraph (h) of subsection (6), paragraph (f) of subsection (7), subsection (8), and paragraphs (a) and (b) of subsection (12) are amended, and a new paragraph (f) is added to subsection (5) 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) For the 2014-2015 and 2015-2016 school years, contingent upon available funds, 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;~~

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

~~3. The student continues in the scholarship program as long as the student’s household income level does not exceed 230 percent of the federal poverty level.~~

(b)(c) For the 2016-2017 school year and thereafter, contingent upon available funds, 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 is on the direct certification list or the student’s household income level does not exceed 185 percent of the federal poverty level; or

2. The student is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care as defined in s. 39.01.

3. The student’s household income level is greater than 185 percent of the federal poverty level but does not exceed 260 percent of the federal poverty level.

A student who initially receives a scholarship based on eligibility under subparagraph (b)2. ~~or subparagraph (c)2.~~ remains eligible to participate until the student graduates from high school or attains the age of 21 years, whichever occurs first, regardless of the student’s household income level. A sibling of a student who is participating in the scholarship program under

this subsection is eligible for a scholarship if the student resides in the same household as the sibling.

(5) SCHOLARSHIP FUNDING TAX CREDITS; LIMITATIONS.—

(b) A taxpayer may submit an application to the department for a tax credit or credits under one or more of s. 211.0251, s. 212.1831, s. 220.1875, s. 561.1211, or s. 624.51055.

1. The taxpayer shall specify in the application each tax for which the taxpayer requests a credit and the applicable taxable year for a credit under s. 220.1875 or s. 624.51055 or the applicable state fiscal year for a credit under s. 211.0251, s. 212.1831, or s. 561.1211. The department shall approve tax credits on a first-come, first-served basis and must obtain the division's approval before approving a tax credit under s. 561.1211.

2. Within 10 days after approving or denying an application, the department shall provide a copy of its approval or denial letter to the eligible nonprofit scholarship-funding organization specified by the taxpayer in the application.

(f) Within 10 days after approving or denying an application for a carryforward tax credit under paragraph (c), the conveyance, transfer, or assignment of a tax credit under paragraph (d), or the rescindment of a tax credit under paragraph (e), the department shall provide a copy of its approval or denial letter to the eligible nonprofit scholarship-funding organization specified by the taxpayer. The department shall also include the eligible nonprofit scholarship-funding organization specified by the taxpayer on all letters or correspondence of acknowledgment for tax credits under s. 212.1831.

(6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS.—An eligible nonprofit scholarship-funding organization:

(h) Must allow a student in foster care or out-of-home care or a dependent child of a parent who is a member of the United States Armed Forces to apply for a scholarship at any time.

Information and documentation provided to the Department of Education and the Auditor General relating to the identity of a taxpayer that provides an eligible contribution under this section shall remain confidential at all times in accordance with s. 213.053.

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

(f) Upon receipt of a scholarship warrant from the eligible nonprofit scholarship-funding organization, the parent to whom the warrant is made must restrictively endorse the warrant to the private school for deposit into the account of the private school. If payments are made by funds transfer,

the parent must approve each payment before the scholarship funds may be deposited. The parent may not designate any entity or individual associated with the participating private school as the parent's attorney in fact to endorse a scholarship warrant or approve a funds transfer. A participant who fails to comply with this paragraph forfeits the scholarship.

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

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

(b) Provide to the eligible nonprofit scholarship-funding organization, upon request, all documentation required for the student's participation, including the private school's and student's fee schedules.

(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 to the Learning System Institute 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.

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

(e) Provide a report from ~~Annually contract with~~ an independent certified public accountant who performs ~~to perform~~ the agreed-upon

procedures developed under paragraph (6)(o) and ~~produce a report of the results if the private school receives more than \$250,000 in funds from scholarships awarded under this section in the 2010-2011 state fiscal year or a state fiscal year thereafter.~~ A private school subject to this paragraph must annually submit the report by September 15, 2011, and annually thereafter to the scholarship-funding organization that awarded the majority of the school's scholarship funds. The agreed-upon procedures must be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

~~If the inability of a private school is unable to meet the requirements of this subsection or has consecutive years of material exceptions listed in the report required under paragraph (e), the commissioner may determine that shall constitute a basis for the ineligibility of the private school is ineligible to participate in the scholarship program as determined by the Department of Education.~~

(12) SCHOLARSHIP AMOUNT AND PAYMENT.—

(a) Except as provided in subparagraph 2., the scholarship amount of a scholarship provided to any student for any single school year by an eligible nonprofit scholarship-funding organization from eligible contributions shall be for total costs authorized under paragraph (6)(d), not to exceed annual limits, which shall be determined as follows:

1.a. ~~The base amount For a scholarship~~ awarded to a student enrolled in an eligible private school, ~~the limit shall be determined as a percentage by multiplying the unweighted FTE funding amount in that state fiscal year by the percentage used to determine the limit in the prior state fiscal year.~~ However, in each state fiscal year that the tax credit cap amount increases pursuant to paragraph (5)(a), the prior year percentage shall be increased by 4 percentage points and the increased percentage shall be used to determine the limit for that state fiscal year. ~~If the percentage so calculated reaches 80 percent in a state fiscal year, no further increase in the percentage is allowed and the limit shall be 80 percent of the unweighted FTE funding amount for that state fiscal year and thereafter. Beginning in the 2016-2017 state fiscal year, the amount of a scholarship awarded to a student enrolled in an eligible private school shall be equal to 82 percent of the unweighted FTE funding amount for that state fiscal year and thereafter as follows:-~~

(I) Eighty-eight percent for a student enrolled in kindergarten through grade 5.

(II) Ninety-two percent for a student enrolled in grade 6 through grade 8.

(III) Ninety-six percent for a student enrolled in grade 9 through grade 12.

b. ~~The For a scholarship amount~~ awarded to a student enrolled in a Florida public school that is located outside the district in which the student

resides or in a lab school as defined in s. 1002.32, is limited to \$750 ~~the limit shall be \$500.~~

~~2. The annual limit for a scholarship under sub-subparagraph 1.a. shall be reduced by:~~

~~a. Twenty-five percent if the student's household income level is equal to or greater than 200 percent, but less than 215 percent, of the federal poverty level.~~

~~b. Fifty percent if the student's household income level is equal to or greater than 215 percent, but equal to or less than 230 percent, of the federal poverty level.~~

~~2.3. For the 2016-2017 state fiscal year and thereafter, The annual limit for a scholarship under sub-subparagraph 1.a. shall be reduced by:~~

~~a. Twelve percent if the student's household income level is greater than or equal to 200 percent, but less than 215 percent, of the federal poverty level.~~

~~b. Twenty-six percent if the student's household income level is greater than or equal to 215 percent, but less than 230 percent, of the federal poverty level.~~

~~c. Forty percent if the student's household income level is greater than or equal to 230 percent, but less than 245 percent, of the federal poverty level.~~

~~d. Fifty percent if the student's household income level is greater than or equal to 245 percent, but less than or equal to 260 percent, of the federal poverty level.~~

~~(b) Payment of the scholarship by the eligible nonprofit scholarship-funding organization shall be by individual warrant made payable to the student's parent or by funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of payment that the department deems to be commercially viable or cost-effective. If the payment is made by warrant ~~parent chooses that his or her child attend an eligible private school, the warrant must be delivered by the eligible nonprofit scholarship-funding organization to the private school of the parent's choice, and the parent shall restrictively endorse the warrant to the private school. An eligible nonprofit scholarship-funding organization shall ensure that the parent to whom the warrant is made restrictively endorsed the warrant to the private school for deposit into the account of the private school or that the parent has approved a funds transfer before any scholarship funds are deposited.~~~~

Section 3. This act shall take effect July 1, 2017.

Approved by the Governor June 26, 2017.

Filed in Office Secretary of State June 26, 2017.