

1 HB640
2 134294-1
3 By Representatives Fincher, Ball, McMillan, Williams (P),
4 Collins, Sessions and McClurkin
5 RFD: Education Policy
6 First Read: 03-APR-12

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8 SYNOPSIS: This bill establishes the Alabama
9 Scholarships for Students with Disabilities
10 Program.

11 The program would provide eligible students
12 with the option of attending a public school other
13 than the one to which the student is assigned or of
14 receiving a scholarship to attend a private school
15 of the student's choice.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
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21 To establish the Alabama Scholarships for Students
22 with Disabilities Program; to provide for eligibility; to
23 provide for prohibitions; to provide parental options; to
24 provide for the obligations of the State Department of
25 Education and the State Superintendent of Education; to
26 provide for the eligibility of private schools to participate;
27 to provide for parent and student responsibilities for

1 participating in the program; to provide for the funding and
2 payment of scholarships; and to provide for the promulgation
3 of rules by the State Board of Education to implement and
4 administer the program.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. (a) The Alabama Scholarships for Students
7 with Disabilities Program (ASSDP) is established to provide
8 the option to attend a public school other than the one to
9 which assigned or to receive a scholarship to a private school
10 of choice for students with disabilities for whom either of
11 the following apply:

12 (1) An individual educational plan has been written
13 in accordance with rules of the State Board of Education.

14 (2) A 504 accommodation plan has been issued under
15 Section 504 of the federal Rehabilitation Act of 1973.

16 (b) Students with disabilities include K-12 students
17 who are documented as having an intellectual disability; a
18 speech impairment; a language impairment; a hearing
19 impairment, including deafness; a visual impairment, including
20 blindness; a dual sensory impairment; an orthopedic
21 impairment; another health impairment; an emotional or
22 behavioral disability; a specific learning disability,
23 including, but not limited to, dyslexia, dyscalculia, or
24 developmental aphasia; a traumatic brain injury; a
25 developmental delay; or autism spectrum disorder.

26 Section 2. (a) The parent of a student with a
27 disability may request and receive from the state an ASSDP

1 scholarship for the child to enroll in and attend a private
2 school in accordance with this act if any of the following
3 conditions are satisfied:

4 (1) The student has received specialized
5 instructional services during the previous school year and the
6 student has a current individual educational plan developed by
7 the local school board in accordance with rules of the State
8 Board of Education for the program or a 504 accommodation plan
9 has been issued under Section 504 of the federal
10 Rehabilitation Act of 1973.

11 (2) The student has spent the prior school year in
12 attendance at an Alabama public school or the Alabama School
13 for Deaf and Blind. For purposes of this subdivision, prior
14 school year in attendance means that the student was enrolled
15 and reported by either of the following:

16 a. A school district for funding during the
17 preceding school year, which includes time spent in a
18 Department of Youth Services school district.

19 b. The Alabama School for Deaf and Blind during the
20 preceding school year.

21 (3) The student has been enrolled and reported by a
22 school district for funding in any of the 5 years before the
23 2011-2012 fiscal year; has a current individualized
24 educational plan developed by the local board of education in
25 accordance with rules of the State Board of Education for the
26 program no later than June 30, 2012; and receives a first-time
27 ASSDP scholarship for the 2012-2013 school year. Upon request

1 of the parent, the local board of education shall complete a
2 matrix of services as required in subdivision (1) of
3 subsection (b) of Section 5 for a student requesting a current
4 individualized educational plan in accordance with this
5 subdivision.

6 (b) The parent has obtained acceptance for admission
7 of the student to a private school that is eligible for the
8 program under Section 8 and has requested from the department
9 a scholarship at least 60 days before the date of the first
10 scholarship payment. The request shall be communicated
11 directly to the department in a manner that creates a written
12 or electronic record of the request and the date of receipt of
13 the request. The department shall notify the district of the
14 intent of the parent upon receipt of the request.

15 (c) A dependent child of a member of the United
16 States Armed Forces who transfers to a school in this state
17 from out of state or from a foreign country due to permanent
18 change of station orders of a parent is exempt from the
19 requirements of subsection (a) but shall satisfy all other
20 eligibility requirements to participate in the program.

21 Section 3. A student is not eligible for an ASSDP
22 scholarship under any of the following circumstances:

23 (1) While he or she is enrolled in a school
24 operating in a Department of Youth Services School District.

25 (2) While he or she is participating in a home
26 education program.

1 (3) While he or she is participating in a private
2 tutoring program.

3 (4) While he or she is participating in a virtual
4 school, correspondence school, or distance learning program
5 that receives state funding pursuant to the participation of
6 the student, unless the participation is limited to no more
7 than two courses per school year.

8 (5) While he or she is enrolled in the Alabama
9 School for Deaf and Blind.

10 (6) While he or she is not having regular and direct
11 contact with his or her private school teachers at the
12 physical location of the school.

13 (7) If he or she has been issued a temporary 504
14 accommodation plan under Section 504 of the federal
15 Rehabilitation Act of 1973, which is valid for six months or
16 less.

17 Section 4. (a) For purposes of continuity of
18 educational choice, an ASSDP scholarship shall remain in force
19 until the student returns to a public school, graduates from
20 high school, or reaches the age of 22, whichever occurs first.
21 A scholarship student who enrolls in a public school or public
22 school program is considered to have returned to a public
23 school for the purpose of determining the end of the term of
24 the scholarship. In the event a student enters a Department of
25 Youth Services detention center for a period of no more than
26 21 days, the student is not considered to have returned to a
27 public school for that purpose.

1 (b) Upon reasonable notice to the department and the
2 school district, the parent of a student may remove the
3 student from the private school and place the student in a
4 public school in accordance with this section.

5 (c) Upon reasonable notice to the department, the
6 parent of a student may move the student from one
7 participating private school to another participating private
8 school.

9 Section 5. (a) (1) By April 1 of each year, and
10 within 10 days after an individual education plan meeting or a
11 504 accommodation plan is issued under Section 504 of the
12 federal Rehabilitation Act of 1973, a school district shall
13 notify the parent of the student of all options available
14 pursuant to this section, inform the parent of the
15 availability of the telephone hotline and Internet website of
16 the department for additional information on ASSDP
17 scholarships, and offer the parent an opportunity to enroll
18 the student in another public school in the district.

19 (2) The parent is not required to accept the offer
20 of enrolling the student in another public school in lieu of
21 requesting an ASSDP scholarship to a private school. If the
22 parent chooses the public school option, the student may
23 continue attending a public school chosen by the parent until
24 the student graduates from high school.

25 (3) If the parent chooses a public school consistent
26 with the school choice plan of the school district, the school
27 district shall provide transportation to the public school

1 selected by the parent. The parent is responsible for
2 providing transportation to a public school chosen that is not
3 consistent with the school choice plan of the school district.

4 (b) (1) For each student with disabilities, the
5 school district shall complete a matrix that assigns the
6 student to one of the levels of service as they existed prior
7 to the 2012-2013 school year.

8 (2)a. Within 10 school days after a school district
9 receives notification of a request by a parent for an ASSDP
10 scholarship, a school district shall notify the parent of the
11 student if the matrix of services has not been completed and
12 inform the parent that the district is required to complete
13 the matrix within 30 days after receiving notice of the
14 request of the parent for an ASSDP scholarship. This notice
15 should include the required completion date for the matrix.

16 b. The school district shall complete the matrix of
17 services for each student who is participating in the
18 scholarship program and shall notify the department of the
19 matrix level of the student within 30 days after receiving
20 notification of a request to participate in the scholarship
21 program. The school district shall provide the parent with the
22 matrix level of the student within 10 school days after its
23 completion.

24 c. The department shall notify the private school of
25 the amount of the scholarship within 10 days after receiving
26 the notification of the school district of the matrix level of
27 the student.

1 d. A school district may change a matrix of services
2 only if the change is to correct a technical, typographical,
3 or calculation error.

4 (c) A school district shall provide notification to
5 parents of the availability of a reevaluation at least every
6 three years for each student who receives an ASSDP
7 scholarship.

8 (d) If the parent chooses the private school option
9 and the student is accepted by the private school, pending the
10 availability of a space for the student, the parent of the
11 student shall notify the department 60 days prior to the first
12 scholarship payment and before entering the private school in
13 order to be eligible for the scholarship when a space becomes
14 available for the student in the private school.

15 (e) The parent of a student may choose, as an
16 alternative, to enroll the student in and transport the
17 student to a public school in an adjacent school district
18 which has available space and has a program with the services
19 agreed to in the individual education plan of the student or
20 504 accommodation plan already in place, and that school
21 district shall accept the student and report the student for
22 purposes of funding the district pursuant to the Foundation
23 Program.

24 (f) For a student who participates in the ASSDP
25 whose parent requests that the student take statewide
26 assessments, the district in which the student attends private

1 school shall provide locations and times to take all statewide
2 assessments.

3 Section 6. (a) The State Department of Education
4 shall do all of the following:

5 (1) Establish a toll-free hotline that provides
6 parents and private schools with information on participation
7 in the scholarship program.

8 (2) Annually verify the eligibility of private
9 schools that meet the requirements of Section 8.

10 (3) Establish a process by which individuals may
11 notify the department of any violation of state law relating
12 to program participation by a parent, private school, or
13 school district. The department shall conduct an inquiry of
14 any written complaint made pursuant to this subdivision, or
15 shall make a referral to the appropriate agency for an
16 investigation if the complaint is signed by the complainant
17 and is legally sufficient. A complaint is legally sufficient
18 if it contains ultimate facts that show that a violation of
19 this section or any rule adopted by the State Board of
20 Education has occurred. In order to determine legal
21 sufficiency, the department may require supporting information
22 or documentation from the complainant.

23 (4) Require an annual, notarized, sworn compliance
24 statement by participating private schools certifying
25 compliance with state law and shall retain such records.

1 (5) To avoid duplication, crosscheck the list of
2 participating scholarship students with the public school
3 enrollment lists prior to each scholarship payment.

4 (6)a. Conduct random site visits to private schools
5 participating in the scholarship program. The purpose of the
6 site visits is solely to verify the information reported by
7 the schools concerning the enrollment and attendance of
8 students, the credentials of teachers, background screening of
9 teachers, and teacher fingerprinting results, which
10 information is required by law. The department may not make
11 more than three random site visits each year and may not make
12 more than one random site visit each year to the same private
13 school.

14 b. Annually, by December 15, report to the Governor,
15 the President of the Senate, and the Speaker of the House of
16 Representatives the actions of the department with respect to
17 implementing accountability in the scholarship program under
18 this act, any substantiated allegations or violations of law
19 or rule by an eligible private school under the scholarship
20 program concerning the enrollment and attendance of students,
21 the credentials of teachers, background screening of teachers,
22 and teacher fingerprinting results and any corrective action
23 taken by the department.

24 Section 7. (a) The State Superintendent of Education
25 shall deny, suspend, or revoke participation of a private
26 school in the scholarship program if it is determined that the
27 private school has failed to comply with this section. If the

1 noncompliance may be corrected within a reasonable amount of
2 time and if the health, safety, or welfare of the students is
3 not threatened, the superintendent may issue a notice of
4 noncompliance providing the private school with a time frame
5 within which to provide evidence of compliance before taking
6 action to suspend or revoke the participation of the private
7 school in the scholarship program.

8 (b) The State Superintendent of Education may deny,
9 suspend, or revoke participation of a private school in the
10 scholarship program if the superintendent determines that an
11 owner or operator of the private school is operating or has
12 operated an educational institution in this state or in
13 another state or jurisdiction in a manner contrary to the
14 health, safety, or welfare of the public.

15 (1) In making such a determination, the commissioner
16 may consider factors that include, but are not limited to,
17 acts or omissions by an owner or operator which led to a
18 previous denial or revocation of participation in an education
19 scholarship program; the failure of an owner or operator to
20 reimburse the department for scholarship funds improperly
21 received or retained by a school; imposition of a prior
22 criminal sanction related to management or operation of an
23 educational institution by an owner or operator; imposition of
24 a civil fine or administrative fine, license revocation or
25 suspension, or program eligibility suspension, termination, or
26 revocation related to management or operation of an
27 educational institution by an owner or operator; or other

1 types of criminal proceedings in which an owner or operator
2 was found guilty of, regardless of adjudication, or entered a
3 plea of nolo contendere or guilty to, any offense involving
4 fraud, deceit, dishonesty, or moral turpitude.

5 (2) For purposes of this subsection, the term owner
6 or operator includes an owner, operator, superintendent, or
7 principal of, or a person who has equivalent decision making
8 authority over, a private school participating in the
9 scholarship program.

10 (c) The determination of the superintendent is
11 subject to all of the following:

12 (1) If the superintendent intends to deny, suspend,
13 or revoke participation of a private school in the scholarship
14 program, the department shall notify the private school of
15 such proposed action in writing by certified mail and regular
16 mail to the address of record of the private school.

17 Notification shall include the reasons for the proposed action
18 and notice of the time lines and procedures provided in this
19 subsection.

20 (2) The private school that is adversely affected by
21 the proposed action shall have 15 days from receipt of the
22 notice of proposed action to file a formal written request for
23 a hearing before the State Board of Education.

24 (3) A hearing shall commence within 30 days after
25 receipt of the formal written request and a recommended order
26 shall be entered by the board within 30 days after the hearing
27 or within 30 days after receipt of the hearing transcript,

1 whichever is later. Each party shall be allowed 10 days in
2 which to submit written exceptions to the recommended order. A
3 final order shall be entered by the board within 30 days after
4 the entry of a recommended order. The provisions of this
5 subdivision may be waived upon stipulation by all parties.

6 (d) The superintendent may immediately suspend
7 payment of scholarship funds if the superintendent determines
8 that there is probable cause to believe that there exists
9 either of the following:

10 (1) An imminent threat to the health, safety, or
11 welfare of the students.

12 (2) Fraudulent activity on the part of the private
13 school. In incidents of alleged fraudulent activity, the
14 department may order the release of personally identifiable
15 records or reports of students to any of the following persons
16 or organizations:

17 a. A court of competent jurisdiction in compliance
18 with an order of that court or the attorney of record in
19 accordance with a lawfully issued subpoena, consistent with
20 the Family Educational Rights and Privacy Act, 20 U.S.C. s.
21 1232g.

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

1 c. Any person, entity, or authority issuing a
2 subpoena for law enforcement purposes when the court or other
3 issuing agency has ordered that the existence or the contents
4 of the subpoena or the information furnished in response to
5 the subpoena not be disclosed, consistent with the Family
6 Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and 34
7 C.F.R. s. 99.31. The order of the superintendent suspending
8 payment pursuant to this subsection may be appealed pursuant
9 to the same procedures and time lines provided in subsection
10 (c).

11 Section 8. To be eligible to participate in the
12 scholarship program, a private school may be sectarian or
13 nonsectarian and shall do all of the following:

14 (1) Comply with all requirements for private schools
15 participating in state school choice scholarship programs.

16 (2) Provide to the department all documentation
17 required for participation of a student, including fee
18 schedules for the private school and the student, at least 30
19 days before any quarterly scholarship payment is made for the
20 student pursuant to subsection (e) of Section 10. A student is
21 not eligible to receive a quarterly scholarship payment if the
22 private school fails to meet this deadline.

23 (3) Be academically accountable to the parent for
24 satisfying the educational needs of the student by:

25 a. At a minimum, annually providing to the parent a
26 written explanation of the progress of the student.

1 b. Cooperating with the scholarship student whose
2 parent chooses to participate in statewide assessments.

3 (4) Maintain in this state a physical location where
4 a scholarship student regularly attends classes. The inability
5 of a private school to satisfy the requirements of this
6 subdivision shall constitute a basis for the ineligibility of
7 the private school to participate in the scholarship program
8 as determined by the department.

9 Section 9. A parent who applies for a scholarship
10 pursuant to this act is exercising his or her parental option
11 to place his or her child in a private school.

12 (1) The parent shall select the private school and
13 apply for the admission of his or her child.

14 (2) The parent shall have requested the scholarship
15 at least 60 days before the date of the first scholarship
16 payment.

17 (3) Any student participating in the scholarship
18 program shall remain in attendance throughout the school year
19 unless excused by the school for illness or other good cause.

20 (4) Each parent and each student has an obligation
21 to the private school to comply with the published policies of
22 the private school.

23 (5) If the parent requests that the student
24 participating in the scholarship program take all statewide
25 assessments, the parent is responsible for transporting the
26 student to the assessment site designated by the school
27 district.

1 (6) Upon receipt of a scholarship warrant, the
2 parent to whom the warrant is made shall restrictively endorse
3 the warrant to the private school for deposit into the account
4 of the private school. The parent may not designate any entity
5 or individual associated with the participating private school
6 as the attorney in fact for the parent to endorse a
7 scholarship warrant. A participant who fails to comply with
8 this subdivision shall forfeit the scholarship.

9 Section 10. (a) (1) The maximum scholarship granted
10 for an eligible student with disabilities shall be equivalent
11 to the base student allocation in the Foundation Program
12 multiplied by the appropriate cost factor for the educational
13 program that would have been provided for the student in the
14 district school to which he or she was assigned, multiplied by
15 the district cost differential.

16 (2) In addition, a share of the guaranteed
17 allocation for exceptional children shall be determined and
18 added to the amount in subdivision (1). The calculation shall
19 be based on the methodology and the data used to calculate the
20 allocation for exceptional children provided by law. The
21 calculated amount shall include the per-student share of all
22 funds as provided in the annual Education Trust Fund
23 Appropriations Act.

24 (3) The scholarship amount for a student who is
25 eligible under subdivision (2) of subsection (a) of Section 2
26 shall be calculated as provided in subdivisions (1) and (2).
27 However, the calculation shall be based on the school district

1 in which the parent resides at the time of the scholarship
2 request.

3 (4) Until the school district completes the matrix
4 required by subsection (b) of Section 5, the calculation shall
5 be based on the support level of service provided to the
6 student on the effective date of this act. When the school
7 district completes the matrix, the amount of the payment shall
8 be adjusted as necessary.

9 (5) The scholarship amount for a student eligible
10 under s. 504 of the Rehabilitation Act of 1973 shall be based
11 on the program cost factor the student currently generates
12 through the Foundation Program.

13 (b) The amount of the ASSDP scholarship shall be the
14 calculated amount or the amount of the tuition and fees of the
15 private school, whichever is less. The amount of any
16 assessment fee required by the participating private school
17 may be paid from the total amount of the scholarship.

18 (c) (1) The school district shall report all students
19 who are attending a private school under this program. The
20 students with disabilities attending private schools on ASSDP
21 scholarships shall be reported separately from other students
22 reported for purposes of the Foundation Program.

23 (2) For program participants who are eligible under
24 subdivision (2) of subsection (a) of Section 2, the school
25 district that is used as the basis for the calculation of the
26 scholarship amount as provided in subdivision (3) of
27 subsection (a) shall:

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

3 b. Be held harmless for such students from the
4 weighted enrollment ceiling for group 2 programs during the
5 first school year in which the students are reported.

6 (d) Following notification on July 1, September 1,
7 December 1, or February 1 of the number of program
8 participants, the department shall transfer, from general
9 Education Trust Fund revenues, the amount calculated under
10 subsection (b) from the total funding entitlement of the
11 school district under the Foundation Program and from
12 authorized categorical accounts to a separate account for the
13 scholarship program for quarterly disbursement to the parents
14 of participating students. Funds may not be transferred from
15 any funding provided to the Alabama School for Deaf and Blind
16 for program participants who are eligible under subdivision
17 (2) of subsection (a) of Section 2. For a student exiting a
18 Department of Youth Services commitment program who chooses to
19 participate in the scholarship program, the amount of the
20 ASSDP scholarship calculated pursuant to subsection (b) shall
21 be transferred from the school district in which the student
22 last attended a public school before commitment to the
23 Department of Youth Services. When a student enters the
24 scholarship program, the department shall receive all
25 documentation required for participation by the student,
26 including the fee schedules of the private school and the

1 student, at least 30 days before the first quarterly
2 scholarship payment is made for the student.

3 (e) Upon notification by the department that it has
4 received the documentation required under subsection (d), the
5 Chief Financial Officer shall make scholarship payments in
6 four equal amounts no later than September 1, November 1,
7 February 1, and April 1 of each academic year in which the
8 scholarship is in force. The initial payment shall be made
9 after department verification of admission acceptance, and
10 subsequent payments shall be made upon verification of
11 continued enrollment and attendance at the private school.
12 Payment shall be by individual warrant made payable to the
13 parent of the student and mailed by the department to the
14 private school selected by the parent, and the parent shall
15 restrictively endorse the warrant to the private school for
16 deposit into the account of the private school.

17 (f) Subsequent to each scholarship payment, the
18 department shall request from the Comptroller a sample of
19 endorsed warrants to review and confirm compliance with
20 endorsement requirements.

21 Section 11. No liability shall arise on the part of
22 the state based on the award or use of an ASSDP scholarship.

23 Section 12. The inclusion of eligible private
24 schools within options available to Alabama public school
25 students does not expand the regulatory authority of the
26 state, its officers, or any school district to impose any
27 additional regulation of private schools beyond those

1 reasonably necessary to enforce requirements expressly set
2 forth in this act.

3 Section 13. The State Board of Education shall
4 promulgate any rules necessary to implement and administer
5 this act, including rules that school districts shall use to
6 expedite the development of a matrix of services based on an
7 active individual education plan from another state or a
8 foreign country for a transferring student with a disability
9 who is a dependent child of a member of the United States
10 Armed Forces. The rules shall identify the appropriate school
11 district personnel who shall complete the matrix of services.
12 For purposes of these rules, a transferring student with a
13 disability is one who was previously enrolled as a student
14 with a disability in an out-of-state or an out-of-country
15 public or private school or agency program and who is
16 transferring from out of state or from a foreign country
17 pursuant to the permanent change of station orders of a
18 parent.

19 Section 14. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.