HB640

By Representatives Fincher, Ball, McMillan, Williams (P), Collins, Sessions and McClurkin
RFD: Education Policy

First Read: 03-APR-12
SYNOPSIS: This bill establishes the Alabama Scholarships for Students with Disabilities Program.

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

A BILL TO BE ENTITLED
AN ACT

To establish the Alabama Scholarships for Students with Disabilities Program; to provide for eligibility; to provide for prohibitions; to provide parental options; to provide for the obligations of the State Department of Education and the State Superintendent of Education; to provide for the eligibility of private schools to participate; to provide for parent and student responsibilities for
participating in the program; to provide for the funding and
payment of scholarships; and to provide for the promulgation
of rules by the State Board of Education to implement and
administer the program.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

Section 2. (a) The parent of a student with a
disability may request and receive from the state an ASSDP
scholarship for the child to enroll in and attend a private
school in accordance with this act if any of the following
conditions are satisfied:

(1) The student has received specialized
instructional services during the previous school year and the
student has a current individual educational plan developed by
the local school board in accordance with rules of the State
Board of Education for the program or a 504 accommodation plan
has been issued under Section 504 of the federal

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

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

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

(3) The student has been enrolled and reported by a
school district for funding in any of the 5 years before the
2011-2012 fiscal year; has a current individualized
educational plan developed by the local board of education in
accordance with rules of the State Board of Education for the
program no later than June 30, 2012; and receives a first-time
ASSDP scholarship for the 2012-2013 school year. Upon request
of the parent, the local board of education shall complete a matrix of services as required in subdivision (1) of subsection (b) of Section 5 for a student requesting a current individualized educational plan in accordance with this subdivision.

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

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

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

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

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

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

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

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

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

Section 4. (a) For purposes of continuity of educational choice, an ASSDP scholarship shall remain in force until the student returns to a public school, graduates from high school, or reaches the age of 22, whichever occurs first. A scholarship student who enrolls in a public school or public school program is considered to have returned to a public school for the purpose of determining the end of the term of the scholarship. In the event a student enters a Department of Youth Services detention center for a period of no more than 21 days, the student is not considered to have returned to a public school for that purpose.
(b) Upon reasonable notice to the department and the school district, the parent of a student may remove the student from the private school and place the student in a public school in accordance with this section.

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

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

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

(3) If the parent chooses a public school consistent with the school choice plan of the school district, the school district shall provide transportation to the public school
selected by the parent. The parent is responsible for
providing transportation to a public school chosen that is not
consistent with the school choice plan of the school district.

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

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

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

c. The department shall notify the private school of
the amount of the scholarship within 10 days after receiving
the notification of the school district of the matrix level of
the student.
d. A school district may change a matrix of services only if the change is to correct a technical, typographical, or calculation error.

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

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

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

(f) For a student who participates in the ASSDP whose parent requests that the student take statewide assessments, the district in which the student attends private
school shall provide locations and times to take all statewide assessments.

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

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

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

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

(4) Require an annual, notarized, sworn compliance statement by participating private schools certifying compliance with state law and shall retain such records.
(5) To avoid duplication, crosscheck the list of participating scholarship students with the public school enrollment lists prior to each scholarship payment.

(6)a. Conduct random site visits to private schools participating in the 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 teacher fingerprinting results, which information is required by law. The department may not make more than three random site visits each year and may not make more than one random site visit each year to the same private school.

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

Section 7. (a) The State Superintendent of Education shall deny, suspend, or revoke participation of a private school in the scholarship program if it is determined that the private school has failed to comply with this section. If the
noncompliance may be corrected within a reasonable amount of time and if the health, safety, or welfare of the students is not threatened, the superintendent may issue a notice of noncompliance providing the private school with a time frame within which to provide evidence of compliance before taking action to suspend or revoke the participation of the private school in the scholarship program.

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

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

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

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

(1) If the superintendent intends to deny, suspend,
or revoke participation of a private school in the scholarship
program, the department shall notify the private school of
such proposed action in writing by certified mail and regular
mail to the address of record of the private school.
Notification shall include the reasons for the proposed action
and notice of the time lines and procedures provided in this
subsection.

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

(3) A hearing shall commence within 30 days after
receipt of the formal written request and a recommended order
shall be entered by the board within 30 days after the hearing
or within 30 days after receipt of the hearing transcript,
whichever is later. Each party shall be allowed 10 days in
which to submit written exceptions to the recommended order. A
final order shall be entered by the board within 30 days after
the entry of a recommended order. The provisions of this
subdivision may be waived upon stipulation by all parties.

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

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

(2) Fraudulent activity on the part of the private
school. In incidents of alleged fraudulent activity, the
department may order the release of personally identifiable
records or reports of students to any of 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
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 order of the superintendent suspending payment pursuant to this subsection may be appealed pursuant to the same procedures and time lines provided in subsection (c).

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

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

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

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

a. At a minimum, annually providing to the parent a written explanation of the progress of the student.
b. Cooperating with the scholarship student whose parent chooses to participate in statewide assessments.

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

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

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

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

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

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

(5) If the parent requests that the student participating in the scholarship program take all statewide assessments, the parent is responsible for transporting the student to the assessment site designated by the school district.
(6) Upon receipt of a scholarship warrant, the parent to whom the warrant is made shall restrictively endorse the warrant to the private school for deposit into the account of the private school. The parent may not designate any entity or individual associated with the participating private school as the attorney in fact for the parent to endorse a scholarship warrant. A participant who fails to comply with this subdivision shall forfeit the scholarship.

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

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

(3) The scholarship amount for a student who is eligible under subdivision (2) of subsection (a) of Section 2 shall be calculated as provided in subdivisions (1) and (2). However, the calculation shall be based on the school district
in which the parent resides at the time of the scholarship request.

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

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

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

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

(2) For program participants who are eligible under subdivision (2) of subsection (a) of Section 2, the school district that is used as the basis for the calculation of the scholarship amount as provided in subdivision (3) of subsection (a) shall:
a. Report to the department all such students who are attending a private school under this program.

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

(d) Following notification on July 1, September 1, December 1, or February 1 of the number of program participants, the department shall transfer, from general Education Trust Fund revenues, the amount calculated under subsection (b) from the total funding entitlement of the school district under the Foundation Program and from authorized categorical accounts to a separate account for the scholarship program for quarterly disbursement to the parents of participating students. Funds may not be transferred from any funding provided to the Alabama School for Deaf and Blind for program participants who are eligible under subdivision (2) of subsection (a) of Section 2. For a student exiting a Department of Youth Services commitment program who chooses to participate in the scholarship program, the amount of the ASSDP scholarship calculated pursuant to subsection (b) shall be transferred from the school district in which the student last attended a public school before commitment to the Department of Youth Services. When a student enters the scholarship program, the department shall receive all documentation required for participation by the student, including the fee schedules of the private school and the
student, at least 30 days before the first quarterly scholarship payment is made for the student.

(e) Upon notification by the department that it has received the documentation required under subsection (d), the Chief Financial Officer shall make 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 scholarship is in force. The initial payment shall be made after department verification of admission acceptance, and subsequent payments shall be made upon verification of continued enrollment and attendance at the private school. Payment shall be by individual warrant made payable to the parent of the student and mailed by the department to the private school selected by the parent, and the parent shall restrictively endorse the warrant to the private school for deposit into the account of the private school.

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

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

Section 12. The inclusion of eligible private schools within options available to Alabama 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 act.

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

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