

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

**BILL:** CS/CS/CS/SB 1128

**INTRODUCER:** Judiciary Committee, Children, Families, and Elder Affairs Committee, Education Pre-K-12 Committee, Senator Rich, and others

**SUBJECT:** Education/Children in Shelter/Foster Care or Residential Facility

**DATE:** April 2, 2009

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>Matthews</u>	<u>ED</u>	<u><b>Fav/CS</b></u>
2.	<u>Toman</u>	<u>Walsh</u>	<u>CF</u>	<u><b>Fav/CS</b></u>
3.	<u>Sumner</u>	<u>Maclure</u>	<u>JU</u>	<u><b>Fav/CS</b></u>
4.	_____	_____	<u>WPSC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill defines a surrogate parent, for purposes of ch. 39, F.S., to mean an individual appointed to act in the place of a parent in making educational decisions and safeguarding a child's educational rights.

The bill requires the district school superintendent or the dependency court to appoint a surrogate parent for a child who has been sheltered or adjudicated dependent and who has or is suspected of having a disability, if no parent can be located or the court determines that no one with authority is willing or able to make educational decisions for the child.

The bill specifies that the minimum qualifications, responsibilities, rights, liabilities, and termination of a surrogate parent appointed by a dependency court are the same as the qualifications, responsibilities, rights, liabilities, and termination of a surrogate parent appointed by a superintendent. The bill provides that judicial and citizen panel reviews of dependency cases must include consideration of testimony from a surrogate parent.

The bill amends s. 39.202, F.S., allowing access to confidential reports and records of child abuse by a local school district employee who is designated to act as a liaison between the school district, the Department of Children and Families (DCF or the department), and the principal of the child's school.

The bill requires that, if a child is placed in shelter pursuant to court order following a shelter hearing, the court must request that the parents consent to allow the court, DCF or its contract providers, and the child's guardian ad litem and attorney, to have access to the child's medical and education records, and authorizes the court to order access to such records if a parent is unavailable or withholds consent, and the court determines that access is necessary.

The bill also provides a temporary exemption for dependent children and children in foster care from providing proof of age and school entry health examinations and immunizations prior to attending school.

The bill revises the requirements relating to the delivery of educational instruction and student funding when an exceptional student with disabilities is placed in a private residential care facility in another district.

This bill substantially amends the following sections of the Florida Statutes: 39.0016, 39.202, 39.402, 39.701, 1003.21, 1003.22, and 1003.57.

## II. Present Situation:

### **Individuals with Disabilities Education Act (IDEA)**

The federal IDEA requires states to make a free appropriate public education (FAPE) available to all resident children with disabilities between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.<sup>1</sup> The state educational agency must exercise general supervision over all educational programs in the state for children with disabilities, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.<sup>2</sup>

Federal "child find" obligations require states to identify, locate, and evaluate all children with disabilities<sup>3</sup> who reside in the state and who are in need of special education and related services.<sup>4</sup> States must also ensure that a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.<sup>5</sup>

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<sup>1</sup> 20 U.S.C. s. 1412(1)(A).

<sup>2</sup> 34 C.F.R. s. 300.149(2).

<sup>3</sup> This includes children with disabilities who are homeless or wards of the state and children with disabilities who are attending private schools, regardless of the severity of their disabilities.

<sup>4</sup> 20 U.S.C. s. 1412. *See also* 34 C.F.R. s. 300.111.

<sup>5</sup> *Id.*

### ***Parental Consent under IDEA***

Pursuant to IDEA, parental consent is required before an initial evaluation to determine if a child qualifies as a child with a disability, before the initial provision of special education and related services to a child, and before reevaluation (unless the agency makes a reasonable attempt to obtain consent for reevaluation and the parent fails to respond).<sup>6</sup>

For initial evaluations only, if the child is a ward of the state and is not residing with his or her parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child has a disability if:

- Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
- The rights of the parents of the child have been terminated in accordance with state law; or
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.<sup>7</sup>

### ***Surrogate Parents under IDEA***

Pursuant to IDEA, each public agency must ensure that the rights of a child are protected, by determining the need for, and assigning, a surrogate parent whenever:

- No parent<sup>8</sup> can be identified;
- The public agency, after reasonable efforts, cannot locate a parent;
- The child is a ward of the state under the laws of that state; or
- The child is an unaccompanied homeless youth as defined by the McKinney-Vento Homeless Assistance Act.<sup>9</sup>

A surrogate parent cannot be an employee of the state education agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents, even if they are employed by an agency that is involved in the education or care of the child, until an alternate surrogate parent is appointed.<sup>10</sup>

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<sup>6</sup> 34 C.F.R. s. 300.300.

<sup>7</sup> 34 C.F.R. s. 300.300(a)(2).

<sup>8</sup> “Parent” includes the biological or adoptive parent of a child, a foster parent (unless state law prohibits a foster parent from acting as a parent), a guardian, an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, an individual who is legally responsible for the child’s welfare, or a surrogate parent. See 34 C.F.R. s. 300.30. The Florida School Code (s. 1000.21(5), F.S.) defines “parent” as either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of a parent.

<sup>9</sup> 34 C.F.R. s. 300.519(a).

<sup>10</sup> 34 C.F.R. s. 300.519.

Under Florida law, the department and the district school board are required to cooperate in accessing services and supports for a child who has been sheltered or adjudicated dependent and who has or is suspected of having a disability. In this context, as soon as a child is determined to be dependent and without a parent to act on his or her behalf, a surrogate parent may be appointed.<sup>11</sup> Florida administrative rule establishes the minimum qualifications, procedures for appointments, responsibilities, limits, rights, liabilities, and allowable compensation for surrogate parents.<sup>12</sup>

### **Florida Law: Exceptional Students**

Under Florida law, an “exceptional student” is any student who has been determined eligible for a special program in accordance with State Board of Education (SBE) rule, and includes students who are gifted and students with disabilities.<sup>13</sup> Exceptional students with disabilities include those who have or are:

- An intellectual disability;
- Autism spectrum disorder;
- Speech impairment;
- Language impairment;
- Orthopedic impairment;
- Other health impairment;
- Traumatic brain injury;
- Visual impairment;
- Emotional or behavioral disability; or
- A specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia;
- Deaf or hard of hearing or dual sensory impaired;
- Hospitalized or homebound;
- Developmental delays (birth through 5 years); or
- Established conditions that are identified in State Board of Education (SBE) rules (birth through 2 years).<sup>14</sup>

The law defines “special education services” as specially designed instruction and related services as are needed for an exceptional student to benefit from education.<sup>15</sup>

Florida’s district school boards are responsible for:

- Providing an appropriate program of special instruction, facilities, and services for exceptional students; and
- Providing alternative educational programs to students who reside in residential care facilities operated by the department.<sup>16</sup>

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<sup>11</sup> Section 39.0016(4)(c)5., F.S.

<sup>12</sup> Rule 6A-6.0333, F.A.C.

<sup>13</sup> Section 1003.01(3)(a), F.S.

<sup>14</sup> *Id. See also*, 34 C.F.R. s. 300.8.

<sup>15</sup> Section 1003.01(3)(b), F.S.

Florida law prohibits a student from being given special instruction or services as an exceptional student until he or she has been properly evaluated, classified, and placed.<sup>17</sup> The parent of an exceptional student who is evaluated, placed, or denied placement must be notified of each evaluation, placement, or denial. In addition, parents must be notified of the right to a due process hearing.<sup>18</sup>

State law requires district school boards to provide for an appropriate program of special instruction, classes, and services for exceptional students, either within the district school system, in cooperation with other district school systems, or through contracts with approved private schools or community facilities that meet the standards established by the Commissioner of Education.<sup>19</sup>

### ***Multi-School District Agreements for Exceptional Students with Disabilities***

According to the Department of Education (DOE), some school districts have entered into multi-district agreements for the provision of exceptional student education services. The DOE notes that this arrangement typically occurs when one district has the capacity to serve a unique population of students, and neighboring districts contract for the provision of those services (*e.g.*, a “center school” or other specialized program). A written agreement designates which district is responsible for:

- Developing and implementing Individual Education Plans;
- Transportation;
- Program and staff supervision;
- Funding; and
- Dissolution of the agreement.

The DOE notes that the district serving the student (the receiving district) commonly enrolls the student and receives the funding generated through the Florida Education Finance Program.<sup>20</sup>

### ***Contracts with Approved Private Schools and Community Facilities***

Pursuant to DOE’s administrative rules, when a district school board determines that no special education program offered by it, a cooperating district school board, or a state agency can adequately provide an educational program for a student, the school district **must** provide special education programs with approved nonpublic schools or community facilities through contracts.<sup>21</sup>

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<sup>16</sup> Section 1001.42(4)(l) and (m), F.S.

<sup>17</sup> Section 1003.57(1)(e), F.S.

<sup>18</sup> *Id.* See also, 34 C.F.R. s. 300.121.

<sup>19</sup> Section 1003.57(1)(b), F.S.

<sup>20</sup> DOE, *2008 Bill Analysis, SB 318* (December 21, 2007). Senate Bill 318 (2008) was similar to CS/SB 1128, for which an analysis from DOE is not yet available.

<sup>21</sup> Rule 6A-6.0361, F.A.C. A district school board **may** provide special educational programs to nonpublic schools or community facilities pursuant to contract for (1) non-residential interagency programs which include educational

Districts must ensure that the proposed program at the nonpublic school or community facility is appropriate to meet the educational needs of students who are placed through the contracts. However, other agencies may be required to provide or pay for some or all of the cost of a free appropriate education to be provided to children with disabilities.<sup>22</sup>

Contracts between the district school board and nonpublic schools or community facilities must contain specific information, including:

- Method of determining charges and sharing costs with other agencies for the placement, including the projected total cost to the district;
- Identification of financial responsibility; and
- Method of resolving interagency disputes when the school board initiates action to secure reimbursement from other agencies.<sup>23</sup>

In order to generate Florida Education Finance Program (FEFP) funds, an exceptional student enrolled in a nonpublic school or community facility under a contractual arrangement for special educational services must meet specific criteria.

### ***Students in Residential Care Facilities***

District school boards must provide educational programs to students who reside in residential care facilities<sup>24</sup> operated by DCF or the Agency for Persons with Disabilities (APD).<sup>25</sup> The law requires funding for the programs to be allocated through the FEFP for the district. The department, APD, and DOE are required to adopt rules for the transition of students from the residential facility to the public school agency.<sup>26</sup>

A district may provide the educational component of a residential placement for exceptional students when the placement is made by another public agency for the primary purpose of addressing residential and other non-educational needs.<sup>27</sup> In this instance, the student's IEP must state that the placement is not required in order for the student to benefit from special education which could otherwise be provided by the district during the day. Under these circumstances, according to DOE, the district may be financially responsible for the educational component of the placement. The DOE further notes that some, but not all, districts have agreements with private residential facilities to fund the educational component. A district's decision to provide the education component is made on a case-by-case basis that considers the placement agency,

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programming; and (2) residential programs when placement is made by another public agency for the purpose of addressing non-educational needs. (See discussion *infra*.) See also 34 C.F.R. s. 300.154.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Residential care facilities include developmental disabilities centers and state mental health facilities.

<sup>25</sup> Section 402.22(2), F.S., requires district school boards to establish educational programs for students who are ages 5 through 18 under the residential care of the DCF or the APD. Districts may provide for students below age 3, as provided in s. 1003.21(1)(e), F.S.

<sup>26</sup> Section 402.22(6), F.S. See also s. 1003.58, F.S.

<sup>27</sup> Rule 6A-6.0361(2)(b), F.A.C.

the private facility, the district in which the student was previously enrolled, the parent's residence, and the location of the facility.<sup>28</sup>

On August 15, 2007, the Commissioner of Education signed an order regarding a complaint filed on behalf of a student with a disability against the Orange County School District, the Seminole County School District, and the Palm Beach County School District.<sup>29</sup> The complaint was related to the determination of which school district was responsible for payment of the educational costs for a student placed by APD in a private residential facility in Seminole County. The parents of the student were residents of Palm Beach County. When the facility closed, APD transferred the student to another residential facility in Orange County. Based on state and federal requirements related to residency and to district obligations to provide FAPE, the order assigned the responsibility for paying for the educational portion of the student's placement to Palm Beach County School District, the district in which the parents reside.<sup>30</sup>

### ***Report on the Education of Exceptional Students in Residential Treatment Facilities***

The Office of Program Policy Analysis and Government Accountability (OPPAGA) recently reviewed the provision of exceptional student education services in residential facilities, including the notification of school districts when students transfer from one facility to another and the allocation of financial costs for those services.

The OPPAGA report notes that DOE has established a cooperative agreement with the Department of Juvenile Justice to address educational services for students in juvenile justice facilities, but has not established such agreements with the other state agencies that place exceptional students in residential facilities.<sup>31</sup> The report recommended that the Legislature use proviso language to set a deadline for DOE to complete interagency agreements and amend current law to clarify the responsibility regarding funding and the responsibility for managing exceptional students in residential facilities.<sup>32</sup>

### **Education of Dependent Children**

Section 39.0016, F.S., requires the department to cooperate with DOE and local school districts to access services and supports for children who are dependent<sup>33</sup> or sheltered.<sup>34</sup>

Research demonstrates that foster children perform significantly worse in school than children in the general population. The educational deficits of foster children are reflected in higher rates of grade retention, lower scores on standardized tests, and higher absenteeism, tardiness, truancy and dropout rates. The poor academic performance of these children affects their lives after

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<sup>28</sup> DOE, *supra* note 20.

<sup>29</sup> *Id.*

<sup>30</sup> *In the Matter of J.A.C.*, Case No. DOE 2007-1394-FOI (August 15, 2007).

<sup>31</sup> OPPAGA, *Responsibility for the Education of Exceptional Students in Residential Treatment Facilities Needs Clarification*, Report No. 08-27 (April 2008).

<sup>32</sup> *Id.*

<sup>33</sup> See s. 39.01(15), F.S.

<sup>34</sup> Pursuant to s. 30.01(68), F.S., "shelter" means placement with a relative or nonrelative, or in a licensed facility, for the temporary care of a child who is alleged or has been found to be dependent, pending court disposition.

foster care and contributes to higher than average rates of homelessness, criminality, drug abuse, and unemployment among foster care “graduates.”<sup>35</sup>

Poor educational outcomes among children in foster care can be attributed in part to the fact that most children in foster care bear the scars of physical and emotional trauma due to prenatal exposure to alcohol and drugs, parental abuse and neglect, exposure to violence, separation from birth families, or frequent changes in foster placement. These experiences place children at great risk of developing physical, emotional, and behavioral disorders that interfere with learning.<sup>36</sup>

In addition, the system that is supposed to ensure the well-being of children in care is often a major obstacle to their educational success. For example,

- School disruptions often result in lost credits, delayed academic progress, repetition of grades, and delays in enrollment and transfer of student records.
- Many people may be involved in a foster child’s education (caseworkers, foster parents, birth parents, teachers, counselors, and other service providers), but sometimes no single person or agency is held accountable for results.
- Schools, child welfare agencies, and other service providers typically do not coordinate their efforts or share information about the children in their systems.
- Children in foster care often lack a consistent and knowledgeable adult who can advocate on their behalf for special education and supplemental services. Foster parents typically are the most familiar with the needs of children in their care, but they often are unprepared to negotiate the complexities of the special education system. In addition, frequent placement changes disrupt the authority of foster parents to represent children’s educational interests.<sup>37</sup>

Foster children are more likely than other children to require special education and related services, and the lack of an adult advocate is especially detrimental to these children.<sup>38</sup>

### **Education Records**

The Family Educational Rights and Privacy Act (FERPA) limits the authority of schools to release student records to third parties.<sup>39</sup> School records may be released to a parent, defined by FERPA to include a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.<sup>40</sup>

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<sup>35</sup> Steve Christian, National Conference of State Legislatures, Children’s Policy Initiative, *Educating Children in Foster Care* (December 2003).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Between 23 and 47 percent of children in out of home care receive special education services, while the national average for students receiving special education services is close to 12 percent.

<sup>39</sup> 20 U.S.C. s. 1232g(b)(1) and 34 C.F.R. s. 99.30. See U.S. Department of Education, Family Educational Rights and Privacy Act (FERPA), *Final Rule, 34 CFR Part 99, Section-by-Section Analysis*, December 2008.

U.S. Dept. of Education, Family Education and Privacy Rights Act (FERPA), available at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last visited March 22, 2009). See also s. 1002.22(3), F.S., which, consistent with federal law, makes student educational records confidential and exempt from ch. 119, F.S.

<sup>40</sup> 34 C.F.R. s. 99.3.



Otherwise, information from a student's education record can only be released with a parent's consent or pursuant to court order.<sup>41</sup> The FERPA does allow schools to disclose records, without consent, to the following:

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials<sup>42</sup> in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific state law.<sup>43</sup>

FERPA was recently amended, with final regulations published in December 2008. In its discussion of the amendments to the section allowing disclosure in connection with an emergency to protect the health and safety of the student or others, the U.S. Department of Education noted:

[T]he word “protect” generally means to keep from harm, attack, or injury. As such, the statutory text underscores that the educational agency or institution must be able to release information from education records in sufficient time for the institution to act to keep persons from harm or injury. Moreover, to be “in connection with an emergency” means to be related to the threat of an actual, impending, or imminent emergency, such as a terrorist attack, a natural disaster, a campus shooting, or the outbreak of an epidemic such as e-coli. An emergency could also be a situation in which a student gives sufficient, cumulative warning signs that lead an educational agency or institution to believe the student may harm himself or others at any moment. It does not mean the threat of a possible or eventual emergency for which the likelihood of occurrence is unknown, such as would be addressed in emergency preparedness activities.<sup>44</sup>

An educational agency or institution subject to FERPA may not have a policy or practice of disclosing education records without the written consent of the parent or eligible student, except as provided by law.<sup>45</sup> If an educational agency or institution determines that it cannot comply with FERPA due to a conflict with state or local law, it must notify the Department of Education

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<sup>41</sup> 34 C.F.R. s. 99.31.

<sup>42</sup> 34 C.F.R. s. 99.36(b) provides that educational information in connection with an emergency to protect the health and safety of a student may be released to teachers in the school and at other schools.

<sup>43</sup> *Id.*

<sup>44</sup> Family Educational Rights and Privacy; Final Rule, 73 Fed. Reg. 74,806, 74,838 (December 9, 2008) (to be codified at 34 C.F.R. pt. 99).

<sup>45</sup> Letter to Grossmont-Cuyamaca Community College District (CA) re: Potential Conflict with State Law, FERPA Online Library (January 16, 2004), available at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/suarezconflict.html> (last visited February 23, 2009).

within 45 days.<sup>46</sup> An actual conflict of laws arises if it is impossible for a party to comply with both federal and state law, or when a state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of a federal law.<sup>47</sup>

Section 39.202(2)(p), F.S., allows the release of confidential information contained in child abuse records to the principal of the child's school, who is authorized to further release the information as necessary to provide the child with education services.

Section 1002.22(3)(d)14., F.S., provides that a child's education records may be released to the department or its community-based care providers without the consent of the child or the child's parent. The provision is limited to the extent the disclosure is consistent with FERPA, which appears to mean that one of the above-noted exceptions to FERPA's rule against disclosure must also be applicable.

### III. Effect of Proposed Changes:

#### Dependent and Sheltered Children

The bill defines a surrogate parent, for purposes of ch. 39, F.S., to mean an individual appointed to act in the place of a parent in making educational decisions and safeguarding the child's rights under the Individuals with Disabilities Education Act (IDEA).

The bill requires that a surrogate parent be appointed, by the district school superintendent or the dependency court, for any "child known to the department"<sup>48</sup> who has or is suspected of having a disability,<sup>49</sup> if:

- No parent can be located; *or*
- The court determines that no one with authority is willing or able to make educational decisions for the child; *and*
- A surrogate parent has not been previously appointed for the child.

The bill provides that the minimum qualifications, responsibilities, rights, and liabilities of a surrogate parent appointed by the court are the same as the responsibilities, rights, and liabilities of a surrogate parent appointed by a superintendent. The bill specifies that under this new statutory authority a surrogate parent may not be:

- An employee of DOE, the local school district, a community-based care provider, DCF, or any other public or private agency involved in the education or care of the child; or
- Group home staff or therapeutic foster home parents.

A surrogate parent may, however, be:

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<sup>46</sup> 34 C.F.R. s. 99.61.

<sup>47</sup> *Taubman Realty Group Ltd. Partnership v. Norman Mineta*, 198 F.Supp. 2d 744, 761 (E.D. Va. 2002) (citing *English v. General Electric*, 496 U.S. 72 (1990)).

<sup>48</sup> A "child known to the department" is defined as a child who is dependent or in shelter care. Section 39.0016(1)(a), F.S.

<sup>49</sup> "Disability" is defined with reference to s. 1003.01(3), F.S.

- A person who acts in a parental role to a child, such as a foster parent or relative caregiver;
- A guardian ad litem;
- A relative or other adult involved in the child's life, regardless of whether he or she has physical custody of the child.

The bill requires the court to provide timely notice of the appointment of a surrogate parent to the district school superintendent, and requires the district school superintendent to accept the appointment of a surrogate parent by a dependency court. The bill requires the court to likewise recognize a previously made appointment by a superintendent. The bill also requires subsequent school districts to accept the court's appointment, regardless of where the child actually resides.

The bill provides that the termination of a surrogate parent appointed by a court is governed by the same rules governing the termination of a surrogate parent appointed by a superintendent.

The bill amends the department's confidentiality provision, allowing access to confidential reports and records of child abuse by a local school district employee who is designated to act as a liaison between the school district, DCF, and the principal of the child's school.

The bill requires that, if a child is placed in shelter pursuant to court order following a shelter hearing, the court must request that the child's parents consent to allow the court, DCF or its contract providers, and the child's guardian ad litem and attorney to have access to the child's medical and education records. If a parent is unavailable or withholds consent, and the court determines that access is necessary, the court shall enter an order granting access to the records.

The bill provides that judicial and citizen panel reviews of dependency cases must include consideration of testimony from a surrogate parent. In reviewing a case, the court and the panel must determine who has the right to make educational decisions for a child, if the child has or is suspected of being an exceptional student with a disability. In these reviews, consideration must be given to evidence from the community-based provider related to the appropriateness of the educational setting and coordination with the school district.<sup>50</sup>

The bill also provides a temporary (30-day) exemption for dependent children and children in foster care from providing proof of age and school entry health examinations and immunizations prior to attending school. (This exemption is provided to homeless children in current law.)

### **Placement of Exceptional Students with Disabilities in Private Residential Care Facilities**

The bill revises the requirements relating to the delivery of educational instruction and student funding when an exceptional student with disabilities is placed in a private residential care facility in another district. In particular, the bill:

- Requires timely notification by DCF, the Agency for Health Care Administration, APD, or a licensed private residential care facility when an exceptional student is placed in a

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<sup>50</sup> See s. 39.6012, F.S., which requires such assurances in the case-planning process.

- private residential care facility for the primary purpose of meeting a student's residential or other non-educational needs;
- Specifies that notification must be provided to the school district where the student is currently counted for funding purposes under s. 1011.62, F.S., and to the school district where the residential facility is located;
  - Requires the receiving school district to review the student's IEP, provide or contract for educational instruction to the student, or decline to do so;
  - Provides that, if the receiving school district declines to contract or provide instruction, the school district in which the student legally resides is responsible for providing or contracting for instruction;
  - Specifies that the school district which provides or contracts to provide instruction reports the student for funding;
  - Requires DOE to develop procedures for notifying school districts when an exceptional student is placed in a residential care facility;
  - Provides that school districts with inter-district agreements for providing and paying for educational services are not subject to the provisions of the bill, with the exception of timely reviewing a student's IEP; and
  - Requires DOE to implement an interagency cooperative agreement regarding the placement of exceptional students in residential facilities, consistent with federal law and regulations, on or before January 1, 2010. The agreement shall identify the responsibilities of each party, ensure that students receive special education and related services necessary to receive a free appropriate public education, and establish procedures.

The bill takes effect July 1, 2009.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

The bill provides an exception to s. 39.202, F.S., which makes records generated as a result of an investigation of child abuse, neglect or abandonment confidential and exempt from public disclosure. The exception increases access to public records and, therefore, is not subject to the constitutional restrictions that apply when access is narrowed.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

According to DOE, there may be some additional costs to surrogate parents whose testimony is needed for judicial review of the status of a child under s. 39.071, F.S.

**C. Government Sector Impact:**

Current administrative rule allows school districts to compensate surrogate parents.<sup>51</sup> According to DOE, there may be some additional costs to school districts that continue to compensate surrogate parents for training and travel.

The bill clarifies the determination of school district responsibility for the provision of educational services for exceptional students with disabilities served in private residential care facilities across district lines, and therefore establishes school district fiscal responsibility for reporting the student for funding under the Florida Education Finance Program.

DOE notes that many of these students currently receive their education through formal and informal inter-district agreements. The bill provides a solution for the provision of services and funding for instances where agreements cannot be reached, and it also holds harmless multi-district written agreements which specify the provision of service and funding, except for the 10-day timeline for the review of the student's IEP.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

CS/CS/CS/SB 1128 provides that a court may appoint a foster parent, relative caregiver, or guardian ad litem to serve as a surrogate parent for a dependent child who has a disability. Federal law precludes the appointment of a surrogate parent who is an employee of the state education agency, the local educational agency, *or any other agency that is involved in the education or care of the child*. To the extent a foster parent or guardian ad litem might be considered employed by an agency that provides care to the child, this provision may be interpreted to violate federal law.

CS/CS/CS/SB 1128 requires the court or citizen review panel to consider the testimony of a surrogate parent in its review of a dependency case, but ch. 39, F.S., does not require notice to surrogate parents.<sup>52</sup>

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<sup>51</sup> Rule 6A-6.0333(7), F.A.C.

<sup>52</sup> See s. 39.701(5), F.S.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS/CS by Judiciary on April 1, 2009:**

The CS/CS/CS SB 1128 clarifies who may serve as a surrogate parent. It also clarifies that the interagency agreement between the Department of Education and other agencies shall address the placement of exceptional students in residential facilities, consistent with federal law and regulations, on or before January 1, 2010. It also provides that the agreement shall identify the responsibilities of each party, ensure that students receive special education and related services necessary to receive a free appropriate public education, and establish procedures.

**CS/CS by Children, Families, and Elder Affairs on March 25, 2009:**

The CS/CS/SB 1128 clarifies that a surrogate parent must be appointed, either by the dependency court or the district school superintendent, for a child who is in shelter or foster care and who is an exceptional student who has a disability. The CS/CS clarifies that a surrogate parent appointed by the court is governed by the same DOE rules that apply to surrogate parents appointed by a superintendent.

The CS/CS also clarifies that the receiving school district has responsibility for deciding whether to provide educational services for a child placed in a residential facility, requires DOE to enter into cooperative agency agreements relating to the placement of children in residential facilities by a date certain, and makes technical corrections.

**CS by Education Pre-K-12 on March 18, 2009:**

CS for SB 1128:

- Allows a guardian ad litem to be appointed by the court as a surrogate parent;
- Removes the provision requiring the appointment of a surrogate parent for a child who resides in a licensed group care or therapeutic setting;
- Specifies the circumstances under which an individual would no longer continue to serve as a surrogate parent;
- Requires a court order to appoint or terminate a surrogate parent;
- Specifies the duties, responsibilities, and procedural safeguards of a surrogate parent;
- Provides that a surrogate parent may not be held liable for actions taken in good faith to protect a student's education rights; and
- Provides that a district school superintendent rather than the school board has responsibilities related to the appointment of a surrogate parent.

The committee substitute also revises the requirements relating to the delivery of educational instruction and student funding when an exceptional student with disabilities is placed in a private residential care facility in another district to:

- Provide for timely notification when a placement is made in a facility that crosses school district lines and is primarily used to meet the student's residential or other non-educational needs;
- Determine the responsibility for providing or contracting for instruction and reporting a student for funding; and
- Hold harmless school districts with inter-district agreements for providing and paying for educational services.

B. Amendments:

None.