

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 783

Education for Children in Shelter Care or Foster Care

**SPONSOR(S):** Kelly and others

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1128

|    | <b>REFERENCE</b>  | <b>ACTION</b>   | <b>ANALYST</b> | <b>STAFF DIRECTOR</b> |
|----|---|-----------------|----------------|-----------------------|
| 1) | Health Care Services Policy Committee                           | 7 Y, 0 N, As CS | Preston        | Schoolfield           |
| 2) | PreK-12 Policy Committee  |                 | Duncan         | Ahearn                |
| 3) | Health & Family Services Policy Council                         |                 |                |                       |
| 4) | Full Appropriations Council on General Government & Health Care |                 |                |                       |
| 5) |   |                 |                |                       |

**SUMMARY ANALYSIS**

The Committee Substitute (CS) for HB 783 provides authority for the district school board or dependency court to appoint a surrogate parent for a child known to the Department of Children and Family Services (DCF) who has or is suspected of having a disability for purposes of educational decisionmaking. Before appointing a surrogate, it must be determined that no parent can be located and no person holds the right to make educational decisions for the child. Qualifications of a surrogate parent are specified, including who may, and may not, serve as a surrogate parent. In addition, the CS:

- Adds a designated liaison between a local school district and the DCF or the court to the list of entities that may be granted access to records in child abuse and neglect cases.
- Requires the court to request parental consent to provide access to a child’s medical records and educational records to the court, the DCF or its contract agencies and any guardian ad litem or attorney for the child if the child is placed in shelter following a shelter hearing. The court may order the release of those records if the parents are unavailable or unwilling to consent or withhold consent.
- 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 or the panel must determine who holds the rights to make educational decisions for the child and, if necessary, may appoint a surrogate parent for the child or refer the child to a district school board for the appointment. If a guardian ad litem (GAL) has been appointed for a child, the district school superintendent must first consider the GAL when appointing a surrogate parent.
- Clarifies that a surrogate parents appointed by either the court or district school superintendent must possess certain specified qualifications; provides for the continuity of an appointed surrogate parent if and when the child moves among and between public and private agencies; specifies circumstances which would eliminate the need for a surrogate parent; and provides the duties and responsibilities of the surrogate parent.
- Adds children who are in shelter or foster care to those children who must have access to free public education and must be admitted to school in the school district in which they or their families live.
- Adds children who are in shelter or foster care to those children who can be granted a 30-day exemption to providing records for purposes of school enrollment and obtaining health records and immunizations.

The bill is anticipated to have an indeterminate fiscal impact on the judiciary but no fiscal impact on local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### CURRENT SITUATION

##### **Federal Law – Individuals with Disabilities Education Act (IDEA)**

In 1975, Congress enacted the Education for All Handicapped Children Act (EAHCA). The goal of this federal legislation was to ensure access to a free, appropriate public education for each child with a disability in every state and locality across the country. The law provided a framework to improve access to education for children with disabilities. Changes implicit in the law included efforts to: 1) improve how children with disabilities were identified and educated, 2) evaluate the success of these efforts, and 3) provide due process protections for children and families.<sup>1</sup>

The EAHCA was a Congressional response to concern for two groups of children: the more than 1 million children with disabilities who were excluded entirely from the education system and the children with disabilities who had only limited access to the education system and were therefore denied an appropriate education. This latter group encompassed more than half of all children with disabilities who were living in the United States at that time.<sup>2</sup>

In 1990, the EAHCA was amended and renamed the Individuals with Disabilities Education Act (IDEA). The purpose of IDEA, as amended in 2004, is to ensure that all children with disabilities receive a free and appropriate education, including special education and related services, to prepare them for further education, employment, and independent living.<sup>3</sup>

Special education is defined as specially designed instruction, provided at no cost to the parents, to meet the unique needs of a child with a disability. Related services are support services necessary to allow a child to benefit from a special education program.<sup>4</sup>

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<sup>1</sup> United States Department of Education, Office of Special Education and Rehabilitative Services. History: Twenty-Five Years of Progress in Educating Children With Disabilities Through IDEA. Date of Publication Unknown. Available at <http://www.ed.gov/policy/speced/leg/idea/history.pdf>.

<sup>2</sup> Back to School on Civil Rights: Advancing the Federal Commitment to Leave No Child Behind," a report published by The National Council on Disability on January 25, 2000.

<sup>3</sup> National Center for Homeless Education, Individuals with Disabilities Education Improvement Act (IDEA) of 2004: Provisions for Homeless Children and Youth with Disabilities (Winter 2007), available at <http://srvlive.serve.org/nche/downloads/briefs/idea.pdf>.

<sup>4</sup> *Id.*

To be eligible under IDEA, a child must have a disability and require specialized instruction to benefit from school. Eligibility and services are determined through evaluation and the development of an Individual Education Plan. Students who have not graduated from high school are eligible through age 21. Services are also available to individuals with disabilities beginning at birth; children under three are served under an Individualized Family Services Plan.<sup>5</sup>

### **Parental Consent for Evaluation 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>

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.
- 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**

Under the 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 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.
- The child is an unaccompanied homeless youth as defined by the McKinney-Vento Homeless Assistance Act.<sup>8</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>9</sup>

Consistent with IDEA, state law requires local school districts to appoint a surrogate parent for any child who has or is suspected of having a disability as soon as the child is determined to be dependent and to be without a parent to act on his or her behalf.<sup>10</sup>

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

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 42 U.S.C. 11434a(6).

<sup>9</sup> U.S. Department of Education, Office of Special Education Programs, Procedural Safeguards: Surrogates, Notice and Parental Consent (October 4, 2006).

<sup>10</sup> Section 39.0016(4)(c), F.S.

## Education of Abused, Neglected or Abandoned Children

The DCF is required to cooperate with the Department of Education (DOE) and local school districts to access services and supports for children who are dependent or sheltered. The DCF, DOE, and the Agency for Workforce Innovation (AWI) executed an interagency agreement on July 11, 2005.<sup>11</sup> A section of the agreement provides:

The Parties agree to each promote the appointment of a Liaison by each district school board, by each DCF district/region or community-based care provider and for each Regional Workforce Board Liaison, with the intent that such Liaisons shall be responsible for implementation of the requirements in this Agreement. The Liaisons shall work to achieve appropriate educational, job training, and employment services for children known to the department.<sup>12</sup>

The Family Educational Rights and Privacy Act (FERPA) and IDEA strictly limit the authority of schools to release student records to third parties. 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>13</sup> This definition may be interpreted to include foster parents or child welfare agencies with legal custody of a child.<sup>14</sup> Otherwise, information from a student's education record can only be released with a parent's consent or pursuant to court order. The FERPA does allow schools to disclose records, without consent, to the following:<sup>15</sup>

- School officials with a 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 in cases of health and safety emergencies.
- State and local authorities, within a juvenile justice system, pursuant to specific state law.

The DCF and community-based care providers are among the entities that may have access to a child's education records without the consent of the child or the child's parent. The access is limited to the extent it is consistent with FERPA.<sup>16</sup> Current law 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.<sup>17</sup>

## Education of Foster Children

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

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<sup>11</sup> Section 39.0016, F.S.

<sup>12</sup> See Interagency Agreement, Article 2, Section 2.04 (July 11, 2005).

<sup>13</sup> 34 C.F.R. s. 99.3.

<sup>14</sup> Steve Christian, National Conference of State Legislatures, Children's Policy Initiative, Educating Children in Foster Care (December 2003).

<sup>15</sup> See U.S. Department of Education, Family Education and Privacy Rights Act (FERPA), available at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

<sup>16</sup> Section 1002.22(3)(d), F.S.

<sup>17</sup> Section 39.202(2)(p), F.S.

standardized tests and higher absenteeism, tardiness, truancy and dropout rates. The poor academic performance of these children affects their lives after foster care and contributes to higher than average rates of homelessness, criminality, drug abuse, and unemployment among foster care "graduates."<sup>18</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. 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>19</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.

## **EFFECT OF THE PROPOSED CHANGES**

The CS:

- Provides authority for the district school board or dependency court to appoint a surrogate parent for a child known to the Department of Children and Family Services (DCF) who has or is suspected of having a disability for purposes of educational decisionmaking. Before appointing a surrogate, it must be determined that no parent can be located and no person holds the right to make educational decisions for the child. Qualifications of a surrogate parent are specified, including who may, and may not, serve as a surrogate parent.
- Adds a designated liaison between a local school district and the DCF or the court to the list of entities that may be granted access to records in child abuse and neglect cases.
- Requires the court to request parental consent to provide access to a child's medical records and educational records to the court, the DCF or its contract agencies and any guardian ad litem or attorney for the child if the child is placed in shelter following a shelter hearing. The court may order the release of those records if the parents are unavailable or unwilling to consent or withhold consent. If a guardian ad litem (GAL) has been appointed for a child, the district school superintendent must first consider the GAL when appointing a surrogate parent.
- Clarifies that a surrogate parents appointed by either the court or district school superintendent must possess certain specified qualifications; provides for the continuity of an appointed surrogate parent if and when the child moves among and between public and private agencies;

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<sup>18</sup> Steve Christian, National Conference of State Legislatures, Children's Policy Initiative, Educating Children in Foster Care (December 2003).

<sup>19</sup> *Id.*

specifies circumstances which would eliminate the need for a surrogate parent; and provides the duties and responsibilities of the surrogate parent.

- 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 or the panel must determine who holds the rights to make educational decisions for the child and, if necessary, may appoint a surrogate parent for the child or refer the child to a district school board for the appointment. Certain determinations must also be made regarding the child's placement relative to his or her school.
- Adds children who are in shelter or foster care to those children who must have access to free public education and must be admitted to school in the school district in which they or their families live.
- Adds children who are in shelter or foster care to those children who can be granted a 30-day exemption to providing records for purposes of school enrollment and obtaining health records and immunizations.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 39.0016, Florida Statutes, relating to education of abused, neglected and abandoned children; agency agreements; and children having or suspected of having a disability.

**Section 2.** Amends s. 39.202, Florida Statutes, relating to confidentiality of reports and records in cases of child abuse or neglect.

**Section 3.** Amends s. 39.402, Florida Statutes, relating to placement in a shelter.

**Section 4.** Amends s. 39.701, Florida Statutes, relating to judicial review.

**Section 5.** Amends s. 1003.21, Florida Statutes, relating to school attendance.

**Section 6.** Amends s. 1003.22, Florida Statutes, relating to school entry health examinations, immunizations; exemptions; and duties of the Department of Health.

**Section 7.** Provides for an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have a fiscal impact on state government revenues.

##### 2. Expenditures:

The Office of the State Courts Administrator (OSCA) estimates that the requirements to appoint educational surrogate parents and review the assurances amended into s. 39.701, F.S., will result in an increase in judicial workload although the amount of that increase is unknown.<sup>20</sup>

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

##### 2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

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<sup>20</sup> Office of the State Courts Administrator, Judicial Impact Statement, HB 783, March 3, 2009.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The OSCA has stated that the bill will impact Juvenile Rule 8.305<sup>21</sup> and there is a possibility of the enactment of a new rule as well.<sup>22</sup>

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 18th, 2009, the Health Care Services Policy Committee adopted an amendment to HB 783 and passed the bill favorably as a Committee Substitute (CS) that does the following:

- Removes the circumstance of a child living in a licensed group care or a therapeutic setting as an instance when a surrogate parent must be appointed.
- Clarifies that a surrogate parents appointed by either the court or district school superintendent must possess certain specified qualifications.
- Provides that if a guardian ad litem (GAL) has been appointed for a child, the district school superintendent must first consider the GAL when appointing a surrogate parent.
- Provides for the continuity of an appointed surrogate parent if and when the child moves among and between public and private agencies.
- Specifies circumstances which would eliminate the need for a surrogate parent;
- Provides the duties and responsibilities of the surrogate parent.
- Provides immunity to a surrogate parent against liability for actions taken in good faith on behalf of a child.

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<sup>21</sup> Florida Rules of Juvenile Procedure, 2009 Edition, Rule 8.305, Shelter Petition, Hearing, and Order. Available at <http://www.floridabar.org/tfb/TFBLegalRes.nsf/basic+view/E1A89A0DC5248D1785256B2F006CCCEE?OpenDocument>.

<sup>22</sup> Office of the State Courts Administrator, Judicial Impact Statement, HB 783, March 3, 2009.