

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1232

SPONSOR: Education Committee, Children and Families Committee, Senator Atwater and others

SUBJECT: Abused, Neglected, and Abandoned Children

DATE: March 10, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Dormady</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>AHS</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

CS/CS/SB 1232 requires interagency agreements between the Department of Children and Families (DCF) and the Department of Education at the state level and the Department of Children and Families and the district school boards at the local level relating to the education of and related services for children found dependent or in shelter care. The bill sets forth the requirements for the interagency agreements, including efforts to avoid disruption of a child's education, identification of educational and other school services necessary for a child's education, sharing of information, determining the availability of transportation to avoid changes in school assignments, supporting the educational needs of a child with disabilities, participation in case planning activities, and provision of training in areas that would facilitate the desired outcomes of these agreements. The bill also adds DCF and community-based care lead agencies to the organizations to which students' educational records may be released by the schools, consistent with the provisions of the Family Educational Records and Privacy Act.

This bill substantially amends section 1002.22 of the Florida Statutes and creates section 39.0016 of the Florida Statutes.

The bill will take effect July 1, 2004.

II. Present Situation:

A child who has been adjudicated dependent for the purpose of protecting the child from abuse, neglect, or abandonment may be placed either in the home of one or both parents, with a relative or another adult approved by the court, or in the custody of the department, which includes in a foster care placement [ss. 39.501(2) and 39.521(1)(b), F.S.]. A child may also be placed outside the home without an adjudication of dependency in order to protect the child, such as in shelter

care if the child is in imminent danger of injury as a result of abuse, neglect, or abandonment; when the parent or legal custodian has materially violated a condition of placement; or when the child does not have a responsible adult immediately available to provide supervision or care [s. 39.402(1), F.S.]. While the state goal is to achieve permanency for the child within 12 months, children are often in out-of-home care arrangements for much longer.

Many of these children are school age, and continuing with the appropriate educational goals becomes an important consideration for the child. However, many children in foster care struggle academically and socially. For foster children, changes in placements often require changes in schools. School personnel often do not know a child is in foster care or the implications of foster care on a child's education.¹ Child welfare professionals often lack the training to provide the advocacy these children require in the educational system.² Studies have found that, compared with other children, children in foster care have higher rates of grade retention, lower academic skills, poorer rates of attendance, and higher dropout rates.³

In Florida, the Independent Living Services Integration Workgroup, directed by the Legislature to "assess barriers to the effective and efficient integration of services" for the transition of adolescents in foster care to independent living, identified issues for such children including the lack of coordinated education decision making and the lack of transportation resources to attend school. The workgroup recommended that children in foster care whose placements change maintain continuity in their school, that if a change in schools must occur, a plan to coordinate the transition be developed, that the department explore the potential of additional transportation resources, and that the Department of Children and Families and Department of Education enter into an interagency agreement.

The Department of Children and Families estimates that there are currently 31,600 children in DCF out-of-home placements, of whom 61 percent or 19,276 are estimated to be children of school age. According to the 2001 pre-Adoption and Safe Families Act audit, 52 percent or 10,023 of the children monitored statewide were found to have had a school change as a result of out-of-home placement.

Children who are in foster care and have a disability are a particularly vulnerable group. One study in New York found that 30 percent of the children in foster care were receiving special education services.⁴ The Individuals with Disabilities Education Act (IDEA), which is codified into law under 20 U.S.C., Chapter 33, guides and supports special education and related services for children and youth with disabilities. The Florida K-20 Education Code contains a number of laws to implement IDEA, as do the rules of the State Board of Education. In particular, each school board is required to provide the appropriate special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education [s. 1003.57, F.S.]. Exceptional students include both gifted students and students who have a disability [s. 1003.01(3)(a), F.S.]. The special education services these children could be provided are the specially designed instruction and related services that are determined necessary for the student

¹ Education Issue Brief: Improving Special Education for Children with Disabilities in Foster Care, Claire van Wingerden, John Emerson, and Dennis Ichhikawa, Casey Family Programs, June 2002, p. 2.

² van Wingerden, *Supra*, p. 3.

³ van Wingerden, *Supra*, p. 2.

⁴ van Wingerden, *Supra*, p. 4.

to benefit from education, such as “transportation; diagnosis and evaluation services; social services; physical and occupational therapy; job placement; orientation and mobility training; braillists, typists, and readers for the blind; interpreters and auditory amplification; rehabilitation counseling; transition services; mental health services; guidance and career counseling; specified materials; assistive technology devices; and other specialized equipment” [s. 1003.01(3)(b), F.S.].

One effort to address this issue has been in Broward County where an interagency agreement has been executed between DCF, Child Net (the community-based care lead agency) and the School Board of Broward County. This agreement has focused on providing educational stabilization and progress to children in the care of DCF by stipulating agreed-upon terms for such matters as broad policy collaboration, information sharing, attempts to stabilize the foster care placements, collaboration on independent living efforts, and assigning surrogate parents. It has been reported that this agreement has had a positive effect on the working relationship between DCF and the school system and for the foster children.

In addition, the Federal Child and Family Services Review of Florida’s Child and Family Services program conducted in 2001 by the Administration for Children and Families identified aspects of the system that needed improvement in the areas of safety, permanency, well-being, and case review and service array. The Department of Children and Families reports that Florida’s Program Improvement Plan to respond to this review includes tasks for the department and other stakeholders in the child welfare system regarding the educational needs of children in care. These tasks include increasing the number of written case plans which include specific goals related to educational needs, improving assessments and matching of services to meet educational needs, and obtaining information about the educational needs and issues of adolescents in foster care.

Section 39.202, F.S., identifies those individuals, officials, and agencies that are permitted to have access to the records held by the Department of Children and Families concerning reports of abuse, neglect, and abandonment. This section was amended during the 2003 session to allow the principal of a school access to the information in the DCF records; the principal may then release the information to those school employees who are determined to need the information to effectively provide the educational services.

Section 1002.22, F.S., sets forth the rights of students and parents relative to access, privacy, and challenges to the content of students’ records and reports that are created and maintained by public educational institutions in the state. Section 1002.22(3)(d), F.S., provides for confidentiality and an exemption from Florida’s public disclosure laws for students’ educational records. This paragraph identifies those persons and organizations to whom personally identifiable records or reports may be released without the consent of the student or student’s parents. Currently, the Department of Children and Families is not specifically identified as an entity to which records and reports may be released; however, under Department of Education policy, if the Department of Children and Families has legal custody of the child, it is considered the legal guardian and is entitled to access to this information.

III. Effect of Proposed Changes:

CS/CS/SB 1232 requires interagency agreements between the Department of Children and Families (DCF) and the Department of Education at the state level, as well as DCF and district school boards at the local level relative to the education of and related services for children found dependent or in shelter care. The bill sets forth the requirements for the interagency agreements, including efforts to avoid disruption of a child's education, identification of educational and other school services necessary for a child's education, sharing of information, determining the availability of transportation to avoid changes in school assignments, supporting the educational needs of a child with disabilities, participation in case planning activities, and provision of training in areas that would facilitate the desired outcomes of these agreements. The bill also adds DCF and community-based care lead agencies⁵ to the organizations to which students' educational records may be released from the schools.

CS/CS/SB 1232 creates a new s. 39.0016, F.S., which addresses the education of abused and neglected children. In this section, DCF is required to enter into an interagency agreement with the Department of Education to provide educational access to children known to the department. To achieve this goal, the agreement is required to facilitate the delivery of services, avoid duplication of services, and combine resources to maximize the availability or delivery of services. "Children known to the department" is defined in the bill for the purposes of this section as children who are dependent or in shelter care.

The Department of Children and Families is directed to enter into interagency agreements with district school boards or other local educational entities relative to the education and related services for children known to the department who are school-age or, if younger than school-age, who qualify for school district services. The bill sets forth the minimum requirements for DCF and school boards that are to be stipulated in the interagency agreements. The requirements of DCF are to include the following:

- Enrollment of a child in school or continuation of enrollment in the same school, if possible, to avoid disruption in the child's education;
- Provision of the name and phone number of the child's caregiver and caseworker to the school and school district;
- Development of a protocol for sharing of information about a child known to the department with the school district, which protocol is to be consistent with the Family Educational Rights and Privacy Act; and
- Notification to the school district of when a child's case plan will be developed or reviewed to provide the school district with an opportunity to participate in this case planning process so that information from the school may be provided if appropriate.

The requirements of the school district are to include the following:

- Communication to DCF on the services and information available from the school district that would facilitate educational access, including, but not limited to, the current Sunshine State Standards and the Surrogate Parent Training Manual;

⁵ These agencies are authorized under s. 409.1671, F.S., to contract to provide services traditionally provided by DCF.

- Identification of the educational and other services available through the school or school district that the school district believes are reasonably necessary to meet the educational needs of the child;
- Determination of whether transportation is available for students, if such transportation would prevent a change in school assignments that would result from a change in residential placements;
- Assessment of the availability of federal, charitable, or grant funding for transportation that would enable each child's continued enrollment in the same school; and
- Provision of either an individual educational plan (for a student with disabilities) or other appropriate individualized student intervention if intervention services are determined necessary, which must include strategies to enable the child to maximize the attainment of educational goals.

The interagency agreements must require the DCF and school districts to cooperate in accessing services and supports needed for an appropriate education by a child who has or is suspected of having a disability, consistent with the Individuals with Disabilities Education Act and applicable state laws, rules, and assurances. The coordination of services for these children is to include a referral to screening, sharing of evaluations, provision of education and related services needed by the child, coordination of service plans to avoid duplicative or conflicting plans, appointment of a surrogate parent by the school district who will remain the surrogate parent throughout the state's custody of the child, and transitional planning for adolescent foster children that meets the requirements of the local school district.

DCF is also directed to incorporate the following components into their training programs:

- Training for surrogate parents regarding the effects of abuse, neglect, and removal from the home on a child's learning ability;
- Training for parents or preadoptive parents, when appropriate, regarding accessing services the child needs and the importance of the parent's involvement in the child's education;
- Training for caseworkers and foster parents regarding the child's right to an education, the role of an education in the child's development, accessing education and related services, and strategies for parental involvement in the child's education; and
- Training for caseworkers on the services and information available through the Department of Education and school districts that would facilitate educational access for a child known to DCF.

The training incorporated into the department's training program is to be coordinated with the Department of Education and local school districts. DCF is directed to provide school personnel with the opportunity to participate in any of the above training.

The bill specifically stipulates that the provisions of s. 39.0016, F.S., establish goals, not rights, and that this section cannot be interpreted to require a service or an expansion of services beyond existing appropriations. The bill states that a cause of action against the state or its subdivisions, agencies, contractors, or subcontractors may not be maintained based on this section becoming law or for the Legislature not adequately funding the achievement of the goals. The section does

not require the expenditure of funds to meet the goals of the bill other than any funds specifically appropriated for such purpose.

Section 1002.22(3)(d), F.S., is amended by the bill to permit the release of educational records to the Department of Children and Families or a community-based care lead agency, consistent with the Family Educational Rights and Privacy Act.

The bill provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill stipulates that the Department of Children and Families' training must include a number of new training components. The department identified a fiscal impact of \$205,000 for the first year for this training but noted that these costs can be absorbed within existing resources.

Additional administrative requirements of the Department of Education and especially school districts are set forth in the bill; certain of these requirements, especially the requirement that school districts assess transportation for each individual student, could pose an additional administrative burden for those school districts that are not already engaging in such assessments. In the event that these activities cannot be undertaken by the use or re-allocation of existing resources, under the bill's terms, no services required by the bill need be provided absent appropriation of necessary funds by the Legislature.

Accordingly, government sector impact will depend on the funding appropriated for the bill's provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Information sharing between DCF and school districts

Paragraph (4)(a)3. of the bill requires the DCF to “establish a protocol for the department to share information about a child known to the department with the school district, consistent with the Family Educational Rights and Privacy Act, since the sharing of information will assist each agency in obtaining education and related services for the benefit of the child.” The Family Educational Rights and Privacy Act (FERPA) generally addresses student and parental rights regarding information contained in a student’s education record; accordingly, it will not apply to the sharing of information by DCF with the school district (except to the extent that such information then becomes a part of the student’s educational record; at that time, FERPA will apply to restrict the school’s ability to disseminate the information further.) Some ambiguity may currently exist with the paragraph’s language as drafted, such that it is not clear that the protocol to be developed must cover the sharing of information by DCF with the school districts and *also* by the school districts with DCF. It may be necessary to clarify the language of the paragraph to read, “Establish a protocol for the department *and the school district* to *mutually* share information about a child known to the department, consistent with the Family Educational Rights and Privacy Act *and applicable state law...*” (Suggested amendatory language is italicized.) This language change will make clear – as is otherwise implied in the paragraph – that the protocol in question will also involve the sharing of information by the school district with DCF, and that applicable federal and state laws provide restrictions on the dissemination of information contained in students’ school records. Although state student record privacy law is largely consistent with FERPA, a reference to the state law will be helpful as well.

Additional or expanded duties for DCF and the Department of Education contained in the bill

Both the Department of Children and Families and the Department of Education report that the bill either creates or expands responsibilities or presents concerns relative to meeting certain provisions of the bill. (As noted above, the bill specifically stipulates that nothing in the newly created section is to be interpreted as a requirement for the delivery of service or expenditure of funds.) The created or expanded responsibilities or concerns identified by DCF and the Department of Education are as follows:

- For the Department of Education –
 - To continue the enrollment of a child at the same school, if transportation is available;
 - To coordinate the services and plans between schools and residential settings;

- In appointing a surrogate parent, to do so without regard to where the child is placed during the entire time in state custody;
 - To identify all services provided by the school or district determined needed to meet the child's educational needs;
 - To determine if transportation is available for a child to prevent a transfer to another school;
 - To assess the availability of other funding for transportation;
 - To participate in the coordination of transition planning for the adolescent child;
 - To participate in the training related activities identified; and
 - To participate in DCF's case planning.
- For the Department of Children and Families –
 - To develop and implement the provisions of the agreement;
 - To implement the training expansions and additions identified; and
 - To coordinate the transportation, if available, when a child's placement must change.

Educational records access for DCF and community-based care lead agencies

The revision to s. 1002.22(3)(d), F.S., set forth in the bill provides broad educational records access for the DCF or a community-based care lead agency acting on behalf of the DCF. Unlike the provisions relating to other entities given access to student records under s. 1002.22, F.S., no parameters for the use of these records by the DCF or the care lead agencies is set forth in the bill's proposed language. It may be helpful to provide that the records be made available to the DCF and the care lead agencies only for purposes of carrying out their legal or statutory duties.

VIII. Amendments:

None.