

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.)

Prepared By: Education Committee

BILL: CS/SB 1766

SPONSOR: Education Committee and Senator Crist

SUBJECT: School Students/Psychotropic Medication

DATE: April 21, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	O'Farrell	ED	Fav/CS
2.	_____	_____	HE	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill sets forth requirements for the provision of medication to children in public schools. A recipient of state funds may not require that a student obtain a prescription for or be administered psychotropic medication, as a prerequisite to attend school, receive school services, or participate in extracurricular activities. Also, the bill requires the administration of psychotropic medication pursuant to s. 1006.062, F.S. The bill defines the term "psychotropic medication." Personnel in the school or school district may not make referrals for the diagnosis or treatment of any disorder listed in the Diagnostic and Statistical Manual of Mental Disorders. The bill allows teachers or school district personnel to share classroom-based observations with parents about students' classroom behavior and academic and functional performance.

This bill creates s. 1006.0625, F.S.

The bill takes effect upon becoming a law.

II. Present Situation:

Individuals with Disabilities Education Act (IDEA)

Federal law requires states to make a free appropriate public education available to all children with disabilities residing in the state between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.¹ Federal Child Find obligations require all children with disabilities residing in the state, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, to be identified, located, and evaluated. States

¹ 20 U.S.C. s. 1412. See also 34 CFR s. 300.121.

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.

Exceptional Students in Florida

Florida law (s. 1003.01(3) (a), F.S.) defines the term “exceptional student” as 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. The law further defines the term “exceptional students with disabilities.”² Gifted students are not considered a subset of students with disabilities.

The law defines special education services as specially designed instruction and such related services as are needed for an exceptional student to benefit from education, and may include: transportation; diagnostic and evaluation services; social services; physical and occupational therapy; job placement; orientation and mobility training; braille, 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; and other such services as approved by SBE rules.³

District School Boards

Current law (s. 1001.42(4), F.S.) requires district school boards to provide for an appropriate program of special instruction, facilities, and services for exceptional students. The law (s. 1003.57(5), F.S.) 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 in the manner prescribed by SBE rule. The parent of an exceptional student 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. Parental consent is required for an initial evaluation and prior to the provision of special education or related services.

Children’s Mental Health

Primary care physicians identify approximately 19 percent of the children they see as having behavioral and emotional problems.⁴ A number of treatment options are available to address mental health problems in children including psychotropic medications. The National Institute of Mental Health reports that psychotropic medications, while generally not the first option, may be prescribed when the possible benefits of the medications outweigh the risk and, in particular, when psychosocial interventions are not effective by themselves and there are potentially serious negative consequences for the child.⁵ There are several major categories of psychotropic medications: stimulants, antidepressants, anti-anxiety agents, anti-psychotics, and mood stabilizers. These medications may be used to treat a variety of symptoms, including as follows:

- Stimulant medications are frequently used for Attention Deficit Hyperactivity Disorder (ADHD), which is the most common behavioral disorder of childhood;

² Exceptional students with disabilities (s. 1003.01(3)(a), F.S.) are those who are mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospital and homebound, autistic, developmentally delayed children, ages birth through five years, or children, ages birth through two years, with established conditions that are identified in State Board of Education rules.

³ s. 1003.01(3)(b), F.S.

⁴ *President’s New Freedom Commission on Mental Health: Report to the President*, May 2003.

⁵ *Treatment of Children with Mental Disorders*, National Institute of Mental Health, updated June 18, 2001.

- Anti-depressants and anti-anxiety medications are frequently used for depression, anxiety, and obsessive compulsive disorders;
- Anti-psychotic medications are used to treat children with schizophrenia, bipolar disorders, autism, and severe conduct disorders; and
- Mood stabilizing medications are also used to treat bipolar disorders.⁶

A substantial number of children in the United States have diagnosed mental disorders. According to research, a review of Medicaid prescription records (from unidentified states) during 1995 indicated that 150,000 preschoolers under the age of six were prescribed psychotropic medications.⁷ Additionally, the 1999 MECA Study (Methodology for Epidemiology of Mental Disorders in Children and Adolescents) estimated that almost 21 percent of the children in the United States between the ages of nine and 17 had a diagnosable mental or addictive disorder that caused impairment, and 11 percent of these children (approximately 4 million) had a significant impairment that limited their ability to function.

Psychotropic medication is one of many treatment interventions that may be used to address mental health problems. Medication may be recommended and prescribed for children with mental, behavioral, or emotional symptoms when the potential benefits of treatment outweigh the risks.

It is estimated that 1.46 to 2.46 million children, or 3 to 5 percent of the student population, have ADHD.⁸ The diagnostic methods, treatment options, and medications have become a very controversial subject, particularly in education.⁹ Concerns have been raised that school officials are reportedly offering their diagnosis of ADHD and urging parents to obtain drug treatment for the child.¹⁰

School District Personnel and Prescription Medication

According to the U.S. Department of Education, medical professionals, not education professionals, are responsible for prescribing medication.¹¹ However, the role of educators in providing information about a student's behavior is recognized as an aid to making a diagnosis.

The 2004 reauthorization of IDEA (P.L. 108-446) requires that each state must prohibit state and school district personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act,¹² as a condition of attending school, receiving services, or receiving an evaluation for a disability.¹³ However, this prohibition does not prohibit teachers or other school personnel from consulting or sharing class-room based observations with parents or

⁶ *Ibid.*

⁷ *Trends in the Prescribing of Psychotropic Medications to Preschoolers*, Zito, J.A., Safer, D.J., dosReis, S., Gardner, J.F., Boles, M., and Lynch, F., *The Journal of the American Medical Association*, Vol. 283, No.8, February 2000.

⁸ *Identifying and Treating Attention Deficit Hyperactivity Disorder: A Resource for School and Home*, U.S. Department of Education, 2003, p.2.

⁹ *Identifying and Treating Attention Deficit Hyperactivity Disorder*, *Supra*, p. 1.

¹⁰ Child Medication Safety Act of 2003, 108th Congress, House of Representatives Report, May 21, 2003, p. 5.

¹¹ Letter from Richard Riley of the U.S. Department of Education to Congressman Peter Hoekstra, November 21, 2000.

¹² 21 U.S.C. § 801.

¹³ 20 U.S.C.1412

guardians about a student's academic and functional performance, or behavior in the classroom or school, or the need for evaluation for special education or related services.

Chapter 458, F.S., governs the regulation of the practice of medicine by the Board of Medicine. Section 458.305, F.S., defines the "practice of medicine" to mean the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition. The Board of Medicine within the Department of Health (DOH) regulates the practice of medical physicians. Chapter 459, F.S., the osteopathic medical practice act, similarly provides for the regulation of osteopathic physicians by the Board of Osteopathic Medicine in DOH. Section 459.003, F.S., defines the "practice of osteopathic medicine" to mean the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition, which practice is based in part upon educational standards and requirements which emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health.

Section 456.065(2), F.S., specifies penalties for the unlicensed practice of a health care profession. Section 456.065(2)(a-c), F.S., provides administrative and civil penalties for unlicensed activity. Section 456.065(2)(d), F.S., provides criminal penalties in addition to the criminal violations and penalties listed in the individual health care practice acts.

There does not appear to be an exemption from these practice acts for school district personnel to require students to obtain a prescription to treat a medical condition to attend school. Consequently, school district personnel who attempt to implement this policy may be subject to criminal penalties prohibiting the unlicensed practice of medicine under the provisions of chapter 458, F.S., or chapter 459, F.S.

School District Authority to Administer Medication

The administration of medication in schools is governed by s. 1006.062, F.S., and local school board policy. Section 1006.062, F.S., allows designated school personnel to assist in administering prescribed medication, provided that specific conditions are met, including the following provisions:

- School board policies and procedures for administering prescription medications and providing training by licensed health care professionals for school personnel to administer prescription medication.
- Written permission from parents for designated school district personnel to administer prescription medications. This must include an explanation of the necessity of the medication.
- Proper storage of medication in a secure location.

The law requires the principal or the trained personnel to assist the student in administering the medication.

Diagnostic and Statistical Manual of Mental Disorders (DSM) and the International Classification of Diseases (ICD-10)

Published by the American Psychiatric Association, the DSM-IV categorizes psychiatric diagnoses and covers all mental health disorders for both children and adults, including disorders related to sleep, eating, substance abuse and dependence, pyromania, and kleptomania. It also

lists known causes of these disorders and prognosis, as well as some research concerning the optimal treatment approaches.

The ICD is the international standard diagnostic classification for all general epidemiological and many health management purposes. While it contains information related to mental health and behavior disorders, including suicide, it also provides information related to a broad range of other health problems including injury, poisoning, sexual and physical abuse, and disorders related to student conduct, expressive language, reading, and arithmetic.

III. Effect of Proposed Changes:

The bill sets forth requirements for the provision of medication to children in public schools. The bill prohibits recipients of state funds from requiring that a student obtain a prescription for or be administered psychotropic medication, as a prerequisite to attending school, receiving school services, or participating in extracurricular activities. Also, the bill requires the administration of psychotropic medication pursuant to s. 1006.062, F.S., which allows school district personnel to administer prescription medication with parental consent.

As used in the bill, the term “psychotropic medication” means a prescription medication that is used for the treatment of mental disorders, including antihypnotics, antipsychotics, antidepressants, anxiety agents, sedatives, psychomotor stimulants, and mood stabilizers.

The bill prohibits school or school district personnel from making referrals for the diagnosis or treatment of any disorder listed in the DSM. The bill allows teachers or school district personnel to share classroom-based observations with parents about students’ classroom behavior and academic and functional performance. The Department of Education notes that most of the disabilities associated with exceptional student education programs are in either the DSM or ICD-10. According to the Department of Education, ICD-10 codes do not apply to schools. Rather, the codes are for Medicaid billing and apply to private mental health practitioners. Schools that participate in the Medicaid certified school match program assign ICD diagnosis codes for Medicaid billing purposes.

As written, the provision related to the DSM may result in the inability of school personnel to comply with the requirements in federal law for students with disabilities. As well, this may limit the ability of school personnel, including school psychologists, to make appropriate referrals of students for necessary evaluation, screening, diagnosis, and treatment.

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:

None.

VI. Technical Deficiencies:

On page 1, line 27, the bill refers to a recipient of state funds. Based on the other language in the bill, this reference appears to mean a public school. The reference should be changed to clarify this ambiguity.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
