

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 849 CS
SPONSOR(S): Porth and others
TIED BILLS:

Public K-12 Education

IDEN./SIM. BILLS: SB 768

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Choice & Innovation Committee	6 Y, 0 N, w/CS	Hassell	Aldis
2) Education Appropriations Committee		Eggers	Hamon
3) Education Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The CS provides that a nonresident exceptional education student who receives special instruction, facilities, or services in any type of education facility in Florida is considered a resident of the state in which the parent resides. The parent's state of residence or the student's parent is required to pay the cost of the nonresident student's instruction, facilities, and services, and the residential facility, not the school district, is responsible for billing and collecting for the out-of-state student's education and related services.

The CS requires the Florida Department of Education (DOE) to provide each school district a statement of the specific limitations of the school district's financial obligations for exceptional students under state and federal law, and to provide any technical assistance needed for developing a local plan to impose on the parent's state of residence or the student's parent the fiscal responsibility for educating the nonresident exceptional student. Also, DOE is required to develop a process that requires school districts to review the residency of each exceptional student who lives in a residential facility in Florida, prior to providing services.

The CS also requires the DOE to develop a streamlined Individual Education Plan (IEP) form, to be used in all school districts in the state.

The CS may result in an estimated cost savings of \$1.5 million by the state; however, the CS may have an economic effect on the private sector. Please see the FISCAL ANALYSIS section of the analysis. Also, please see the FISCAL COMMENTS section of the analysis for information relating to the new responsibilities the CS places on the Department of Education.

The CS provides for an effective date of July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The CS requires the DOE to create a statewide, uniform individual education plan for exceptional education students, to develop a process for school districts to review the residency of every exceptional student who lives in a residential facility, and to provide school districts with a statement of specific financial obligation limitations and needed technical assistance in the development of local plans for imposing fiscal responsibility on a nonresident student's home state. The CS requires residential facilities to bill for and collect payment of nonresident exceptional education students attending their facility.

B. EFFECT OF PROPOSED CHANGES:

Exceptional Students in Florida

Section 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. This term includes both students who are gifted¹ and students with disabilities. Exceptional students with disabilities 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 5 years, or children, ages birth through 2 years, with established conditions that are identified in SBE rules.

Section 1003.01(3)(b), F.S., defines the term “special education services” to mean specially designed instruction and such related services as are needed for an exceptional student to benefit from education. Special education services may include: transportation; diagnostic 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; and other such services as approved by SBE rules.

Florida administrative rules define gifted students.² Similarly, federal law appears to make a distinction between students with disabilities and students with special learning needs, including students who are gifted and talented.³

The DOE reported that 387,617 students were served in the exceptional student education (ESE) program in the fall of 2002. The program serves individuals aged 3 through 21, with children aged three to five being served by the program's Prekindergarten Disabilities component. Some school districts opt to serve children from birth through two years.

Free and Appropriate Public Education (FAPE)

Federal Law

¹Gifted students are not considered a subset of students with disabilities.

² Rule 6A-6.03019, F.A.C., defines a gifted student as a student who has superior intellectual development and is capable of high performance and establishes the eligibility criteria for gifted instructional programs.

³ See 20 U.S.C.A. ss. 6622 and 6623, related to grants under Chapter 70, Strengthening and Improvement of Elementary and Secondary Schools.

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.⁴ Children who are placed in or referred to private schools or facilities by the state or appropriate school districts are provided special education and related services at no cost to their parents. School districts have more limited obligations to children with disabilities when the public agency made a free and appropriate public education available and the parents elected to place them in a private school or facility without the public agency's consent or referral.⁵

The state educational agency must exercise general supervision over all educational programs for children with disabilities in the state, including all such programs administered by any other state or local agency, and ensure that programs meet the educational standards of the State educational agency. However, the law does not limit the responsibility of agencies in the state other than the state educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the state.⁶

Florida Law

Pursuant to s. 1003.57, F.S., Florida district school boards are required to provide for an appropriate program of special instruction, facilities, and services for exceptional students, as prescribed by the SBE as acceptable. State law and administrative rule require district school boards to provide for an appropriate program of special instruction, facilities, 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 standards established by the Commissioner of Education. When a parent is offered an appropriate education program by the school district and the parent waives this opportunity in favor of a program selected by the parent, the parent assumes full financial responsibility for the student's education.

Residency

Rule 6A-6.0361(6)(d), Florida Administrative Code, requires a school district to verify that the student is a resident of the school district and is enrolled in, or has made application for admittance to, a district school educational program. However, the rule does not require verification that the student's parent is a resident of the district. According to DOE, there is a means for schools to record the student's state of residency; however, this information is not used to deny services to any student who lives within a district and does not include procedures for verifying parental residency.

For the purposes of public school enrollment, "residency" is not defined in Florida statute or rule. According to the DOE, a longstanding policy⁷ is that it is the responsibility of the school district in which a student resides to provide eligible school aged students with disabilities a free, appropriate public education.⁸ Accordingly, Florida determines that the residency status of a student in a residential placement is determined by the district in which the student resides and not the district in which the student's parent resides. This creates a financial obligation for Florida and the local district where the facility is located to provide ESE services to the child, even if the child's parents are residents of another state. Currently there is not a process in place for Florida school districts to impose on a student's home state the fiscal responsibility for educating a nonresident exceptional student.

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

⁵ 20 U.S.C. s. 1412(a)(10)(C)(i).

⁶ 34 C.F.R. s. 300.600

⁷ Florida State Plan, 1995-1997, p.63

⁸ Department of Education *2005 Legislative Bill Analysis on HB 849*

The United States Department of Education (U.S. DOE), Office of Special Education Programs, has disseminated letters of clarification regarding residency.⁹ The letters of clarification specify that it is residence that creates the duty under the statute and regulations, and not the location of the child or the school. The letters specifically provide that a child is a resident of the state in which their parent or guardian is a resident, or of which they are a ward.

Office of Program Policy Analysis and Government Accountability (OPPAGA) Study¹⁰

In October 2003, OPPAGA reviewed the number of out-of-state children living in Florida private residential facilities and the state's cost of providing ESE services to these children. OPPAGA determined that Florida could avoid \$1.5 million annually in ESE costs for these students. The report noted that children may be placed in residential facilities by their parents, the local school district, or by a state agency and that while most placements are made in-state, children may be placed in an out-of-state facility, if no school district in the state offers the specific services the child needs.

Study findings, include, but are not limited to the following:

- Although DOE maintains a database on ESE students, it lacks reliable information on the number of children served in residential facilities or whether these students are residents of another state.
- OPPAGA identified 417 ESE students in private residential facilities, of whom 90 were residents of other states and had been placed in Florida facilities by agencies and school districts from other states and parents in their home state.
 - Most of these out-of-state ESE children (98%) are funded at level 4 or 5, the highest levels of the ESE funding matrix.
 - The funding provided to these out-of-state children equaled the funding provided to 443 non-disabled Florida students during the same school year.
- Districts reported that during the 2002-03 school year they placed two children out of state. In both cases, the district is paying the entire cost of the out-of-state placement, including educational costs.
- Florida's state agencies (Department of Children and Families' Children's Mental Health and Developmental Disabilities) did not place children outside the state for residential treatment.
- The Department of Juvenile Justice (DJJ) also makes residential facility placements; however, these placements are made for reasons related to a child breaking the law, not because of a disability. For this reason, DJJ was not a part of this study and OPPAGA's findings do not extend to the DJJ population.
- Orange County School District has adopted policies against claiming FEFP funding and providing services for out-of-state children.
- Of the seven states contacted by OPPAGA, only one has a policy similar to Florida's while five do not fund out-of-state children. One state has not established a policy on the issue and allows districts to make this decision.
- Controls do not exist to prevent double-billing of education services. Neither the Florida DOE nor local school districts contact home states of out-of-state ESE children to determine if educational costs are covered in an out-of-state child's residential contract. Some school administrators in districts that have private residential facilities said that they would not know if the facilities were double-billing both Florida and the student's home state for services.

Proposed Changes

The CS provides that a nonresident student who receives special instruction, facilities, or services as an exceptional student in Florida is considered a resident of the state in which the parent resides. For purposes of this section, the term "parent" is defined as either or both parents of a student or any guardian of a student. The parent's state of residence or the student's parent is required to pay the cost

⁹ See *Letter to McAllister*, Office of the Utah Attorney General, June 9, 1994 and *Letter to Moody*, Massachusetts Department of Education, October 24, 2995

¹⁰ OPPAGA, *Special Review, Report #03-58, October 2003*

of the nonresident student's instruction, facilities, and services received in Florida. In addition, these nonresident students shall not be reported by the any school district for FTE funding in the Florida Education Finance Program.

The CS requires the DOE to provide each school district a statement of the specific limitations of the school district's financial obligations for exceptional students under state and federal law, and to provide any technical assistance needed for developing a local plan to impose on the parent's state of residence or the student's parent the fiscal responsibility for educating the nonresident exceptional student.

The DOE is also required to develop a process that requires school districts to review the residency of each exceptional student who lives in a residential facility in Florida, prior to providing services. Under the provisions of this CS, the residential facility, not the school district, is responsible for billing and collecting the out-of-state student's education and related services from the parent's state of residence.

The provisions created under the CS apply to any nonresident exceptional student in any type of educational facility in the state, including but not limited to, public schools, private schools, group home facilities, intensive residential treatment programs, intermediate care facilities for the developmentally disabled, and community residential homes.

Individual Education Plan

Current law requires that an individual education plan IEP include certain information about the child and the educational program designed to meet his or her unique needs. However, states and school systems have a great deal of flexibility about the information they require in an IEP. The IEP must include: current performance, including how the child's disability affects his or her involvement and progress in the general curriculum; annual goals; special education and related services; participation with non-disabled children; participation in state and district-wide tests; dates and places; transition services needs; needed transition services; age of majority; and measuring progress.¹¹ Additionally, some states and school systems have chosen to include additional information¹² in the IEP to document their compliance with other state and federal requirements.¹³

Currently, federal law provides information on what must be included in the IEP; however, it does not specify what the IEP should look like. No one form, approach, or appearance is required or even suggested. States may decide how their forms look and design their own IEP forms. Thus, across the United States, many different IEP forms are used.¹⁴ Florida is no different. School districts across the state utilize a variety of IEP forms, both computerized and non-computerized, to comply with federal and state requirements related to IEP development.

According to Florida's DOE analysis, the Individuals with Disabilities Act of 2004 (IDEA) provides that the U.S. DOE authorize a pilot program, for fifteen states to participate in an IEP demonstration program.¹⁵ When the demonstration program is completed, each state will be required to implement a uniform IEP form based on the final regulations for IDEA 2004.

The CS would require the Florida DOE to develop a streamlined IEP form, to be used in all school districts in the state for developing, implementing, and transferring IEPs for exceptional students within the state school system. However, until the final regulations for the IDEA 2004 and the sample IEP forms are disseminated, the specific components required for an IEP under federal law will not be known. The CS does not state that the DOE is to develop a uniform IEP before the federal guidelines are in place.

¹¹ <http://www.ed.gov/parents/needs/spced/iepguide/index.html>

¹² *Id* Extra elements in IEPs that may be included: holding the meeting to write, review and, if necessary, revise a child's IEP in a timely manner; providing parents with a copy of the procedural safeguards they have under the law; placing the child in the least restrictive environment; and obtaining the parents' consent

¹³ *Id*. Federal law requires that school districts maintain documentation to demonstrate their compliance with federal requirements.

¹⁴ <http://www.ed.gov/parents/needs/spced/iepguide/index.html>

¹⁵ Department of Education 2005 Legislative Bill Analysis on HB 849

C. SECTION DIRECTORY:

- Section 1. Amends s. 1003.57, F.S., relating to exceptional students education.
- Section 2. Creates s. 1003.575, F.S., requiring the DOE to develop an individual education plan form.
- Section 3. Amends s. 1003.58, F.S., conforming a cross-reference.
- Section 4. Provides an effective date.

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 revenues.

2. Expenditures:

The CS will decrease the expenditures of the state currently expended on the care and education of nonresident children receiving exceptional student education in residential facilities. The anticipated amount of expenditures that could be reduced is not readily available because the DOE has not accumulated the data on student residency to calculate the anticipated savings. However, the report issued by OPPAGA indicated that an estimated \$1.5 million could be saved by the state.

The DOE will be required to provide the districts with technical assistance as necessary for developing a local plan to impose the fiscal responsibility on a parent's state of residence for educating a nonresident exceptional student as well as providing a statement of specific limitations of the district's financial obligation for exceptional students under federal and state law.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The CS may have an economic impact on the private sector because the residential facility bears the responsibility of billing and collecting payment for educational and related services from a nonresident student's home state. Residential care facilities providing services to nonresident exceptional education students did not have such a responsibility prior to this bill, and there could be problems on collecting the money owed for services by the parent's state of residence or the student's parent. There may also be timing consequences for the residential facility and/or the student caused by delays in the collection of fees from the parent's state of residence. If parents' states of residence are slow in payment or refuse to pay for the services, the number of nonresident students receiving exceptional student services in the state could decrease.

D. FISCAL COMMENTS:

The DOE will be required to implement a uniform IEP form based on the final regulations for IDEA 2004, once those regulations are released, and the sample IEP form. However, as indicated in the DOE's analysis, the specific components required for IEPs developed in accordance with the Federal law are not yet known. According to the DOE's analysis, under this proposed law, the DOE will incur expenses relating to revisions, both computerized and non-computerized, to the IEP document format, and may involve implementation costs for the development and training in the uniform IEP form to IEP participants. Accordingly, if the DOE was required to implement the uniform IEP prior to the release of the implementing regulations for IDEA 2004 by the United State Department of Education, including the dissemination of the sample IEP form, their efforts could be rendered obsolete.

The CS requires the DOE to develop a process for mandatory school district reviews of the residency of each exceptional student who lives in a Florida residential facility, prior to the provision of services. The additional procedures required for determination of a student's residency should not have a material fiscal impact on the department or on school districts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The CS does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The CS does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

The CS does not reduce the percentage of state tax shared with counties or municipalities.

3. Other:

None.

B. RULE-MAKING AUTHORITY:

The CS does not create any rulemaking authority. However, the bill requires DOE to develop a process for school district review of student residency. This requirement may result in de facto rulemaking and should comply with Chapter 120, F.S. to avoid a rule challenge.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The CS applies to any nonresident student receiving exceptional student instruction in any type of educational facility in the state. This will include school districts, private schools, and juvenile justice commitment facilities. However, the CS addresses only residential care facilities when identifying the responsibility for billing and collection of the fees from the student's home state.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2005, the Choice and Innovation Committee adopted three amendments and reported the bill favorably with a committee substitute. Two of the amendments were technical and the other amendment defined the term "parent" for purposes of this section.

This analysis is drafted to the committee substitute.