HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1213 Exceptional Student Evaluation
SPONSOR(S): Barreiro
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	4 Y, 6 N	Hamrick	Mitchell
2) PreK-12 Committee			
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1213 requires the parent of a public school student to be fully informed and sign an extensive disclosure statement established in statute that identifies known and potential consequences before any evaluation of the student for an emotional, behavioral, or mental disorder, specific learning disability, or other health impairment, including psychological or psychiatric evaluations. The disclosure form identifies that there are alternatives to such evaluations. The signed statement must be maintained in the student's school records.

The bill addresses concerns with over medication of children with psychotropic medication and control of personal identity and behavior, through public school psychological assessments and the medicalizing of personality characteristics.

The bill provides an effective date of July 1, 2006.

On March 29, 2006, the bill was reported unfavorable by the Health Care Regulation Committee. The bill analysis does not reflect a strike-all amendment that was adopted by the Health Care Regulation Committee. [See **IV. Amendment Changes**]

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill restricts the ability of state-funded education or school-related services providers to professionally assess children for any psychological or behavioral difficulties they may have that affect their ability to learn, without a parent's signed authorization of a required disclosure form.

Safeguard individual liberty – Students receiving state-funded education or school-related services could not be assessed for any psychological or and behavioral difficulties they may have that affect their learning.

Empower Families – Families of students receiving state-funded education or school-related services would have to approve any assessment of their child's psychological or behavioral difficulties without full disclosure of the potential negative results of such assessment.

B. EFFECT OF PROPOSED CHANGES:

The bill requires that before a public school student can be evaluated for an emotional, behavioral, or mental disorder, specific learning disability, or other health impairment, including a psychological or psychiatric evaluation, the child's parent must be fully informed of all known and potential consequences of such evaluation and alternatives. The parent must acknowledge and sign an extensive statement established in law, which must be maintained in the student's school records.

The disclosure statement established in statute by the bill is:

> I understand that my child has been referred to be evaluated for an emotional, behavioral, or mental disorder, a specific learning disability, or other health impairment, including psychological or psychiatric evaluation. The evaluation may result in the assignment of a diagnosis of "mental disorder" or "syndrome" as described in the formal text published by the American Psychiatric Association for the purpose of diagnosing and providing billing codes according to the Diagnostic and Statistical Manual of Mental Disorders Fourth Edition (DSM-IV). Such a diagnosis will be based on the variable observation and subjective interpretation of my child's behavior, intermittently reported by teachers, psychologists, psychiatrists, or others.
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> I understand that physical problems such as poor nutrition, exposure to toxins, or structural disorders can cause emotional, behavioral, or mental symptoms and that I should provide for my child's complete and thorough medical examination, including, but not limited to, blood testing, to determine if my child has any objectively verifiable nutritional deficiency, allergy, metal toxicity, or physical disease or disorder which may be causing the symptoms and that anything so found should be medically treated.
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> I understand that the State of Florida mandates screening of children for lead poisoning and that the Centers for Disease Control and Prevention, in a report entitled "Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials," determined that children with lead poisoning can present with seizures, other neurological symptoms, abdominal pain, developmental delay, attention deficit, hyperactivity, other behavioral disorders, school problems, hearing loss, or anemia.
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> I understand that, unlike most medical diagnostic methods, a diagnosis of mental disorder or syndrome, including, but not limited to, attention deficit hyperactivity disorder (ADHD), bipolar disorder, and depression, is not based on any medical test, such as a brain scan, chemical

imbalance test, X-ray, biopsy, blood test, or urinalysis, that can scientifically detect a physical abnormality in an infant, child, adolescent, or adult. As stated in the 1999 report entitled "Mental Health: A Report of the Surgeon General," the diagnosis of mental disorders is often believed to be more difficult than diagnosis of somatic or general medical disorders since there is no definitive lesion, laboratory test, or abnormality in brain tissue that can identify the illness. And as stated in the DSM-IV that although this manual provides a classification of mental disorders, it must be admitted that no definition adequately specifies precise boundaries for the concept of mental disorder.

I understand that if my child is diagnosed or labeled with any mental disorder or syndrome listed in the DSM-IV, treatment is likely to include prescriptions for psychotropic or psychiatric medications, such as antidepressants or stimulants, which may have dangerous side effects and uncertain effectiveness. Most antidepressants are not approved by the U. S. Food and Drug Administration (FDA) for treatment of children though they are often prescribed by medical doctors. On October 14, 2004, the FDA ordered the addition of a "black box" warning of suicide risk on the health professional labeling of all antidepressant medications prescribed to children under 18 years of age. On June 28, 2005, the FDA ordered labeling changes to methylphenidate (Ritalin) products to warn that these drugs can cause psychiatric events described as visual hallucinations, suicidal ideation, or psychotic behavior, as well as aggression or violent behavior. On July 1, 2005, an FDA panel recommended stronger labels for Concerta, another methylphenidate-based drug, to more clearly warn of the possibility of hallucinations, suicidal tendencies, or aggression in patients taking the drug. The amphetamine Adderall is the subject of an FDA health warning because of reports linking the drug to sudden deaths in children. On September 25, 2005, the FDA issued a warning that atomoxetine (Strattera) can cause suicidal thoughts in children.

I understand that I have the right to be informed of all the known side effects of any recommended drug, including the current information listed on the drug in the Physicians' Desk Reference.

I understand that I may request full information on the short-term and long-term benefits and risks of a drug, any interactions the drug has with other medications, how long my child will need to be taking the drug, and all of the up-to-date accumulation of FDA adverse reaction reports of the drug. I understand that psychotropic or psychiatric drugs are addictive and create dependency and that drug withdrawal can pose serious problems.

I understand that there are alternatives to psychotropic or psychiatric drug treatment and that I should ask the evaluation personnel and my physician about such alternatives. I understand it is my responsibility to take the necessary time and trouble to fully research the relevant necessary information in order to make an informed decision on behalf of my child.

I acknowledge that I have read and understood the above information and, based on my understanding, I hereby:

(1) Give my full and informed consent for my child to undergo evaluation for an emotional, behavioral, or mental disorder, a specific learning disability, or other health impairment.

....(Signature of Parent)...

(2) Do not give my consent for my child to undergo evaluation for an emotional, behavioral, or mental disorder, a specific learning disability, or other health impairment.

...(Signature of Parent)...

Background

Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA) was reauthorized in 2004. Schools are required by IDEA to provide services or make modifications or adaptations for students whose disability adversely affects their educational performance. According to federal regulations, a student is determined to have a disability when they have been evaluated and determined to have mental retardation, hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, or other health impairment, deaf-blindness, or multiple disabilities that require special education and related services.[1]

Section 1003.01(3)(a), F.S., provides a definition for an exceptional student, which is any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students with disabilities who are mentally handicapped, speech and language impaired, deaf or hard of hearing, visual impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospital and homebound, autistic, developmentally delayed children, ages birth through 2 years, with established conditions that are identified in the rules set by the State Board of Education.

Children with Behavioral and Emotional Difficulties

Primary care physicians identify approximately 19 percent of the children they see as having behavioral and emotional problems.[2] A number of treatment options are available to address mental health problems of students, including psychotropic medications. While generally not the first option, the National Institute of Mental Health reports that psychotropic medications 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 student.[3] The U.S. Department of Education provides that prescribing medications is the responsibility of the medical professionals, not the educational professionals.[4]

Students Diagnosed with Attention Deficit Hyperactivity Disorder

It is estimated that 1.46-2.46 million children or 3-5 percent of the student population have Attention Deficit Hyperactivity Disorder (ADHD).[5] The diagnostic methods, treatment options, and medications have become controversial subjects, particularly in education.[6] One of the concerns raised has been that school officials are reported to be offering their diagnosis of ADHD and urging parents to obtain drug treatment for the child.[7]

Students with ADHD may need the services as provided under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973 to assist them with their educational needs. Adaptations available to assist students with ADHD include “curriculum adjustments, alternative classroom organization and management, specialized teaching techniques and study skills, use of behavior management, and increased parent/teacher collaboration.[8]

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[1] See 34 CFR 300.7(a)(1)
2 President's New Freedom Commission on Mental Health: Report to the President, May 2003.
3 Treatment of Children with Mental Disorders, National Institute of Mental Health, updated June 18, 2001.
4 Letter from Richard Riley of the U.S. Department of Education to Congressman Peter Hoekstra, November 21, 2000.
5 Identifying and Treating Attention Deficit Hyperactivity Disorder: A resource for School and Home, U.S. Department of Education, 2003, p. 2.
6 Identifying and Treating Attention Deficit Hyperactivity Disorder, Supra, p. 1.
7 Child Medication Safety Act of 2003, 108th Congress, House of Representatives Report, May 21, 2003, p. 5
[8] Identifying and Treating Attention Deficit Hyperactivity Disorder, Supra, p. 6.

School Psychologists

School psychologists help children and youth succeed academically, socially, and emotionally. They collaborate with educators, parents, and other professionals to create safe, healthy, and supportive learning environments for all students that strengthen connections between home and school. Licensed school psychologists are governed by chapter 490, F.S., and licensed in accordance to ss. 490.005(1) and 490.006, F.S. In Florida a licensed school psychologist must have a doctoral degree and successfully pass a licensure examination.

School psychologists are highly trained in both psychology and education. Their education emphasizes preparation in mental health, child development, school organization, learning styles and processes, behavior, motivation, and effective teaching. They also may be nationally certified by the National School Psychology Certification Board (NSPCB).[9]

School psychologists may provide the following services[10]:

Consultation
- Collaborate with teachers, parents, and administrators to find effective solutions to learning and behavior problems.
- Help others understand child development and how it affects learning and behavior.
- Strengthen working relationships between teachers, parents, and service providers in the community.

Evaluation
- Evaluate eligibility for special services.
- Assess academic skills and aptitude for learning.
- Determine social-emotional development and mental health status.
- Evaluate learning environments.

Intervention
- Provide psychological counseling to help resolve interpersonal or family problems that interfere with school performance.
- Work directly with children and their families to help resolve problems in adjustment and learning.
- Provide training in social skills and anger management.
- Help families and schools manage crises, such as death, illness, or community trauma.

Prevention
- Design programs for children at risk of failing at school.
- Promote tolerance, understanding, and appreciation of diversity within the school community.
- Develop programs to make schools safer and more effective learning environments.
- Collaborate with school staff and community agencies to provide services directed at improving psychological and physical health.
- Develop partnerships with parents and teachers to promote healthy school environments.

Research and Planning
- Evaluate the effectiveness of academic and behavior management programs.
- Identify and implement programs and strategies to improve schools.
- Use evidence-based research to develop and/or recommend effective interventions.

DSM and ICD-10 Codes for Mental Illnesses

A student's academic, social, and emotional difficulties, which may interfere with learning, are often first detected in the educational environment. School districts are required to identify, locate, and evaluate suspected students with disabilities as noted in the "child find" requirements within state and federal

[9] National Association of School Psychologist, www.nasponline.org
[10] Ibid.

regulations. Most of the disabilities associated with exceptional student education programs can be found in the Diagnostic and Statistical Manual of Mental Disorders (DSM) or in the International Classification of Diseases-Version 10 (ICD-10). ICD-10 codes are not applicable to schools. They are used by medical professionals, including mental health practitioners as Medicaid billing codes. Schools that participate in the Medicaid Certified School Match Program assign ICD-10 diagnosis codes to enable Medicaid billing.

The State Board of Education establishes administrative rules for special programs that govern the diagnostic criteria utilized by school psychologists within the State.[11]

C. SECTION DIRECTORY:

Section 1: Amends s. 1003.57, F.S., relating to Exceptional Student Instruction and Evaluation to require full disclosure to parents of the consequences of a school psychological evaluation of their child and require them to sign a specified disclosure form before any psychological or behavioral evaluation of a student.

Section 2: Establishes an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. See D. Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. See D. Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of Education, schools receive funding depending upon the needs of the student. The funding received varies by the services a student needs to assist them in their ability to learn identified in Individual Education Plans based on professional assessment and evaluation. The funding schools receive to assist a child in learning vary from $3,600-$20,000.

[11] See administrative rules 6A-6.010-6A-6.0131.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Department of Education has rule making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The disclosure statement established in statute by the bill includes information specific to current products and events that will not be easily updated as new medications are developed. Because the disclosure statement as written in statute includes statements that appear unclear and may be challenged in court.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Health Care Regulation Committee adopted a strike-all amendment offered by the bill's sponsor. The bill analysis does not reflect the strike-all amendment that was adopted by the Health Care Regulation Committee. The strike-all amendment differs from the original bill as filed in that it:

- Removes the required statement in the informed consent form and requires the Department of Education to provide a written form to each school district that contains certain required information that must be provided to a parent so that they may be fully informed prior to an evaluation of a school student for an emotional, behavioral, mental or any other psychological or psychiatric disorder; and
- Amends s. 1006.0625, F.S., to provide that parent of a student must consent to any psychological screening of a student; school district personnel may not recommend psychotropic medications to a parent; and parents may not be charged with child abuse or neglect if they refuse to provide psychotropic medication to their child.

The bill was reported unfavorable by the Health Care Regulation Committee.