

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

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Prepared By: Education Pre-K - 12 Committee

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BILL: CS/SB 2130

INTRODUCER: Education Pre-K - 12 Committee and Senator Constantine

SUBJECT: Exceptional Disabled Student/Education

DATE: March 29 2007                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.			EA	
3.				
4.				
5.				
6.				

**I. Summary:**

Prior to placing an exceptional student with a disability in a private residential care facility that is located in a school district other than the student’s assigned district, the Department of Children and Family Services (DCF) or the Agency for Person with Disabilities (APWD) must notify the student’s assigned district and the district in which the facility is located. Additionally, the bill requires agencies to attempt to ensure that school districts enter into an agreement for paying the cost of placement, including the cost of educational services that exceed the funding generated in the Florida Education Finance Program (FEFP).

If the districts are unable to reach an agreement, the bill specifies which school district is financially responsible for providing exceptional student education (ESE) services. In these circumstances, the cost of providing ESE services will be paid by the school district where the student’s parent resides. In the case of a student who no longer resides with the parent, the school district where the student last resided with the parent must pay for the ESE services.

The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to evaluate the practices of agencies and district school boards in providing educational services to exceptional students with disabilities when they place them in a private residential care facility. OPPAGA must submit a report and recommendations to the Legislature by December 1, 2007.

This bill substantially amends sections 1003.57 and 1003.58 of the Florida Statutes, and creates an undesignated section of law.

## II. Present Situation:

### **Free and Appropriate Public Education (FAPE)**

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.<sup>1</sup> 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.<sup>2</sup>

Federal Child Find obligations require all children with disabilities residing in the state, including children with disabilities who are homeless or wards of the state and children with disabilities who are 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.<sup>3</sup> States 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.<sup>4</sup>

### **Exceptional Students in Florida**

Under current law, an exceptional student is 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.<sup>5</sup> The law further defines the term “exceptional students with disabilities.”<sup>6</sup>

### **Special Education Services**

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; speech and language 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.<sup>7</sup>

### **District School Boards**

District school boards are tasked with the following:<sup>8</sup>

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<sup>1</sup> 20 U.S.C. s. 1412. See also 34 CFR s. 300.121.

<sup>2</sup> 34 C.F.R. s. 300.600.

<sup>3</sup> 20 U.S.C. s. 1412

<sup>4</sup> 34 C.F.R. s. 300.125.

<sup>5</sup> s. 1003.01(3)(a), F.S.

<sup>6</sup> 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.

<sup>7</sup> s. 1003.01(3)(b), F.S.

<sup>8</sup> s. 1001.42(4)(l),(m),(n), F.S., and s. 1002.42(12), F.S.

- Provide for an appropriate program of special instruction, facilities, and services for exceptional students, as prescribed by the State Board of Education (SBE) as acceptable in accordance with the provisions of s. 1003.57, F.S.; and
- Provide, in accordance with s. 1003.58, F.S., alternative educational programs, according to SBE rules, to students who reside in residential care facilities operated by the DCF.

The law 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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

According to the DOE, school districts have entered into multi-district agreements for the provision of ESE services. The DOE notes that this arrangement typically occurs when a district has the capacity to serve a unique population of students and neighboring districts contract for the provision of those services. The specially designed instruction and related services are developed by the district serving the students. The district serving the students develops the individual educational plans (IEPs) and receives the funding generated through the Florida Education Finance Program (FEFP), which permits the student to benefit from other funding sources.

### **Contracts with Approved Private Schools and Community Facilities<sup>12</sup>**

When the district school board determines that no special education program offered by it, a cooperating district school board, or a state agency can adequately provide the educational program for the student, the school district must provide special education programs with approved private schools or community facilities through contracts, according to criteria specified in rule. This includes the provision of the educational component of a residential placement for exceptional students when the placement is made by another public agency for the primary purpose of addressing residential and other non-educational needs. In this instance, the student's IEP must state that the placement is not required in order for the student to benefit from special education which could otherwise be provided by the district during the day.

Districts must assure that the proposed program at the private school or community facility is appropriate to meet the educational needs of students who are placed through contracts. However, this provision does not limit the responsibility of agencies other than the state's school districts to provide or pay for some or all of the cost of a free appropriate education to be

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<sup>9</sup> s. 1003.57(1)(e), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> s. 1003.57(1)(b), F.S.

<sup>12</sup> Rule 6A-6.0361, F.A.C.

provided to handicapped children. Contracts between the district school board and private schools or community facilities must contain specific information, including:

- Method of determining charges and sharing costs with other agencies for the placements under the contract, including the projected total cost to the district;
- Identification of financial responsibility; and
- Method of resolving interagency disputes when the school board initiates action to secure reimbursement from other agencies.

Prior to executing contracts, districts must ensure that the private school or community facility meet specific criteria, including health, safety, and welfare certificates and inspections, staffing by qualified personnel, and a written description of the support services that are available and would be provided to each student placed under the contract, in accordance with the student's IEP. As well, these criteria must be met for an exceptional student enrolled in a special program in a private school or community facility to generate FEFP funds for the district in the appropriate cost categories. Contracts between school districts and private schools or community facilities for the provision of educational facilities to exceptional students may not extend beyond one school fiscal year.

The district responsibilities under the contract include selecting an appropriate school or facility in consultation with the parent, verifying that the student is a resident of the school district and is enrolled in or applied for admittance to a district school educational program, and providing for the cost of the student's educational program, as specified in the contract.

### **Students in Residential Care Facilities<sup>13</sup>**

District school boards must provide educational programs to students who reside in residential care facilities operated by the DCF or the APWD, according to SBE rules. However, the law prohibits school districts from being charged for any rent, maintenance, utilities, or overhead at these facilities. As well, districts have full and complete authority in assigning and placing these students in educational programs. Districts are required to have a written agreement with the DCF and the APWD that outlines the duties and responsibilities of each party.

According to the DOE, placement in a residential facility occurs when a district is unable to provide the specially designed instructional program and an informed decision has been made for residential placement. The district where the facility is located is responsible for providing educational services and therefore receives the FEFP funds generated.

### **III. Effect of Proposed Changes:**

Prior to placing an exceptional student with a disability in a private residential care facility that is located in a school district other than the student's assigned district, the DCF or the APWD must notify the student's assigned district and the district in which the facility is located. Additionally, the agencies must attempt to ensure that school districts enter into an agreement for paying the cost of placement, including the cost of educational services that exceed the funding generated in

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<sup>13</sup> s. 1003.58, F.S.

the FEFP. The bill requires the DCF and the APWD to make their best efforts to ensure that districts agree to pay for ESE services. Presumably, this means that the agencies will act in good faith.

If the districts are unable to reach an agreement, the bill specifies which school district is financially responsible for providing ESE services. In these circumstances, the cost of providing ESE services will be paid by the school district where the student's parent resides. In the case of a student who no longer resides with the parent, the school district where the student last resided with the parent must pay for the ESE services.

The bill requires OPPAGA to evaluate the practices of agencies and district school boards in providing educational services to exceptional students with disabilities when they place them in a private residential care facility. OPPAGA must submit a report and recommendations to the Legislature by December 1, 2007.

The effective date of the bill is July 1, 2007.

#### **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 DOE has indicated that there is no fiscal impact. The bill would apply to all students with disabilities who are placed by the DCF or APWD in private residential care facilities that are located in school districts other than the students' assigned school districts. The DOE notes that many students in all FEFP classifications receive their education through formal and informal inter-district agreements.

According to the DOE, each of these students is funded appropriately in the district providing the service through the FEFP or other sources. Some inter-district agreements provide for compensation beyond FEFP funding for extra costs incurred. The law provides for cooperation with school boards of adjoining districts and the settlement of disagreements through the DOE.<sup>14</sup> The DOE's decision is binding on both districts.<sup>15</sup>

The DOE further notes that the FEFP funding program and all DOE data systems rely on reporting students where they are served.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>14</sup> s. 1001.42(4)(d), F.S.

<sup>15</sup> *Id.*

## **VIII. Summary of Amendments:**

None.

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