

By Senator Diaz de la Portilla

36-1437-07

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A bill to be entitled

An act relating to exceptional student  
 evaluation; amending s. 1003.57, F.S.;  
 requiring that parents be provided full  
 information regarding student evaluation and  
 treatment before giving parental consent;  
 requiring the Department of Education to  
 provide an informed-consent form to obtain a  
 parent's informed consent; amending s.  
 1006.0625, F.S.; redefining the term  
 "psychotropic medication"; revising provisions  
 relating to the administration of psychotropic  
 medication in public schools; requiring  
 parental consent for psychological screening;  
 prohibiting personnel from recommending  
 psychotropic medications; providing an  
 effective date.

WHEREAS, the Individuals with Disabilities Education  
 Act (IDEA) was first enacted in 1975 to provide equal access  
 to education for every disabled child, and

WHEREAS, IDEA requires that every child considered for  
 exceptional education services must first be evaluated to  
 determine if the child qualifies as a child with a disability,  
 and that the agency proposing to conduct the evaluation and  
 any subsequent reevaluation "shall obtain informed consent  
 from the parent of such child before conducting the  
 evaluation" (20 U.S.C. s. 1414(a)(1)(D)(i)(I)), and

WHEREAS, on August 14, 2006, the United States  
 Department of Education published final regulations for  
 implementation of IDEA, strengthening the informed-consent

1 requirements, including a new paragraph (34 C.F.R. s.  
2 300.300(d)(5)) requiring the school or other public agency to  
3 document its efforts to obtain parental consent, and  
4       WHEREAS, Rule 6A-6.03311 (1)-(3), Florida  
5 Administrative Code, entitled "Exceptional Student Education  
6 Rules," which implements IDEA in Florida, requires that before  
7 a student may be evaluated, the parents must be "fully  
8 informed of all information relevant to the activity for which  
9 consent is sought," that "the consent describes that  
10 activity," that it must be "informed parental consent," and  
11 that the parents must also be informed of "procedural  
12 safeguards," and  
13       WHEREAS, the legal definition of "informed consent"  
14 means a person's agreement to allow something to happen, made  
15 with full knowledge of the risks involved and the  
16 alternatives, and  
17       WHEREAS, in practice, school districts throughout the  
18 state provide information only on the due-process rights of  
19 parents and should provide information to parents on the risks  
20 and alternatives to the evaluation process and the potential  
21 consequences of evaluation, including likely courses of  
22 treatment, and  
23       WHEREAS, the new IDEA regulations provide for "model  
24 forms" to notify parents at each stage of a child's  
25 exceptional education program, noting that states may choose  
26 to add additional content to the model forms consistent with  
27 "the importance of including parents in decisions regarding  
28 the education of their children," NOW, THEREFORE,  
29  
30 Be It Enacted by the Legislature of the State of Florida:  
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1           Section 1. Paragraph (h) is added to subsection (1) of  
2 section 1003.57, Florida Statutes, to read:

3           1003.57 Exceptional students instruction.--

4           (1) Each district school board shall provide for an  
5 appropriate program of special instruction, facilities, and  
6 services for exceptional students as prescribed by the State  
7 Board of Education as acceptable, including provisions that:

8           (h)1. Before a public school student is evaluated for  
9 an emotional, behavioral, or mental disorder, the student's  
10 parents are provided full information about the evaluation  
11 process and possible courses of treatment, including, but not  
12 limited to, the following potential risks and alternatives to  
13 such evaluation, and must give written informed consent for  
14 the evaluation:

15           a. The behaviors prompting the evaluation could be the  
16 result of underlying physical conditions, developmental or  
17 environmental factors, or normal variants of child behavior.  
18 Physical factors may include, but are not limited to, exposure  
19 to toxins, including lead, mercury, pesticides, and other  
20 neurotoxins; allergies; seizure disorders; thyroid imbalances;  
21 or sleep deprivation.

22           b. A parent may want to consider consulting a medical  
23 doctor to rule out physical causes before pursuing  
24 psychological or psychiatric evaluation for his or her child.

25           c. Recommended treatment for emotional, behavioral, or  
26 mental disorders may include psychotropic medications that may  
27 have potential dangerous side effects listed in the current  
28 package insert for the medication approved by the federal Food  
29 and Drug Administration.

30           d. There are alternative interventions for mental and  
31 behavioral disorders which do not include psychotropic

1 medications and which parents have the right to consider and  
2 use, regardless of whether they consent to the proposed  
3 evaluation. The specifically designed instruction and related  
4 services of special education programs are available to the  
5 child regardless of the parent's choice of behavioral, mental,  
6 or medical care for his or her child.

7       2. The Department of Education shall provide an  
8 informed-consent form to each of the school districts which  
9 includes the information contained in subparagraph 1. followed  
10 by a provision for each parent's signed acknowledgement of  
11 having read the information and the parent's consent or lack  
12 of consent for the evaluation or reevaluation. The  
13 informed-consent form shall be provided to the parents of any  
14 child referred for any evaluation or reevaluation in  
15 connection with any emotional, behavioral, or mental disorder,  
16 or any other psychological or psychiatric evaluation. In the  
17 case of an initial evaluation of a child being considered for  
18 inclusion in an exceptional student education program, the  
19 informed-consent form shall be provided to the parent along  
20 with any procedural safeguard notification.

21       Section 2. Section 1006.0625, Florida Statutes, is  
22 amended to read:

23       1006.0625 Administration of psychotropic medication;  
24 prohibition; conditions.--

25       (1) As used in this section, the term "psychotropic  
26 medication" means a prescription medication that is used for  
27 the treatment of mental disorders and includes, without  
28 limitation, hypnotics ~~antihypnotics~~, antipsychotics,  
29 antidepressants, anxiety agents, sedatives, neurostimulants  
30 ~~psychomotor stimulants~~, and mood stabilizers.

1           (2) A public school may not deny any student access to  
2 programs or services because the parent of the student has  
3 refused to place the student on psychotropic medication.

4           (3) A public school teacher and school district  
5 personnel may share school-based observations of a student's  
6 academic, functional, and behavioral performance with the  
7 student's parent and offer program options and other  
8 assistance that is available to the parent and the student  
9 based on the observations. However, a public school teacher  
10 and school district personnel may not compel or attempt to  
11 compel any specific actions by the parent or require that a  
12 student take medication. A parent of a student must give  
13 written informed consent to any psychological screening of the  
14 student and may refuse such ~~psychological~~ screening of the  
15 student.

16           (4) Public school and school district personnel may  
17 not recommend psychotropic medications to any parent. The  
18 parent of a student who refuses to provide psychotropic  
19 medication to his or her child may not be charged with child  
20 neglect or abuse.

21  
22 Any medical decision made to address a student's needs is a  
23 matter between the student, the student's parent, and a  
24 competent health care professional chosen by the parent.

25           Section 3. This act shall take effect July 1, 2007.  
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SENATE SUMMARY

Requires that a parent be fully informed of potential consequences and alternatives prior to his or her child's evaluation for an emotional, behavioral, or mental disorder. Specifies information relating to consequences of and alternatives for such evaluation. Requires the Department of Education to provide to school districts a form to obtain a parent's informed consent. Revises provisions relating to administration of psychotropic medication in public schools. Requires parental consent for psychological screening. Prohibits personnel from recommending use of psychotropic medications.