

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 2750

INTRODUCER: Senator Storms

SUBJECT: Education for Children in Shelter or Foster Care

DATE: April 6, 2008

REVISED: 04/08/08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Jameson</u>	<u>CF</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>ED</u>	<u></u>
3.	<u></u>	<u></u>	<u>JU</u>	<u></u>
4.	<u></u>	<u></u>	<u>HA</u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Senate Bill 2750 authorizes the court in a dependency case to appoint a surrogate parent for a child who has or is suspected of having a disability. Before appointing a surrogate, the court must determine that no person holds the right to make educational decisions for the child. The bill specifies the qualifications of an appointed surrogate parent.

The bill amends s. 39.202, F.S., relating to the confidentiality of reports and records of child abuse. Current law provides a list of entities permitted access to such records. The bill adds to the list a local school district employee who is designated to act as a liaison between the school, the department or the court, and the principal of the child's school.

The bill amends s. 39.402, F.S., relating to children placed in shelter care, authorizing the court to enter an order granting access to education records to identified entities or persons. The bill also authorizes the court to appoint a surrogate parent for the child or to refer the child to a district school board for the appointment.

The bill provides that judicial and citizen panel reviews of dependency cases must include consideration of testimony from a surrogate parent. In reviewing a case, the court or the panel

must determine who holds the rights to make educational decisions for the child and, if necessary, may appoint a surrogate parent for the child or refer the child to a district school board for the appointment.

The bill amends s. 1002.21(5), F.S., to include surrogate parents in the definition of "parent" in the Education Code. The inclusion of surrogate parents in this definition will result in a significant expansion of the authority of surrogate parents, beyond that contemplated by the IDEA.

The bill also amends s. 1002.22, F.S., apparently limiting access to documents that under current law are accessible to the department and community-based care providers. The bill thus appears to expand the current public records exemption.

The bill amends the definition of "homeless child" to align it with the definition of "child or youth experiencing homelessness" in the McKinney-Vento Act, and makes the exemptions provided to homeless children applicable also to children in foster care.

The bill creates a new section of law, requiring each district school board, within 30 days of notification, to appoint a surrogate parent for a child who has or is suspected of having a disability, if no parent can be located and a dependency court has determined that no one has the authority to serve as the educational decision maker for the child. The bill provides that the school board must defer to any pre-existing court appointment of a surrogate parent, and specifies the qualifications of a surrogate parent. The bill provides that a surrogate parent is entitled to all the rights of a parent under the Education Code, is presumed to be acting in good faith and is immune from civil and criminal liability.

This bill substantially amends ss. 39.202, 39.402, 39.701, 1000.21, 1002.22, 1003.01, 1003.21, 1003.22 and creates ss. 39.0017 and 1003.572, F.S.

II. Present Situation:

Individuals with Disabilities Education Act (IDEA)

In 1975, Congress enacted the Education for All Handicapped Children Act (EAHCA).¹ The EAHCA was a Congressional response to concern for the more than one million children with disabilities who were excluded entirely from the education system, as well as for the children with disabilities who had only limited access to the educational system and were therefore denied an appropriate education. The latter group included more than half of all children with disabilities living in the United States at the time.²

In 1990, the EAHCA was amended and renamed the Individuals with Disabilities Education Act (IDEA). The purpose of IDEA, as amended in 2004, is to ensure that all children with disabilities

¹ U.S. Dep't of Educ., Office of Special Educ. and Rehab. Serv., *History: Twenty-Five Years of Progress in Educating Children with Disabilities through IDEA* (date of publication unknown), available at <http://www.ed.gov/policy/speced/leg/idea/history.pdf> (last visited April 3, 2008).

² *Id.*

receive a free and appropriate education, including special education and related services, to prepare them for further education, employment, and independent living.³

Special education is defined as specially designed instruction, provided at no cost to the parents, to meet the unique needs of a child with a disability. Related services are support services necessary to allow a child to benefit from a special education program.⁴

To be eligible under IDEA, a child must have a disability and require specialized instruction to benefit from school. Eligibility and services are determined through evaluation and the development of an Individual Education Plan (IEP). Students who have not graduated from high school are eligible through age 21. Services are also available to individuals with disabilities beginning at birth; children under three are served under an Individualized Family Services Plan (IFSP).⁵

Parental Consent under IDEA

Pursuant to IDEA, parental consent is required before an initial evaluation to determine if a child qualifies as a child with a disability, before the initial provision of special education and related services to a child, and before reevaluation (unless the agency makes a reasonable attempt to obtain consent for reevaluation and the parent fails to respond).⁶

For initial evaluations only, if the child is a ward of the state and is not residing with his or her parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child has a disability if:

- Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
- The rights of the parents of the child have been terminated in accordance with state law; or
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.⁷

Surrogate Parents under IDEA

Pursuant to IDEA, each public agency must ensure that the rights of a child are protected by determining the need for, and assigning, a surrogate parent whenever:⁸

- No parent⁹ can be identified;

³ National Ctr. for Homeless Educ., *Individuals with Disabilities Education Improvement Act (IDEA) of 2004: Provisions for Homeless Children and Youth with Disabilities* (Winter 2007), available at <http://srvlive.serve.org/nche/downloads/briefs/idea.pdf> (last visited April 3, 2008).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ U.S. Dep't of Educ., Office of Special Educ. Programs, *Procedural Safeguards: Surrogates, Notice and Parental Consent* (October 4, 2006).

⁹ "Parent" includes the biological or adoptive parent of a child, a foster parent (unless state law prohibits a foster parent from acting as a parent), a guardian, an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare, or

- The public agency, after reasonable efforts, cannot locate a parent;
- The child is a ward of the state under the laws of that state; or
- The child is an unaccompanied homeless youth as defined by the McKinney-Vento Homeless Assistance Act.¹⁰

A surrogate parent cannot be an employee of the state education agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents, even if they are employed by an agency that is involved in the education or care of the child, until an alternate surrogate parent is appointed.¹¹

Consistent with IDEA, Rule 6A-6.0333, F.A.C., defines the term surrogate parent and establishes minimum qualifications, procedures for appointments, responsibilities, limits, rights, liabilities and allowable compensation for surrogate parents. Section 39.0016(4)(c), F.S., requires local school districts to appoint a surrogate parent for any child who has or is suspected of having a disability as soon as the child is determined to be dependent and to be without a parent to act on his or her behalf.

Education of Abused, Neglected or Abandoned Children

Section 39.0016, F.S., requires the department to cooperate with DOE and local school districts to access services and supports for children who are dependent¹² or sheltered.¹³ The department, DOE and the Agency for Workforce Innovation (AWI) executed an interagency agreement on July 11, 2005. A section of the agreement provides:

The Parties agree to each promote the appointment of a Liaison by each district school board, by each DCF district/region or community-based care provider and for each Regional Workforce Board Liaison, with the intent that such Liaisons shall be responsible for implementation of the requirements in this Agreement. The Liaisons shall work to achieve appropriate educational, job training and employment services for children known to the department.¹⁴

The Family Educational Rights and Privacy Act (FERPA) and Individuals with Disabilities Education Act (IDEA) strictly limit the authority of schools to release student records to third parties.¹⁵ School records may be released to a parent, defined by FERPA to include a natural

a surrogate parent. *See* 34 C.F.R. 300.30. Under Florida education law, "parent" is defined as either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of a parent. *See* s. 1000.21(5), F.S.

¹⁰ 42 U.S.C. 11434a(6).

¹¹ U.S. Dep't of Educ., Office of Special Educ. Programs, *Procedural Safeguards: Surrogates, Notice and Parental Consent* (October 4, 2006).

¹² *See* s. 39.01(14), F.S.

¹³ Pursuant to s. 30.01(67), "shelter" means placement with a relative or nonrelative, or in a licensed facility, for the temporary care of a child who is alleged or has been found to be dependent, pending court disposition.

¹⁴ *See* Interagency Agreement, Article 2, Section 2.04 (July 11, 2005).

¹⁵ Steve Christian, *Educating Children in Foster Care* (December 2003). *See also*, s. 1002.22(3), F.S., which, consistent with federal law, makes student educational records confidential and exempt from ch. 119, F.S.

parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.¹⁶ This definition may be interpreted to include foster parents or child welfare agencies with legal custody of a child.¹⁷

Otherwise, information from a student's education record can only be released with a parent's consent or pursuant to court order.¹⁸ The FERPA does allow schools to disclose records, without consent, to the following:¹⁹

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials²⁰ in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific state law.

Section 1002.22(3)(d)14., F.S., includes the department and community-based care providers among the entities that may have access to a child's education records without the consent of the child or the child's parent. The access is limited to the extent it is consistent with FERPA.

Section 39.202(2)(p), F.S., allows the release of confidential information contained in child abuse records to the principal of the child's school, who is authorized to further release the information as necessary to provide the child with education services.

Education of Foster Children

Foster children perform significantly worse in school than children in the general population. The educational deficits of foster children are reflected in higher rates of grade retention, lower scores on standardized tests and higher absenteeism, tardiness, truancy and dropout rates. The poor academic performance of these children affects their lives after foster care and contributes to higher than average rates of homelessness, criminality, drug abuse, and unemployment among foster care "graduates."²¹

Poor educational outcomes among children in foster care can be attributed in part to the fact that most children in foster care bear the scars of physical and emotional trauma due to prenatal exposure to alcohol and drugs, parental abuse and neglect, exposure to violence, separation from

¹⁶ 34 C.F.R. s. 99.3.

¹⁷ Steve Christian, *Educating Children in Foster Care* (December 2003).

¹⁸ See U.S. Dept. of Education, Family Education and Privacy Rights Act (FERPA), available at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>. (last visited March 27, 2008).

¹⁹ *Id.*

²⁰ 34 C.F.R. s. 99.36(b) provides that educational information in connection with an emergency to protect the health and safety of a student may be released to teachers in the school and at other schools.

²¹ Steve Christian, National Conference of State Legislatures, Children's Policy Initiative, *Educating Children in Foster Care* (December 2003).

birth families, or frequent changes in foster placement. These experiences place children at great risk of developing physical, emotional and behavioral disorders that interfere with learning.²²

In addition, the system that is supposed to ensure the well-being of children in care is often a major obstacle to their educational success. For example,

- School disruptions often result in lost credits, delayed academic progress, repetition of grades, and delays in enrollment and transfer of student records.
- Many people may be involved in a foster child's education (caseworkers, foster parents, birth parents, teachers, counselors and other service providers), but sometimes no single person or agency is held accountable for results.
- Schools, child welfare agencies and other service providers typically do not coordinate their efforts or share information about the children in their systems.
- Children in foster care often lack a consistent and knowledgeable adult who can advocate on their behalf for special education and supplemental services. Foster parents typically are the most familiar with the needs of children in their care, but they often are unprepared to negotiate the complexities of the special education system. In addition, frequent placement changes disrupt the authority of foster parents to represent children's educational interests.²³

Foster children are more likely than other children to require special education and related services, and the lack of an adult advocate is especially detrimental to these children.²⁴

Education of Homeless Children

The McKinney-Vento Homeless Education Assistance Improvements Act of 2001,²⁵ reauthorized in 2002 as part of the No Child Left Behind Act, ensures access to a free, appropriate public education for children experiencing homelessness.

The McKinney-Vento Act mandates:

- Immediate school enrollment and full participation in all school activities for eligible children, even when records normally required for enrollment are not available;
- The right of children and youth experiencing homelessness to remain in their school of origin (the school the student attended when permanently housed or the school in which the student was last enrolled);
- Transportation to the school of origin;
- Access to programs and services, including special education services, preschool services, free school meals, Title I services, services for English language learners, vocational or technical education, gifted and talented services, and before and after school care;
- The appointment of a local homeless education liaison in every school district to ensure that homeless children and youth are identified and given full and equal access to all educational services for which they are eligible in order to succeed in school.

²² *Id.*

²³ *Id.*

²⁴ Between 23 and 47 percent of children in out of home care receive special education services, while the national average for students receiving special education services is close to 12 percent.

²⁵ 42 U.S.C. 11431, *et. seq.*

Florida law provides that homeless children "must have access to a free public education and must be admitted to school in the school district in which they or their families live."²⁶ Homeless children are given a temporary exemption for 30 school days from documentation requirements (including proof of immunizations), and school districts must assist homeless children to meet state and local requirements for documentation.²⁷

Under the McKinney-Vento Homeless Education Act of 2001, homeless children and youth are defined to be "individuals who lack a fixed, regular, and adequate nighttime residence." The definition includes children and youth who:

- Are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; living in emergency or transitional shelters; abandoned in hospitals; or awaiting foster care placement;
- Have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- Are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- Are migratory.²⁸

The definition of homeless child in Florida's law does not align with the definition of homeless child in the McKinney-Vento Act. In Florida statutes a homeless child is:

- One who lacks a fixed, regular nighttime residence;
- One who has a primary nighttime residence that is:
 - A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill;
 - An institution that provides a temporary residence for individuals intended to be institutionalized; or
 - A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or
- One who temporarily resides with an adult other than his or her parent because the parent is suffering financial hardship.²⁹

In Florida, children who are sharing housing with others due to economic hardship (also known as "doubled up") are not included in the definition of "homeless child." In 2006-2007, of the 30,883 homeless children identified in Florida schools, more than half were living in "doubled

²⁶ Section 1003.21(1)(f), F.S.

²⁷ *Id.* See also, s. 1003.22(1), F.S.

²⁸ 42 U.S.C. 11431, *et. seq.*

²⁹ Section 1003.01(12)(c), F.S.

up" situations, and thus did not meet the definition of "homeless child" for purposes of accessing services.³⁰

III. Effect of Proposed Changes:

Senate Bill 2750 authorizes the court in a dependency case to appoint a surrogate parent for a child who has or is suspected of having a disability, if the court determines that no person holds the right to make educational decisions for the child. The bill specifies that an appointed surrogate parent:

- Must be an adult with knowledge and skills necessary to ensure adequate representation;
- May not be an employee of DOE, the local school district, DCF, a community-based care provider, or any other agency involved in the child's education; and
- May be a foster parent (but not a group home or therapeutic foster home provider) or relative caregiver acting in a parental role.

The bill provides that the court must defer to a school board's prior appointment of a surrogate parent, and that a court-appointed surrogate parent has the same rights, responsibilities and immunities as surrogate parents appointed by a district school board.

The bill amends s. 39.202, F.S., relating to the confidentiality of reports and records of child abuse. The bill expands the list of entities permitted access to such records to include a local school district employee who is designated to act as a liaison between the school, the department or the court, and the principal of the child's school.

The bill amends s. 39.402, F.S., relating to children placed in shelter care. The bill requires the court to request that the parents of a child placed in shelter care consent to provide access to the child's education records to the court, the department or its contracted providers, and the child's guardian ad litem and attorney. If a parent withholds consent, and the court determines that access is necessary, the court must enter an order granting access to identified entities or persons. The bill also authorizes the court to appoint a surrogate parent for the child or to refer the child to a district school board for the appointment.

The bill provides that judicial and citizen panel reviews of dependency cases must include consideration of testimony from a surrogate parent. In reviewing a case, the court or the panel must determine who holds the rights to make educational decisions for the child and, if necessary, may appoint a surrogate parent for the child or refer the child to a district school board for the appointment.

The bill amends s. 1002.21(5), F.S., to include surrogate parents in the definition of "parent" in the Education Code. The inclusion of surrogate parent in the definition of parent will greatly expand the scope of the authority of a surrogate parent, beyond that contemplated by the IDEA.

³⁰ See Florida Dep't of Education, *2008 Bill Analysis SB 2750* (February 19, 2008).

The bill also amends s. 1002.22, F.S., apparently limiting access to documents that under current law are accessible to the department and community-based care providers. The bill thus appears to expand the current public records exemption.

The bill amends the definition of "homeless child" to align it with the definition of "child or youth experiencing homelessness" in the McKinney-Vento Act, and makes conforming changes to s. 1003.21, F.S., relating to school attendance, and s. 1003.2, F.S., relating to immunizations. The bill also makes the exemptions provided by these sections applicable to children in foster care, until they achieve permanency.

The bill creates a new section of law, requiring each district school board, within 30 days of notification, to appoint a surrogate parent for a child who has or is suspected of having a disability, if no parent can be located and a dependency court has determined that no one has the authority to serve as the educational decision maker for the child. The bill provides that the school board must defer to any pre-existing court appointment of a surrogate parent.

The bill specifies the qualifications of a surrogate parent as follows:

- Must be least 18 years of age;
- Must have no personal or professional interests that conflict with the interests of the child;
- May be a guardian ad litem;
- May not be an employee of DOE, the local school district, a community-based care provider, DCF, or any other public or private agency involved in the education or care of the child;
- May be a person who acts in a parental role to a child, such as a foster parent or relative caregiver, even if employed by such agency;
- May not be group home staff or therapeutic foster home parents;
- Is not considered an employee of an agency solely because he or she is paid by the agency to serve as a surrogate parent; and
- Must complete training provided or approved by the district school board to ensure that he or she has the knowledge and skills to adequately represent the child.

The bill provides that a surrogate parent is entitled to all the rights of a parent under the Education Code, is presumed to be acting in good faith and is immune from civil and criminal liability.

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill amends s. 39.202, F.S., allowing broader access to documents that have been made confidential and exempt by the Legislature, thus limiting a current public records exemption.

The bill also amends s. 1002.22, F.S., apparently limiting access to documents that under current law are accessible to the department and community-based care providers. The bill thus appears to expand the current public records exemption. **(Provision deleted by Amendment Barcode 818944.)**

Public records exemptions must be created by general law, passed by two-thirds vote of each house, and specifically state the public necessity justifying the exemption.³¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.³² A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.³³ This bill does not include a statement of public necessity, it contains other substantive provisions, and it does not make provision for review under the Open Government Sunset Review Act.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Because portions of the bill implicate the fundamental right to parent a child, including the right to make educational decisions on behalf of a child, it may be subject to constitutional scrutiny.³⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

³¹ Art. 1, § 24(c), Fla. Const.

³² *Id.*

³³ *Id.*

³⁴ *Padgett v. Department of Health and Rehabilitative Services*, 577 So.2d 565 (Fla. 1991). See also, *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

VI. Technical Deficiencies:

At lines 48-49 and 465, the bill refers to a child who "has or is suspected of having a disability." The term "disability" is not defined.³⁵ In addition, it is not clear who is responsible for suspecting that a child has a disability. Students with disabilities are included in the definition of the term "exceptional student" in s. 1003.01(3)(a), F.S., but that definition also includes students who are gifted. The bill appears to relieve school boards of the duty to appoint a surrogate parent for a gifted student.³⁶ **(Provision clarified by Amendment Barcode 818944; see lines 176, 481-483.)**

At lines 51-68, the bill describes who may be court appointed to serve as a surrogate parent. The description does not align with lines 482-503 of the bill, the requirements of the IDEA or Rule 6A-6.0333, F.A.C. The inconsistencies may cause confusion. **(Provision removed by Amendment Barcode 818944.)**

At lines 85-87, the bill adds a designated liaison to the list of entities that may be granted access to child abuse records. It is unclear who these liaisons are, how they are designated, what authority they have, and how such authority is granted. In addition, it is unclear whether the liaisons proposed by the bill are intended to be different from the liaisons contemplated by the interagency agreement implementing s. 39.0016, F.S. **(Provision clarified by Amendment Barcode 818944; see lines 233-236.)**

At lines 98-108, the bill authorizes the court to order release of a child's education records to the department or community-based care provider. This provision appears to be unnecessary as the department or community-based care providers are already entitled to access pursuant to s. 1002.22(3)(d)14., F.S.

At lines 109-112, the bill provides that at the shelter hearing or any subsequent hearing, the court may either appoint a surrogate parent or refer a child to the district school board for appointment of a surrogate parent. This appears to be inconsistent with current law which provides that a surrogate parent may be appointed "as soon as the child is determined to be dependent"³⁷ In addition, the bill appears to authorize the court to appoint a surrogate parent for **any** child placed in shelter, not just for those children who have or are suspected of having a disability. **(Provision removed by Amendment Barcode 818944.)**

At lines 106-107, the bill provides that the court shall issue an order granting access to a child's educational records to "identified entities or persons" but there are no entities or persons identified. **(Provision clarified by Amendment Barcode 818944; see lines 257-275.)**

At line 120, the bill requires the court or citizen review panel to consider the testimony of a surrogate parent in its review of a dependency case, but ch. 39, F.S., does not require notice to surrogate parents.³⁸

³⁵ Section 39.0016, F.S., relating to the education of abused, neglected and abandoned children, also references a child who has or is suspected of having a disability. Although s. 39.0016, F.S., refers to the IDEA, it is not clear that the IDEA definition of child who has a disability applies to the Florida statute.

³⁶ See Rule 6A-6.0333, F.A.C., relating to surrogate parents.

³⁷ Section 39.0016(4)(c)5., F.S.

³⁸ See s. 39.701(5), F.S.

At lines 187-190, the bill amends the definition of "parent" in the Education Code to include a surrogate parent. This amendment appears to entitle a surrogate parent to all of the rights afforded to a parent under the Education Code, including, for example, the right to take physical custody of a child and the right to exempt a child from immunizations. **(Provision removed by Amendment Barcode 818944.)**

At lines 320-324, the bill appears to be limiting the department's access to education records to the records of children placed in shelter care. Under current law, the department is permitted access to the records of all children subject to ch. 39, F.S., proceedings. **(Provision removed by Amendment Barcode 818944.)**

Pages 12-19 of the bill, add numerous references to "child," "youth" and "foster care" to the Education Code, but the Education Code does not define these terms. **(Clarified by Amendment Barcode 818944.)**

At the end of line 500, there should be a period. **(Corrected by Amendment Barcode 818944.)**

Line 391 (current law), refers to "free public education" for children who are homeless and children who are in foster care. Lines 510-511 refer to "free appropriate education" for children with surrogate parents. The IDEA uses the term "free appropriate public education." These inconsistencies may cause confusion. **(Partially addressed by Amendment Barcode 818944; see lines 355 and 470.)**

Section 39.0016, F.S., and the Interagency Agreements required by that section use the term "child known to the department" but this term is not used in the bill or the Education Code. This inconsistency may lead to implementation problems. **(Clarified by Amendment Barcode 818944.)**

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 818944 by Children, Families and Elder Affairs on April 8, 2008:

- Adds the term "surrogate parent" to ch. 39, F.S., as well as to the Florida K-20 Education Code, and defines the term to mean an individual appointed to act in place of a parent to make educational decisions and to safeguard a child's access to services.
- Provides legislative findings and intent with respect to children who have or are suspected of having a disability, and defines "disability" with reference to s. 1003.01(3), F.S.

- Provides that a court must appoint a surrogate parent for a child who is dependent or in shelter care and who has or is suspected of having a disability, within 30 days of determining that the child's parent cannot be located or that an educational decision maker for the child is not available.
- Expands the list of entities permitted to have access to abuse records to include a local school district employee who is designated to act as a liaison between the school district and the department.
- Deletes the provision that appeared to limit the department's access to the education records to those of children in shelter care.
- Requires the court to request that the parents of a child placed in shelter care consent to the release of the child's medical and education records and, if a parent is unable, unwilling or unavailable to consent, and the court determines that access is necessary, the court must enter an order granting access.
- Makes the exemptions for school attendance and immunizations that are available to homeless children applicable to children who are dependent or in shelter care.
- Restores current law as to the definition of "homeless child" in the Education Code.
- Deletes provisions that included surrogate parent in the definition of parent in the Education Code.
- Creates a new section of law, requiring the court with jurisdiction to appoint a surrogate parent for a child a child who is dependent or in shelter care and who has or is suspected of having a disability.
- Deletes provisions requiring local school boards to appoint surrogate parents for children who are the subject of ch. 39, F.S., proceedings, as well as provisions requiring the court and the local school districts to defer to one another's prior appointments.
- Clarifies the qualifications and responsibilities of a surrogate parent.
- Clarifies that the bill does not preclude the appointment of a surrogate parent for a gifted child.
- Makes other technical corrections and conforming amendments.