



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

*Free Appropriate Public Education:* Under the IDEA, the term “free appropriate public education” means special education and related services that are provided by the public school system at no cost to the parent.<sup>1</sup> Such students must be educated in the least restrictive environment; i.e., the student must be educated in an environment that is as close to a typical school environment as is appropriate in relation to the severity of the student’s disability.<sup>2</sup>

*Exceptional Student Education Services:* Florida law requires each district school board to provide special education services, i.e., ESE services, to exceptional students.<sup>3</sup> Florida law defines special education services as specially designed instruction and related services as are needed for an exceptional student to benefit from education.<sup>4</sup> School districts may provide such services within the district school system, in cooperation with other district school systems, or through contractual agreements with an approved private school or community facility.<sup>5</sup>

Current 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 State Board of Education (SBE) rule. 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>6</sup>

*Individual Educational Plans:* The evaluation and written services plan required for an exceptional student is referred to as an IEP.<sup>7</sup> The IEP must describe the student’s educational needs and the services that will be provided to meet those needs. The IEP is developed by a multidisciplinary team that includes school and district staff and other experts, if necessary. Parents must participate in the development of the plan. The IEP must be developed by district staff within 30 days of determining that the student is eligible for ESE services. An exceptional student must have an IEP at the beginning of each school year. The IEP must be reviewed every twelve months to determine if services currently provided appropriately serve the student.<sup>8</sup>

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<sup>1</sup> 20 U.S.C. 1412(a)(1).

<sup>2</sup> 20 U.S.C. 1412(a)(5).

<sup>3</sup> Section 1003.57(1), F.S. (Section 1003.01(3)(a), F.S., defines an “exceptional student” to include individuals with disabilities 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 in SBE rule. Students who are gifted are also classified as exceptional students).

<sup>4</sup> Section 1003.01(1), F.S. (Such services may include: transportation; diagnostic and evaluation services; social services; physical and occupational therapy; speech and language therapy; job placement; orientation and mobility training; braillest, 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 services as approved by SBE rules).

<sup>5</sup> Section 1003.57(1)(b), F.S. See also ss. 1001.42(4)(l) and 1002.42(12), F.S.

<sup>6</sup> Section 1003.57(1)(e), F.S.

<sup>7</sup> 20 U.S.C. § 1414(d).

<sup>8</sup> Rule 6A-6.03028, F.A.C.

*Agency-Operated Residential Facilities Placements:* Current law specifically requires district school boards to provide and pay for educational programs for students who reside in a residential facility operated by the DCF or the APD.<sup>9</sup> School boards receive weighted funding for these students via the Florida Education Finance Program (FEFP).<sup>10</sup> Further, statute provides that district school boards have the “full and complete authority” to determine the assignment and placement of such students in an appropriate educational program.<sup>11</sup> Each district school board must have a written agreement with the DCF and APD that delineates each entity’s respective obligations concerning the funding and provision of educational services for such students.<sup>12</sup> Statute provides that DOE, DCF, APD, and district school board programs for residential exceptional students must be mutually supportive.<sup>13</sup>

*Private Residential Facilities Placements:* Statute does not directly address the placement of exceptional students in private residential facilities by the DCF or APD. Thus, the responsibilities of agencies, district school boards, and residential facilities concerning such placements are less clear. Typically, the district where the facility is located provides educational services to the student. District personnel review the student’s IEP and determine which educational services are appropriate.<sup>14</sup>

In some cases, exceptional students are transferred by the agency from a private facility in their home school district to a private facility in another district. Such placements are often motivated by availability, special residential needs, or other noneducational needs. Because some placements are made in urgent or emergency situations, it is not always feasible for the agency to formally notify the school district of the placement.<sup>15</sup> Because school districts are usually not involved in these placement decisions, and do not receive timely notice of the placement, delays in delivering educational services to such students have resulted.<sup>16</sup>

Rule 6A-6.0361, F.A.C., authorizes school districts to enter into contracts with a private school or residential facility for the provision of ESE services. The district must first determine that no special educational program offered by it, a cooperating district school board, or a state agency is appropriate to serve the student.<sup>17</sup> These contracts may be entered into for either non-residential or residential exceptional students.<sup>18</sup> Contract provisions must include a method for determining charges, sharing costs with other agencies, and resolving disputes.<sup>19</sup> Such contracts must also specify that the exceptional student served under the contract generates FEFP funds for the school district.<sup>20</sup> School districts are not required to enter into these contracts. Thus, not all districts have them.<sup>21</sup>

Likewise, Rule 6A-6.0311, F.A.C., authorizes district school boards to establish multi-district programs that allow exceptional students to be served outside of their assigned school district. Each participating district must enter into a written agreement governing the provision of ESE services. When ESE services are provided to students residing in an agency-operated or private residential facility under a multi-district agreement, each school district and the facility must be party to the written agreement. However, these provisions only address placements made under a multi-district agreement.<sup>22</sup>

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<sup>9</sup> Sections 1003.58, F.S. and 402.22(2), F.S.

<sup>10</sup> Section 402.22(4), F.S.

<sup>11</sup> Section 1003.58(3), F.S.

<sup>12</sup> Section 1003.58(4), F.S. (Section 39.0016, F.S., specifies the requirements for agreements between school boards and the DCF. Among other things, the agreement must indicate all educational services that the district school board believes are reasonably necessary to educate the student. For students placed in residential care by the APD, s. 393.0651, F.S., specifies that the educational services that must be provided and paid for by the district school board are those services set forth in the student’s IEP).

<sup>13</sup> Section 402.22(3), F.S.

<sup>14</sup> Department of Education, 2008 Bill Analysis for House Bill 359.

<sup>15</sup> Department of Children and Families, 2008 Bill Analysis for House Bill 359.

<sup>16</sup> Department of Education, 2008 Bill Analysis for House Bill 359.

<sup>17</sup> Rule 6A-6.0361(1), F.A.C.

<sup>18</sup> Rule 6A-6.0361(2), F.A.C.

<sup>19</sup> Rule 6A-6.0361(5)(h), F.A.C.

<sup>20</sup> Rule 6A-6.0361(7), F.A.C.

<sup>21</sup> Department of Education, 2008 Bill Analysis for House Bill 359.

<sup>22</sup> Rule 6A-6.0311, F.A.C.

According to a survey conducted by the Office of Program Policy Analysis and Government Accountability (OPPAGA), school districts reported serving 469 exceptional students placed in residential treatment facilities regulated/licensed by the DCF, APD, or AHCA as of October 2007. Two hundred and seventy-six of these students reside in facilities located outside of the school district where their parents reside. These students were served by 31 of the state's 67 school districts.<sup>23</sup>

### **Effect of Proposed Changes**

The Council Substitute for House Bill 359 revises the requirements relating to the delivery of educational instruction and student funding when an exceptional student with disabilities is placed in a residential care facility by the DCF, APD, or AHCA. The bill defines:

- “Agency” to mean the DCF or its contracted lead agency, APD, and AHCA;
- “Home school district” to mean the student’s school district of legal residence; and
- “Receiving school district” to mean the school district in which the private residential care facility that is serving the student is located.

In addition, the bill provides that a “residential placement” or “placement” occurs when an agency directly funds or arranges funding for an exceptional student to live in a residential facility that provides educational services operated or licensed by the agency.

### **Agency Requirements:**

The bill requires the DOE, DCF, APD, and AHCA to enter into a coordinated interagency agreement to ensure that the educational services required under the IDEA are provided to residential exceptional students. The DOE in consultation with the DCF, APD, AHCA, and school districts must develop procedures for providing written notice within 10 days of a placement to: (a) the school district in which the student is currently counted for funding purposes; and (b) the school district where the facility is located if the facility is located across school district lines. Notice procedures must identify the entity responsible for providing the notice. For residential facilities licensed by the APD, notice must be provided by the facility.

### **School District Requirements:**

The bill requires the receiving school district to review the student’s IEP within 10 days after receiving the notice to determine if an educational program offered by it is appropriate to serve the student. The school district must provide educational services to the student, either directly, by contract with another provider or facility, or by contract with the private residential care facility, or decline to provide such services. If the receiving school district declines to provide educational services, the student’s home school district must provide or contract for such services. The bill further specifies that the school district providing the educational services is to report the student for FEFP funding purposes.

## **C. SECTION DIRECTORY:**

**Section 1.:** Amending s. 1003.57, F.S.; defining terms; requiring agencies to develop procedures for notifying school districts regarding the placement of exceptional students in residential facilities; requiring school district review of student IEPs; providing school district responsibilities for the cost and delivery of educational services; requiring reporting of students for funding.

**Section 2.:** Amending s. 1003.58, F.S.; requiring agencies to enter into an interagency agreement.

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<sup>23</sup> Data Provided by OPPAGA, March 31, 2008 (The school districts that reported students were Alachua, Bay, Brevard, Broward, Citrus, Collier, Dade, Duval, Hendry, Hernando, Hillsborough, Lake, Lee, Levy, Leon, Manatee, Marion, Martin, Orange, Osceola, Palm Beach, Pasco, Pinellas, Sarasota, Seminole, St Johns, St. Lucie, Suwannee, Taylor, Volusia, and Washington).

**Section 3.:** Providing an effective date of July 1, 2007.

## **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 bill does not appear to have a fiscal impact on state expenditures.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have a fiscal impact on local revenues.

#### **2. Expenditures:**

The bill does not appear to have a fiscal impact on local expenditures.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have a direct economic impact on the private sector.

### **D. FISCAL COMMENTS:**

Under the bill, the receiving school district will have the option of either providing, or declining to provide, educational services to the student placed in the private residential care facility. If the district declines, the student's school district of legal residence must provide or contract for the student's educational services. The bill specifies that the district that provides or contracts for the educational services is to report the student for FEFP funding purposes.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds; reduce the authority that counties or municipalities had as of February 1, 1989, to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities as of February 1, 1989.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Drafting Comments:**

The terms “receiving school district,” “private residential care facility,” and “residential care facility” are applied inconsistently in the bill. This causes confusion as to whether the bill applies to both public and private facilities or just private facilities.

The bill defines “residential placement” as occurring “when an agency has funded or arranged for funding all or part of the cost of an exceptional student to live in a facility that provides educational services operated or licensed by the agency.” The meaning of this term is unclear.

D. STATEMENT OF THE SPONSOR

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On April 11, 2008, the Schools and Learning Council adopted a strike-all amendment to the proposed council substitute for House Bill 359 and reported the bill favorably as a council substitute. The council substitute:

- Defines “agency,” “home school district,” “receiving school district,” and “residential placement.”
- Requires the DOE, DCF, APD, and AHCA to enter into an interagency agreement to ensure that the educational services required by the IDEA are provided to residential exceptional students.
- Requires the DOE in consultation with the DCF, APD, AHCA, and school districts to develop procedures for providing written notice within 10 days of a residential placement to specified school districts.
- Provides that notice procedures must identify the entity responsible for providing the notice. For residential facilities licensed by the APD, notice must be provided by the facility.
- Requires the receiving school district to review the student’s IEP within 10 days of receiving notice of the placement and either provide, contract for, or decline to provide educational services to the student.
- Provides that the student’s home school district must provide or contract for the student’s educational services if the receiving district declines to do so.
- Provides that the district that provides the educational services is the district that reports the student for funding.

The council substitute substantially differs from the original bill. The original bill included provisions:

- Requiring an agency to provide 30 days written notice to specified school districts prior to placing an exceptional student in a residential care facility.
- Requiring an agency to use best efforts to ensure that the student’s assigned school district and the district where the facility is located enter into an agreement concerning cost of the placement.
- Requiring that, in the absence of such an agreement, funding must follow the student in full and costs exceeding such funding must be shared equally by the districts and the DOE.
- Requiring a residential exceptional student who receives a scholarship under the Corporate Income Tax Credit Scholarship Program, the Opportunity Scholarship Program, or the John M. McKay Scholarships for Students with Disabilities Program to remain at the private residential care facility until completion of the academic program.
- Requiring OPPAGA to study the issue of residential exceptional student placements.

This bill analysis is drafted to council substitute.