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LEGISLATIVE ACTION

Senate

House

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04/27/2009 06:33 PM

Senator Rich moved the following:

Senate Amendment (with title amendment)

Delete lines 218 - 529

and insert:

(b)1. Each district school superintendent or dependency court must appoint a surrogate parent for a child known to the department who has or is suspected of having a disability, as defined in s. 1003.01(3), when:

a. After reasonable efforts, no parent can be located; or

b. A court of competent jurisdiction over a child under this chapter has determined that no person has the authority under the Individuals with Disabilities Education Act, including



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13 the parent or parents subject to the dependency action, or that
14 no person has the authority, willingness, or ability to serve as
15 the educational decisionmaker for the child without judicial
16 action.

17 2. A surrogate parent appointed by the district school
18 superintendent or the court must be at least 18 years old and
19 have no personal or professional interest that conflicts with
20 the interests of the student to be represented. Neither the
21 district school superintendent nor the court may appoint an
22 employee of the Department of Education, the local school
23 district, a community-based care provider, the Department of
24 Children and Family Services, or any other public or private
25 agency involved in the education or care of the child as
26 appointment of those persons is prohibited by federal law. This
27 prohibition includes group home staff and therapeutic foster
28 parents. However, a person who acts in a parental role to a
29 child, such as a foster parent or relative caregiver, is not
30 prohibited from serving as a surrogate parent if he or she is
31 employed by such agency, willing to serve, and knowledgeable
32 about the child and the exceptional student education process.
33 The surrogate parent may be a court-appointed guardian ad litem
34 or a relative or nonrelative adult who is involved in the
35 child's life regardless of whether that person has physical
36 custody of the child. Each person appointed as a surrogate
37 parent must have the knowledge and skills acquired by
38 successfully completing training using materials developed and
39 approved by the Department of Education to ensure adequate
40 representation of the child.

41 3. If a guardian ad litem has been appointed for a child,



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42 the district school superintendent must first consider the
43 child's guardian ad litem when appointing a surrogate parent.
44 The district school superintendent must accept the appointment
45 of the court if he or she has not previously appointed a
46 surrogate parent. Similarly, the court must accept a surrogate
47 parent duly appointed by a district school superintendent.

48 4. A surrogate parent appointed by the district school
49 superintendent or the court must be accepted by any subsequent
50 school or school district without regard to where the child is
51 receiving residential care so that a single surrogate parent can
52 follow the education of the child during his or her entire time
53 in state custody. Nothing in this paragraph or in rule shall
54 limit or prohibit the continuance of a surrogate parent
55 appointment when the responsibility for the student's
56 educational placement moves among and between public and private
57 agencies.

58 5. For a child known to the department, the responsibility
59 to appoint a surrogate parent resides with both the district
60 school superintendent and the court with jurisdiction over the
61 child. If the court elects to appoint a surrogate parent, notice
62 shall be provided as soon as practicable to the child's school.
63 At any time the court determines that it is in the best
64 interests of a child to remove a surrogate parent, the court may
65 appoint a new surrogate parent for educational decisionmaking
66 purposes for that child.

67 6. The surrogate parent shall continue in the appointed
68 role until one of the following occurs:

69 a. The child is determined to no longer be eligible or in
70 need of special programs, except when termination of special



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- 71 programs is being contested.
- 72 b. The child achieves permanency through adoption or legal
73 guardianship and is no longer in the custody of the department.
- 74 c. The parent who was previously unknown becomes known,
75 whose whereabouts were unknown is located, or who was
76 unavailable is determined by the court to be available.
- 77 d. The appointed surrogate no longer wishes to represent
78 the child or is unable to represent the child.
- 79 e. The superintendent of the school district in which the
80 child is attending school, the Department of Education contract
81 designee, or the court that appointed the surrogate determines
82 that the appointed surrogate parent no longer adequately
83 represents the child.
- 84 f. The child moves to a geographic location that is not
85 reasonably accessible to the appointed surrogate.
- 86 7. The appointment and termination of appointment of a
87 surrogate under this paragraph shall be entered as an order of
88 the court with a copy of the order provided to the child's
89 school as soon as practicable.
- 90 8. The person appointed as a surrogate parent under this
91 paragraph must:
- 92 a. Be acquainted with the child and become knowledgeable
93 about his or her disability and educational needs.
- 94 b. Represent the child in all matters relating to
95 identification, evaluation, and educational placement and the
96 provision of a free and appropriate education to the child.
- 97 c. Represent the interests and safeguard the rights of the
98 child in educational decisions that affect the child.
- 99 9. The responsibilities of the person appointed as a



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100 surrogate parent shall not extend to the care, maintenance,
101 custody, residential placement, or any other area not
102 specifically related to the education of the child, unless the
103 same person is appointed by the court for such other purposes.

104 10. A person appointed as a surrogate parent shall enjoy
105 all of the procedural safeguards afforded a parent with respect
106 to the identification, evaluation, and educational placement of
107 a student with a disability or a student who is suspected of
108 having a disability.

109 11. A person appointed as a surrogate parent shall not be
110 held liable for actions taken in good faith on behalf of the
111 student in protecting the special education rights of the child.

112 (4) ~~(5)~~ TRAINING.—The department shall incorporate an
113 education component into all training programs of the department
114 regarding children known to the department. Such training shall
115 be coordinated with the Department of Education and the local
116 school districts. The department shall offer opportunities for
117 education personnel to participate in such training. Such
118 coordination shall include, but not be limited to, notice of
119 training sessions, opportunities to purchase training materials,
120 proposals to avoid duplication of services by offering joint
121 training, and incorporation of materials available from the
122 Department of Education and local school districts into the
123 department training when appropriate. The department training
124 components shall include:

125 (a) Training for surrogate parents to include how an
126 ability to learn of a child known to the department is affected
127 by abuse, abandonment, neglect, and removal from the home.

128 (b) Training for parents in cases in which reunification is



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129 the goal, or for preadoptive parents when adoption is the goal,
130 so that such parents learn how to access the services the child
131 known to the department needs and the importance of their
132 involvement in the education of the child known to the
133 department.

134 (c) Training for caseworkers and foster parents to include
135 information on the right of the child known to the department to
136 an education, the role of an education in the development and
137 adjustment of a child known to the department, the proper ways
138 to access education and related services for the child known to
139 the department, and the importance and strategies for parental
140 involvement in education for the success of the child known to
141 the department.

142 (d) Training of caseworkers regarding the services and
143 information available through the Department of Education and
144 local school districts, including, but not limited to, the
145 current Sunshine State Standards, the Surrogate Parent Training
146 Manual, and other resources accessible through the Department of
147 Education or local school districts to facilitate educational
148 access for a child known to the department.

149 Section 2. Paragraph (p) of subsection (2) of section
150 39.202, Florida Statutes, is amended to read:

151 39.202 Confidentiality of reports and records in cases of
152 child abuse or neglect.—

153 (2) Except as provided in subsection (4), access to such
154 records, excluding the name of the reporter which shall be
155 released only as provided in subsection (5), shall be granted
156 only to the following persons, officials, and agencies:

157 (p) An employee of the local school district who is



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158 designated as a liaison between the school district and the
159 department pursuant to an interagency agreement required under
160 s. 39.0016 and the principal of a public school, private school,
161 or charter school where the child is a student. Information
162 contained in the records which the liaison or the principal
163 determines are necessary for a school employee to effectively
164 provide a student with educational services may be released to
165 that employee.

166 Section 3. Subsection (11) of section 39.402, Florida
167 Statutes, is amended to read:

168 39.402 Placement in a shelter.-

169 (11) (a) If a child is placed in a shelter pursuant to a
170 court order following a shelter hearing, the court shall require
171 in the shelter hearing order that the parents of the child, or
172 the guardian of the child's estate, if possessed of assets which
173 under law may be disbursed for the care, support, and
174 maintenance of the child, to pay, to the department or
175 institution having custody of the child, fees as established by
176 the department. When the order affects the guardianship estate,
177 a certified copy of the order shall be delivered to the judge
178 having jurisdiction of the guardianship estate. The shelter
179 order shall also require the parents to provide to the
180 department and any other state agency or party designated by the
181 court, within 28 days after entry of the shelter order, the
182 financial information necessary to accurately calculate child
183 support pursuant to s. 61.30.

184 (b) The court shall request that the parents consent to
185 provide access to the child's medical records and provide
186 information to the court, the department or its contract



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187 agencies, and any guardian ad litem or attorney for the child.
188 If a parent is unavailable or unable to consent or withholds
189 consent and the court determines access to the records and
190 information is necessary to provide services to the child, the
191 court shall issue an order granting access. The court may also
192 order the parents to ~~The parent or legal guardian shall~~ provide
193 all known medical information to the department and to any
194 others granted access under this subsection.

195 (c) The court shall request that the parents consent to
196 provide access to the child's educational records and provide
197 information to the court, the department or its contract
198 agencies, and any guardian ad litem or attorney for the child.
199 If a parent is unavailable or unable to consent or withholds
200 consent and the court determines access to the records and
201 information is necessary to provide services to the child, the
202 court shall issue an order granting access.

203 (d) The court may appoint a surrogate parent or may refer
204 the child to the district school superintendent for appointment
205 of a surrogate parent if the child has or is suspected of having
206 a disability and the parent is unavailable pursuant to s.
207 39.0016(3) (b).

208 Section 4. Subsection (8) of section 39.701, Florida
209 Statutes, is amended to read:

210 39.701 Judicial review.—

211 (8) The court and any citizen review panel shall take into
212 consideration the information contained in the social services
213 study and investigation and all medical, psychological, and
214 educational records that support the terms of the case plan;
215 testimony by the social services agency, the parent, the foster



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216 parent or legal custodian, the guardian ad litem or surrogate
217 parent for educational decisionmaking if one has been appointed
218 for the child, and any other person deemed appropriate; and any
219 relevant and material evidence submitted to the court, including
220 written and oral reports to the extent of their probative value.
221 These reports and evidence may be received by the court in its
222 effort to determine the action to be taken with regard to the
223 child and may be relied upon to the extent of their probative
224 value, even though not competent in an adjudicatory hearing. In
225 its deliberations, the court and any citizen review panel shall
226 seek to determine:

227 (a) If the parent was advised of the right to receive
228 assistance from any person or social service agency in the
229 preparation of the case plan.

230 (b) If the parent has been advised of the right to have
231 counsel present at the judicial review or citizen review
232 hearings. If not so advised, the court or citizen review panel
233 shall advise the parent of such right.

234 (c) If a guardian ad litem needs to be appointed for the
235 child in a case in which a guardian ad litem has not previously
236 been appointed or if there is a need to continue a guardian ad
237 litem in a case in which a guardian ad litem has been appointed.

238 (d) Who holds the rights to make educational decisions for
239 the child. If appropriate, the court may refer the child to the
240 district school superintendent for appointment of a surrogate
241 parent or may itself appoint a surrogate parent under the
242 Individuals with Disabilities Education Act and s. 39.0016.(e)

243 ~~(d)~~ The compliance or lack of compliance of all parties with
244 applicable items of the case plan, including the parents'



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245 compliance with child support orders.

246 (f)~~(e)~~ The compliance or lack of compliance with a
247 visitation contract between the parent and the social service
248 agency for contact with the child, including the frequency,
249 duration, and results of the parent-child visitation and the
250 reason for any noncompliance.

251 (g)~~(f)~~ The compliance or lack of compliance of the parent
252 in meeting specified financial obligations pertaining to the
253 care of the child, including the reason for failure to comply if
254 such is the case.

255 (h)~~(g)~~ Whether the child is receiving safe and proper care
256 according to s. 39.6012, including, but not limited to, the
257 appropriateness of the child's current placement, including
258 whether the child is in a setting that is as family-like and as
259 close to the parent's home as possible, consistent with the
260 child's best interests and special needs, and including
261 maintaining stability in the child's educational placement, as
262 documented by assurances from the community-based care provider
263 that:

264 1. The placement of the child takes into account the
265 appropriateness of the current educational setting and the
266 proximity to the school in which the child is enrolled at the
267 time of placement.

268 2. The community-based care agency has coordinated with
269 appropriate local educational agencies to ensure that the child
270 remains in the school in which the child is enrolled at the time
271 of placement.

272 (i)~~(h)~~ A projected date likely for the child's return home
273 or other permanent placement.



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274 ~~(j)~~~~(i)~~ When appropriate, the basis for the unwillingness or
275 inability of the parent to become a party to a case plan. The
276 court and the citizen review panel shall determine if the
277 efforts of the social service agency to secure party
278 participation in a case plan were sufficient.

279 ~~(k)~~~~(j)~~ For a child who has reached 13 years of age but is
280 not yet 18 years of age, the adequacy of the child's preparation
281 for adulthood and independent living.

282 ~~(l)~~~~(k)~~ If amendments to the case plan are required.

283 Amendments to the case plan must be made under s. 39.6013.

284 Section 5. Paragraph (f) of subsection (1) and paragraph
285 (g) of subsection (4) of section 1003.21, Florida Statutes, are
286 amended to read:

287 1003.21 School attendance.—

288 (1)

289 (f) Homeless children, as defined in s. 1003.01, and
290 children who are known to the department, as defined in s.
291 39.0016, must have access to a free public education and must be
292 admitted to school in the school district in which they or their
293 families live. School districts shall assist homeless children
294 and children who are known to the department to meet the
295 requirements of subsection (4) and s. 1003.22, as well as local
296 requirements for documentation.

297 (4) Before admitting a child to kindergarten, the principal
298 shall require evidence that the child has attained the age at
299 which he or she should be admitted in accordance with the
300 provisions of subparagraph (1)(a)2. The district school
301 superintendent may require evidence of the age of any child whom
302 he or she believes to be within the limits of compulsory



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303 attendance as provided for by law. If the first prescribed
304 evidence is not available, the next evidence obtainable in the
305 order set forth below shall be accepted:

306 (g) If none of these evidences can be produced, an
307 affidavit of age sworn to by the parent, accompanied by a
308 certificate of age signed by a public health officer or by a
309 public school physician, or, if neither of these is available in
310 the county, by a licensed practicing physician designated by the
311 district school board, which certificate states that the health
312 officer or physician has examined the child and believes that
313 the age as stated in the affidavit is substantially correct. A
314 homeless child, as defined in s. 1003.01, and a child who is
315 known to the department, as defined in s. 39.0016, shall be
316 given temporary exemption from this section for 30 school days.

317 Section 6. Subsection (1) and paragraph (e) of subsection
318 (5) of section 1003.22, Florida Statutes, are amended to read:

319 1003.22 School-entry health examinations; immunization
320 against communicable diseases; exemptions; duties of Department
321 of Health.-

322 (1) Each district school board and the governing authority
323 of each private school shall require that each child who is
324 entitled to admittance to kindergarten, or is entitled to any
325 other initial entrance into a public or private school in this
326 state, present a certification of a school-entry health
327 examination performed within 1 year prior to enrollment in
328 school. Each district school board, and the governing authority
329 of each private school, may establish a policy that permits a
330 student up to 30 school days to present a certification of a
331 school-entry health examination. A homeless child, as defined in



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332 s. 1003.01, and a child who is known to the department, as
333 defined in s. 39.0016, shall be given a temporary exemption for
334 30 school days. Any district school board that establishes such
335 a policy shall include provisions in its local school health
336 services plan to assist students in obtaining the health
337 examinations. However, any child shall be exempt from the
338 requirement of a health examination upon written request of the
339 parent of the child stating objections to the examination on
340 religious grounds.

341 (5) The provisions of this section shall not apply if:

342 (e) An authorized school official issues a temporary
343 exemption, for a period not to exceed 30 school days, to permit
344 a student who transfers into a new county to attend class until
345 his or her records can be obtained. A homeless child, as defined
346 in s. 1003.01, and a child who is known to the department, as
347 defined in s. 39.0016, shall be given a temporary exemption for
348 30 school days. The public school health nurse or authorized
349 private school official is responsible for followup of each such
350 student until proper documentation or immunizations are
351 obtained. An exemption for 30 days may be issued for a student
352 who enters a juvenile justice program to permit the student to
353 attend class until his or her records can be obtained or until
354 the immunizations can be obtained. An authorized juvenile
355 justice official is responsible for followup of each student who
356 enters a juvenile justice program until proper documentation or
357 immunizations are obtained.

358 Section 7. Subsections (3) and (4) are added to section
359 1003.57, Florida Statutes, to read:

360 1003.57 Exceptional students instruction.



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361 (3) (a) For purposes of this subsection and subsection (4),
362 the term:

363 1. "Agency" means the Department of Children and Family
364 Services or its contracted lead agency, the Agency for Persons
365 with Disabilities, and the Agency for Health Care
366 Administration.

367 2. "Exceptional student" means an exceptional student, as
368 defined in s. 1003.01, who has a disability.

369 3. "Receiving school district" means the district in which
370 a private residential care facility is located.

371 4. "Placement" means the funding or arrangement of funding
372 by an agency for all or a part of the cost for an exceptional
373 student to reside in a private residential care facility and the
374 placement crosses school district lines.

375 (b) Within 10 business days after an exceptional student is
376 placed in a private residential care facility by an agency, the
377 agency or private residential care facility licensed by the
378 agency, as appropriate, shall provide written notification of
379 the placement to the school district where the student is
380 currently counted for funding purposes under s. 1011.62 and the
381 receiving school district. The exceptional student shall be
382 enrolled in school and receive a free and appropriate public
383 education, special education, and related services while the
384 notice and procedures regarding payment are pending. This
385 paragraph applies when the placement is for the primary purpose
386 of addressing residential or other noneducational needs and the
387 placement crosses school district lines.

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390 ===== T I T L E A M E N D M E N T =====

391 And the title is amended as follows:

392 Delete lines 6 - 34

393 and insert:

394 providing conditions and requirements for district
395 school superintendent or court appointment of a
396 surrogate parent for educational decisionmaking for a
397 child who has or is suspected of having a disability;
398 providing requirements for educational placement;
399 providing requirements relating to qualifications and
400 responsibilities of surrogate parents; limiting
401 liability; amending s. 39.202, F.S.; providing for
402 access to certain records to liaisons between school
403 districts and the Department of Children and Family
404 Services; amending s. 39.402, F.S.; requiring access
405 to a child's medical records and educational records
406 if a child is placed in a shelter; authorizing
407 appointment of a surrogate parent; amending s. 39.701,
408 F.S.; requiring the court and citizen review panel in
409 judicial reviews to consider testimony by a surrogate
410 parent for educational decisionmaking; providing for
411 additional deliberations relating to appointment of an
412 educational decisionmaker; requiring certain
413 documentation relating to the educational setting;
414 amending s. 1003.21, F.S.; providing access to free
415 public education for children known to the department;
416 authorizing a temporary exemption relating to school
417 attendance; amending s. 1003.22, F.S.; authorizing a
418 temporary exemption from school-entry health



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419 examinations for children known to the department;
420 amending s. 1003.57, F.S.; providing definitions;
421 requiring the Department of Children and Family
422 Services, the Agency for Health Care Administration,
423 and residential facilities licensed by the Agency for
424 Persons with Disabilities to notify certain school
425 districts following the placement of an exceptional
426 student in a private residential care facility;
427 requiring that an exceptional student be enrolled in
428 school;