

By Senator Rich

34-00599-09

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1                   A bill to be entitled  
2           An act relating to education for children in shelter  
3           care or foster care; amending s. 39.0016, F.S.;  
4           defining the term "surrogate parent"; providing  
5           legislative intent; providing conditions for district  
6           school board or court appointment of a surrogate  
7           parent for educational decisionmaking for a child who  
8           has or is suspected of having a disability; amending  
9           s. 39.202, F.S.; providing for access to certain  
10          records to liaisons between school districts and the  
11          Department of Children and Family Services; amending  
12          s. 39.402, F.S.; requiring access to a child's medical  
13          records and educational records if a child is placed  
14          in a shelter; amending s. 39.701, F.S.; requiring the  
15          court and citizen review panel in judicial reviews to  
16          consider testimony by a surrogate parent for  
17          educational decisionmaking; providing for additional  
18          deliberations relating to appointment of an  
19          educational decisionmaker; requiring certain  
20          documentation relating to the educational setting;  
21          amending s. 1003.21, F.S.; providing access to free  
22          public education for children known to the department;  
23          authorizing a temporary exemption relating to school  
24          attendance; amending s. 1003.22, F.S.; authorizing a  
25          temporary exemption from school-entry health  
26          examinations for children known to the department;  
27          providing an effective date.

28  
29   Be It Enacted by the Legislature of the State of Florida:

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Section 1. Section 39.0016, Florida Statutes, is amended to read:

39.0016 Education of abused, neglected, and abandoned children; agency agreements; children having or suspected of having a disability.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Children known to the department" means children who are found to be dependent or children in shelter care.

(b) "Department" means the Department of Children and Family Services or a community-based care lead agency acting on behalf of the Department of Children and Family Services, as appropriate.

(c) "Surrogate parent" means an individual appointed to act in the place of a parent in educational decisionmaking and in safeguarding a child's rights under the Individuals with Disabilities Education Act and this section.

(2) AGENCY AGREEMENTS.—

(a)~~(3)~~ The department shall enter into an agreement with the Department of Education regarding the education and related care of children known to the department. Such agreement shall be designed to provide educational access to children known to the department for the purpose of facilitating the delivery of services or programs to children known to the department. The agreement shall avoid duplication of services or programs and shall provide for combining resources to maximize the availability or delivery of services or programs.

(b)~~(4)~~ The department shall enter into agreements with district school boards or other local educational entities

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59 regarding education and related services for children known to  
60 the department who are of school age and children known to the  
61 department who are younger than school age but who would  
62 otherwise qualify for services from the district school board.  
63 Such agreements shall include, but are not limited to:

64 1.~~(a)~~ A requirement that the department shall:

65 a.1.~~1.~~ Enroll children known to the department in school. The  
66 agreement shall provide for continuing the enrollment of a child  
67 known to the department at the same school, if possible, with  
68 the goal of avoiding disruption of education.

69 b.2.~~2.~~ Notify the school and school district in which a child  
70 known to the department is enrolled of the name and phone number  
71 of the child known to the department caregiver and caseworker  
72 for child safety purposes.

73 c.3.~~3.~~ Establish a protocol for the department to share  
74 information about a child known to the department with the  
75 school district, consistent with the Family Educational Rights  
76 and Privacy Act, since the sharing of information will assist  
77 each agency in obtaining education and related services for the  
78 benefit of the child.

79 d.4.~~4.~~ Notify the school district of the department's case  
80 planning for a child known to the department, both at the time  
81 of plan development and plan review. Within the plan development  
82 or review process, the school district may provide information  
83 regarding the child known to the department if the school  
84 district deems it desirable and appropriate.

85 2.~~(b)~~ A requirement that the district school board shall:

86 a.1.~~1.~~ Provide the department with a general listing of the  
87 services and information available from the district school

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88 board, ~~including, but not limited to, the current Sunshine State~~  
89 ~~Standards, the Surrogate Parent Training Manual, and other~~  
90 ~~resources accessible through the Department of Education or~~  
91 ~~local school districts~~ to facilitate educational access for a  
92 child known to the department.

93 b.2. Identify all educational and other services provided  
94 by the school and school district which the school district  
95 believes are reasonably necessary to meet the educational needs  
96 of a child known to the department.

97 c.3. Determine whether transportation is available for a  
98 child known to the department when such transportation will  
99 avoid a change in school assignment due to a change in  
100 residential placement. Recognizing that continued enrollment in  
101 the same school throughout the time the child known to the  
102 department is in out-of-home care is preferable unless  
103 enrollment in the same school would be unsafe or otherwise  
104 impractical, the department, the district school board, and the  
105 Department of Education shall assess the availability of  
106 federal, charitable, or grant funding for such transportation.

107 d.4. Provide individualized student intervention or an  
108 individual educational plan when a determination has been made  
109 through legally appropriate criteria that intervention services  
110 are required. The intervention or individual educational plan  
111 must include strategies to enable the child known to the  
112 department to maximize the attainment of educational goals.

113 3.(e) A requirement that the department and the district  
114 school board shall cooperate in accessing the services and  
115 supports needed for a child known to the department who has or  
116 is suspected of having a disability to receive an appropriate

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117 education consistent with the Individuals with Disabilities  
118 Education Act and state implementing laws, rules, and  
119 assurances. Coordination of services for a child known to the  
120 department who has or is suspected of having a disability may  
121 include:

122 ~~a.1.~~ Referral for screening.

123 ~~b.2.~~ Sharing of evaluations between the school district and  
124 the department where appropriate.

125 ~~c.3.~~ Provision of education and related services  
126 appropriate for the needs and abilities of the child known to  
127 the department.

128 ~~d.4.~~ Coordination of services and plans between the school  
129 and the residential setting to avoid duplication or conflicting  
130 service plans.

131 ~~e.5.~~ Appointment of a surrogate parent, consistent with the  
132 Individuals with Disabilities Education Act and pursuant to  
133 subsection (3), for educational purposes for a child known to  
134 the department who qualifies ~~as soon as the child is determined~~  
135 ~~to be dependent and without a parent to act for the child. The~~  
136 ~~surrogate parent shall be appointed by the school district~~  
137 ~~without regard to where the child known to the department is~~  
138 ~~placed so that one surrogate parent can follow the education of~~  
139 ~~the child known to the department during his or her entire time~~  
140 ~~in state custody.~~

141 ~~f.6.~~ For each child known to the department 14 years of age  
142 and older, transition planning by the department and all  
143 providers, including the department's independent living program  
144 staff, to meet the requirements of the local school district for  
145 educational purposes.

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146        ~~(c)(2)~~ The provisions of this subsection ~~section~~ establish  
147 standards ~~goals~~ and not rights. This subsection ~~section~~ does not  
148 require the delivery of any particular service or level of  
149 service in excess of existing appropriations. A person may not  
150 maintain a cause of action against the state or any of its  
151 subdivisions, agencies, contractors, subcontractors, or agents  
152 based upon this subsection ~~section~~ becoming law or failure by  
153 the Legislature to provide adequate funding for the achievement  
154 of these standards ~~goals~~. This subsection ~~section~~ does not  
155 require the expenditure of funds to meet the standards ~~goals~~  
156 established in this subsection ~~section~~ except funds specifically  
157 appropriated for such purpose.

158        (3) CHILDREN HAVING OR SUSPECTED OF HAVING A DISABILITY.—

159        (a)1. The Legislature finds that disability is a natural  
160 part of the human experience and in no way diminishes the right  
161 of individuals to participate in or contribute to society.  
162 Improving educational results for children with disabilities is  
163 an essential element of our public policy of ensuring equality  
164 of opportunity, full participation, independent living, and  
165 economic self-sufficiency for individuals with disabilities.

166        2. The Legislature also finds that research and experience  
167 have shown that the education of children with disabilities can  
168 be made more effective by:

169        a. Having high expectations for these children and ensuring  
170 their access to the general education curriculum in the regular  
171 classroom, to the maximum extent possible.

172        b. Providing appropriate exceptional student education,  
173 related services, and aids and supports in the least restrictive  
174 environment appropriate for these children.

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175 c. Having a trained, interested, and consistent educational  
176 decisionmaker for the child when the parent is determined to be  
177 legally unavailable or when the foster parent is unwilling, has  
178 no significant relationship with the child, or is not trained in  
179 the exceptional student education process.

180 3. It is, therefore, the intent of the Legislature that all  
181 children with disabilities known to the department, consistent  
182 with the Individuals with Disabilities Education Act, have  
183 available to them a free, appropriate public education that  
184 emphasizes exceptional student education and related services  
185 designed to meet their unique needs and prepare them for further  
186 education, employment, and independent living and that the  
187 rights of children with disabilities are protected.

188 (b)1. Each district school board or dependency court must  
189 appoint a surrogate parent for a child known to the department  
190 who has or is suspected of having a disability, as defined in s.  
191 1003.01(3), when:

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

193 b. A court of competent jurisdiction over a child has  
194 determined that no person has the authority under the  
195 Individuals with Disabilities Education Act or that no person  
196 with such authority is willing or able to serve as the  
197 educational decisionmaker for the child; or

198 c. The child is residing in a licensed group care or  
199 therapeutic setting wherein the Individuals with Disabilities  
200 Education Act prohibits staff from acting as a surrogate parent  
201 for educational decisionmaking.

202 2. The dependency court may appoint a surrogate parent for  
203 any child who is under its jurisdiction. A surrogate parent

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204 appointed by the court must be at least 18 years old. The court  
205 may not appoint an employee of the Department of Education, the  
206 local school district, a community-based care provider, the  
207 Department of Children and Family Services, or any other public  
208 or private agency involved in the education or care of the child  
209 as appointment of those persons is prohibited by federal law.  
210 However, a person who acts in a parental role to a child, such  
211 as a foster parent or relative caregiver, is not prohibited from  
212 serving as a surrogate parent if employed by such agency,  
213 willing to serve, and knowledgeable about the child and about  
214 the exceptional student education process. Group home staff and  
215 therapeutic foster home parents may not be appointed. The  
216 surrogate parent may be a relative or other adult involved in  
217 the child's life regardless of whether that person has physical  
218 custody of the child.

219 3. The district school board must accept the appointment of  
220 the court or must appoint a surrogate parent within 30 days  
221 after notice that the child meets the criteria in this paragraph  
222 and no court appointment has been made.

223 4. A surrogate parent appointed by the district school  
224 board must be accepted by any subsequent school without regard  
225 to where the child is receiving residential care so that a  
226 single surrogate parent can follow the education of the child  
227 during his or her entire time in state custody.

228 5. For a child known to the department, the responsibility  
229 to appoint a surrogate parent resides with both the district  
230 school board and the court with jurisdiction over the child. If  
231 the court elects to appoint a surrogate parent, notice shall be  
232 provided as soon as practicable to the child's school. At any

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233 time that the court determines that it is in the best interests  
234 of a child to remove a surrogate parent, the court may appoint a  
235 new surrogate parent for educational decisionmaking purposes for  
236 that child.

237 (4)~~(5)~~ TRAINING.—The department shall incorporate an  
238 education component into all training programs of the department  
239 regarding children known to the department. Such training shall  
240 be coordinated with the Department of Education and the local  
241 school districts. The department shall offer opportunities for  
242 education personnel to participate in such training. Such  
243 coordination shall include, but not be limited to, notice of  
244 training sessions, opportunities to purchase training materials,  
245 proposals to avoid duplication of services by offering joint  
246 training, and incorporation of materials available from the  
247 Department of Education and local school districts into the  
248 department training when appropriate. The department training  
249 components shall include:

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

253 (b) Training for parents in cases in which reunification is  
254 the goal, or for preadoptive parents when adoption is the goal,  
255 so that such parents learn how to access the services the child  
256 known to the department needs and the importance of their  
257 involvement in the education of the child known to the  
258 department.

259 (c) Training for caseworkers and foster parents to include  
260 information on the right of the child known to the department to  
261 an education, the role of an education in the development and

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262 adjustment of a child known to the department, the proper ways  
263 to access education and related services for the child known to  
264 the department, and the importance and strategies for parental  
265 involvement in education for the success of the child known to  
266 the department.

267 (d) Training of caseworkers regarding the services and  
268 information available through the Department of Education and  
269 local school districts, including, but not limited to, the  
270 current Sunshine State Standards, the Surrogate Parent Training  
271 Manual, and other resources accessible through the Department of  
272 Education or local school districts to facilitate educational  
273 access for a child known to the department.

274 Section 2. Paragraph (p) of subsection (2) of section  
275 39.202, Florida Statutes, is amended to read:

276 39.202 Confidentiality of reports and records in cases of  
277 child abuse or neglect.—

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

282 (p) An employee of the local school district who is  
283 designated as a liaison between the school district and the  
284 department pursuant to an interagency agreement required under  
285 s. 39.0016 and the principal of a public school, private school,  
286 or charter school where the child is a student. Information  
287 contained in the records which the liaison or the principal  
288 determines are necessary for a school employee to effectively  
289 provide a student with educational services may be released to  
290 that employee.

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

293 39.402 Placement in a shelter.—

294 (11) (a) If a child is placed in a shelter pursuant to a  
295 court order following a shelter hearing, the court shall require  
296 in the shelter hearing order that the parents of the child, or  
297 the guardian of the child's estate, if possessed of assets which  
298 under law may be disbursed for the care, support, and  
299 maintenance of the child, to pay, to the department or  
300 institution having custody of the child, fees as established by  
301 the department. When the order affects the guardianship estate,  
302 a certified copy of the order shall be delivered to the judge  
303 having jurisdiction of the guardianship estate. The shelter  
304 order shall also require the parents to provide to the  
305 department and any other state agency or party designated by the  
306 court, within 28 days after entry of the shelter order, the  
307 financial information necessary to accurately calculate child  
308 support pursuant to s. 61.30.

309 (b) The court shall request that the parents consent to  
310 provide access to the child's medical records and provide  
311 information to the court, the department or its contract  
312 agencies, and any guardian ad litem or attorney for the child.  
313 If a parent is unavailable or unable to consent or withholds  
314 consent and the court determines access to the records and  
315 information is necessary to provide services to the child, the  
316 court shall issue an order granting access. The court may also  
317 order the parents to ~~The parent or legal guardian shall~~ provide  
318 all known medical information to the department and to any  
319 others granted access under this subsection.

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320       (c) The court shall request that the parents consent to  
321 provide access to the child's educational records and provide  
322 information to the court, the department or its contract  
323 agencies, and any guardian ad litem or attorney for the child.  
324 If a parent is unavailable or unable to consent or withholds  
325 consent and the court determines access to the records and  
326 information is necessary to provide services to the child, the  
327 court shall issue an order granting access. The court may  
328 appoint a surrogate parent or may refer the child to the  
329 district school board for appointment of a surrogate parent.

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

332       39.701 Judicial review.—

333       (8) The court and any citizen review panel shall take into  
334 consideration the information contained in the social services  
335 study and investigation and all medical, psychological, and  
336 educational records that support the terms of the case plan;  
337 testimony by the social services agency, the parent, the foster  
338 parent or legal custodian, the guardian ad litem or surrogate  
339 parent for educational decisionmaking if one has been appointed  
340 for the child, and any other person deemed appropriate; and any  
341 relevant and material evidence submitted to the court, including  
342 written and oral reports to the extent of their probative value.  
343 These reports and evidence may be received by the court in its  
344 effort to determine the action to be taken with regard to the  
345 child and may be relied upon to the extent of their probative  
346 value, even though not competent in an adjudicatory hearing. In  
347 its deliberations, the court and any citizen review panel shall  
348 seek to determine:

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

352 (b) If the parent has been advised of the right to have  
353 counsel present at the judicial review or citizen review  
354 hearings. If not so advised, the court or citizen review panel  
355 shall advise the parent of such right.

356 (c) If a guardian ad litem needs to be appointed for the  
357 child in a case in which a guardian ad litem has not previously  
358 been appointed or if there is a need to continue a guardian ad  
359 litem in a case in which a guardian ad litem has been appointed.

360 (d) Who holds the rights to make educational decisions for  
361 the child. If appropriate, the court may refer the child to the  
362 district school board for appointment of a surrogate parent or  
363 may itself appoint a surrogate parent under the Individuals with  
364 Disabilities Education Act and s. 39.0016.

365 (e)~~(d)~~ The compliance or lack of compliance of all parties  
366 with applicable items of the case plan, including the parents'  
367 compliance with child support orders.

368 (f)~~(e)~~ The compliance or lack of compliance with a  
369 visitation contract between the parent and the social service  
370 agency for contact with the child, including the frequency,  
371 duration, and results of the parent-child visitation and the  
372 reason for any noncompliance.

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

377 (h)~~(g)~~ Whether the child is receiving safe and proper care

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378 according to s. 39.6012, including, but not limited to, the  
379 appropriateness of the child's current placement, including  
380 whether the child is in a setting that is as family-like and as  
381 close to the parent's home as possible, consistent with the  
382 child's best interests and special needs, and including  
383 maintaining stability in the child's educational placement, as  
384 documented by assurances from the community-based care provider  
385 that:

386 1. The placement of the child takes into account the  
387 appropriateness of the current educational setting and the  
388 proximity to the school in which the child is enrolled at the  
389 time of placement.

390 2. The community-based care agency has coordinated with  
391 appropriate local educational agencies to ensure that the child  
392 remains in the school in which the child is enrolled at the time  
393 of placement.

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

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

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

404 (l)~~(k)~~ If amendments to the case plan are required.  
405 Amendments to the case plan must be made under s. 39.6013.

406 Section 5. Paragraph (f) of subsection (1) and paragraph

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407 (g) of subsection (4) of section 1003.21, Florida Statutes, are  
408 amended to read:

409 1003.21 School attendance.—

410 (1)

411 (f) Homeless children, as defined in s. 1003.01, and  
412 children who are known to the department, as defined in s.  
413 39.0016, must have access to a free public education and must be  
414 admitted to school in the school district in which they or their  
415 families live. School districts shall assist homeless children  
416 and children who are known to the department to meet the  
417 requirements of subsection (4) and s. 1003.22, as well as local  
418 requirements for documentation.

419 (4) Before admitting a child to kindergarten, the principal  
420 shall require evidence that the child has attained the age at  
421 which he or she should be admitted in accordance with the  
422 provisions of subparagraph (1)(a)2. The district school  
423 superintendent may require evidence of the age of any child whom  
424 he or she believes to be within the limits of compulsory  
425 attendance as provided for by law. If the first prescribed  
426 evidence is not available, the next evidence obtainable in the  
427 order set forth below shall be accepted:

428 (g) If none of these evidences can be produced, an  
429 affidavit of age sworn to by the parent, accompanied by a  
430 certificate of age signed by a public health officer or by a  
431 public school physician, or, if neither of these is available in  
432 the county, by a licensed practicing physician designated by the  
433 district school board, which certificate states that the health  
434 officer or physician has examined the child and believes that  
435 the age as stated in the affidavit is substantially correct. A

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436 homeless child, as defined in s. 1003.01, and a child who is  
437 known to the department, as defined in s. 39.0016, shall be  
438 given temporary exemption from this section for 30 school days.

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

441 1003.22 School-entry health examinations; immunization  
442 against communicable diseases; exemptions; duties of Department  
443 of Health.—

444 (1) Each district school board and the governing authority  
445 of each private school shall require that each child who is  
446 entitled to admittance to kindergarten, or is entitled to any  
447 other initial entrance into a public or private school in this  
448 state, present a certification of a school-entry health  
449 examination performed within 1 year prior to enrollment in  
450 school. Each district school board, and the governing authority  
451 of each private school, may establish a policy that permits a  
452 student up to 30 school days to present a certification of a  
453 school-entry health examination. A homeless child, as defined in  
454 s. 1003.01, and a child who is known to the department, as  
455 defined in s. 39.0016, shall be given a temporary exemption for  
456 30 school days. Any district school board that establishes such  
457 a policy shall include provisions in its local school health  
458 services plan to assist students in obtaining the health  
459 examinations. However, any child shall be exempt from the  
460 requirement of a health examination upon written request of the  
461 parent of the child stating objections to the examination on  
462 religious grounds.

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

464 (e) An authorized school official issues a temporary

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465 exemption, for a period not to exceed 30 school days, to permit  
466 a student who transfers into a new county to attend class until  
467 his or her records can be obtained. A homeless child, as defined  
468 in s. 1003.01, and a child who is known to the department, as  
469 defined in s. 39.0016, shall be given a temporary exemption for  
470 30 school days. The public school health nurse or authorized  
471 private school official is responsible for followup of each such  
472 student until proper documentation or immunizations are  
473 obtained. An exemption for 30 days may be issued for a student  
474 who enters a juvenile justice program to permit the student to  
475 attend class until his or her records can be obtained or until  
476 the immunizations can be obtained. An authorized juvenile  
477 justice official is responsible for followup of each student who  
478 enters a juvenile justice program until proper documentation or  
479 immunizations are obtained.

480 Section 7. This act shall take effect July 1, 2009.