

By the Committee on Governmental Oversight and Accountability;  
and Senator Detert

585-05759-09

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1                   A bill to be entitled  
2           An act relating to exceptional students; amending s.  
3           1003.57, F.S.; revising provisions relating to due  
4           process hearings for exceptional students; requiring  
5           that such hearings be conducted by an administrative  
6           law judge from the Division of Administrative Hearings  
7           pursuant to a contract with the Department of  
8           Education; providing that any party to a hearing  
9           related to gifted students may request that the  
10          findings or decision be reviewed by the district court  
11          of appeal; authorizing a district school board to  
12          consider a change in placement for a student who has a  
13          disability if the student engages in behavior that  
14          violates the district school board's code of student  
15          conduct; providing for the removal and placement of  
16          such student in an alternative educational setting for  
17          a limited period; specifying the grounds for removal;  
18          providing definitions for the terms "weapon" and  
19          "controlled substance"; creating s. 1003.571, F.S.;  
20          requiring that the State Board of Education comply  
21          with the Individuals with Disabilities Education Act  
22          after evaluating and determining that such act is  
23          consistent with certain principles; requiring that the  
24          State Board of Education adopt rules; amending s.  
25          1003.58, F.S.; conforming a cross-reference; providing  
26          an effective date.

27  
28   Be It Enacted by the Legislature of the State of Florida:  
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30 Section 1. Subsection (1) of section 1003.57, Florida  
31 Statutes, is amended to read:

32 1003.57 Exceptional students instruction.—

33 (1) (a) Each district school board shall provide for an  
34 appropriate program of special instruction, facilities, and  
35 services for exceptional students as prescribed by the State  
36 Board of Education as acceptable, including provisions that:

37 1.~~(a)~~ The district school board provide the necessary  
38 professional services for diagnosis and evaluation of  
39 exceptional students.

40 2.~~(b)~~ The district school board provide the special  
41 instruction, classes, and services, either within the district  
42 school system, in cooperation with other district school  
43 systems, or through contractual arrangements with approved  
44 private schools or community facilities that meet standards  
45 established by the commissioner.

46 3.~~(c)~~ The district school board annually provide  
47 information describing the Florida School for the Deaf and the  
48 Blind and all other programs and methods of instruction  
49 available to the parent of a sensory-impaired student.

50 4.~~(d)~~ The district school board, once every 3 years, submit  
51 to the department its proposed procedures for the provision of  
52 special instruction and services for exceptional students.

53 (b)~~(e)~~ A student may not be given special instruction or  
54 services as an exceptional student until after he or she has  
55 been properly evaluated, classified, and placed in the manner  
56 prescribed by rules of the State Board of Education. The parent  
57 of an exceptional student evaluated and placed or denied  
58 placement in a program of special education shall be notified of

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59 each such evaluation and placement or denial. Such notice shall  
60 contain a statement informing the parent that he or she is  
61 entitled to a due process hearing on the identification,  
62 evaluation, and placement, or lack thereof. Such hearings are  
63 ~~shall be exempt from the provisions of~~ ss. 120.569, 120.57, and  
64 286.011, except to the extent that the State Board of Education  
65 adopts rules establishing other procedures. ~~and~~ Any records  
66 created as a result of such hearings are ~~shall be~~ confidential  
67 and exempt from ~~the provisions of~~ s. 119.07(1). The hearing must  
68 be conducted by an administrative law judge from the Division of  
69 Administrative Hearings pursuant to a contract between the  
70 Department of Education and the Division of Administrative  
71 Hearings of the Department of Management Services. The decision  
72 of the administrative law judge is ~~shall be~~ final, except that  
73 any party aggrieved by the finding and decision rendered by the  
74 administrative law judge has ~~shall have~~ the right to bring a  
75 civil action in the state circuit court. In such an action, the  
76 court shall receive the records of the administrative hearing  
77 and shall hear additional evidence at the request of either  
78 party. In the alternative, in hearings conducted on behalf of a  
79 student who is identified as gifted, any party aggrieved by the  
80 finding and decision rendered by the administrative law judge  
81 has ~~shall have~~ the right to request a ~~an impartial~~ review of the  
82 administrative law judge's order by the district court of appeal  
83 as provided in ~~by~~ s. 120.68.

84 (c) Notwithstanding any law to the contrary, during the  
85 pendency of any proceeding conducted pursuant to this section,  
86 unless the district school board and the parents otherwise  
87 agree, the student shall remain in his or her then-current

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88 educational assignment or, if applying for initial admission to  
89 a public school, shall be assigned, with the consent of the  
90 parents, in the public school program until all such proceedings  
91 have been completed.

92 (d) ~~(f)~~ In providing for the education of exceptional  
93 students, the district school superintendent, principals, and  
94 teachers shall utilize the regular school facilities and adapt  
95 them to the needs of exceptional students to the maximum extent  
96 appropriate. Segregation of exceptional students shall occur  
97 only if the nature or severity of the exceptionality is such  
98 that education in regular classes with the use of supplementary  
99 aids and services cannot be achieved satisfactorily.

100 (e) ~~(g)~~ In addition to the services agreed to in a student's  
101 individual educational ~~education~~ plan, the district school  
102 superintendent shall fully inform the parent of a student having  
103 a physical or developmental disability of all available services  
104 that are appropriate for the student's disability. The  
105 superintendent shall provide the student's parent with a summary  
106 of the student's rights.

107 (f) School personnel may consider any unique circumstances  
108 on a case-by-case basis when determining whether a change in  
109 placement is appropriate for a student who has a disability and  
110 violates a district school board's code of student conduct.  
111 School personnel may remove and place such student in an interim  
112 alternative educational setting for not more than 45 school  
113 days, without regard to whether the behavior is determined to be  
114 a manifestation of the student's disability, if the student:

115 1. Carries a weapon to or possesses a weapon at school, on  
116 school premises, or at a school function under the jurisdiction

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117 of the school district;

118 2. Knowingly possesses or uses illegal drugs, or sells or  
119 solicits the sale of a controlled substance, while at school, on  
120 school premises, or at a school function under the jurisdiction  
121 of the school district; or

122 3. Has inflicted serious bodily injury upon another person  
123 while at school, on school premises, or at a school function  
124 under the jurisdiction of the school district.

125 (g) For purposes of paragraph (f), the term:

126 1. "Weapon" means a device, instrument, material, or  
127 substance, animate or inanimate, which is used for, or is  
128 readily capable of, causing death or serious bodily injury;  
129 however, this definition does not include a pocketknife having a  
130 blade that is less than 2 1/2 inches in length.

131 2. "Controlled substance" means a drug or other substance  
132 identified under Schedule I, Schedule II, Schedule III, Schedule  
133 IV, or Schedule V of the Controlled Substances Act, 21 U.S.C. s.  
134 812(c) and s. 893.02(4).

135 Section 2. Section 1003.571, Florida Statutes, is created  
136 to read:

137 1003.571 Instruction for exceptional students who have a  
138 disability.-

139 (1) The State Board of Education shall comply with the  
140 Individuals with Disabilities Education Act (IDEA), as amended,  
141 and its implementing regulations after evaluating and  
142 determining that the IDEA, as amended, and its implementing  
143 regulations are consistent with the following principles:

144 (a) Ensuring that all children who have disabilities are  
145 afforded a free and appropriate public education that emphasizes

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146 special education and related services designed to meet their  
147 unique needs and prepare them for further education, employment,  
148 and independent living;

149 (b) Ensuring that the rights of children who have  
150 disabilities and their parents are protected; and

151 (c) Assessing and ensuring the effectiveness of efforts to  
152 educate children who have disabilities.

153 (2) The State Board of Education shall adopt rules pursuant  
154 to ss. 120.536(1) and 120.54 to implement this section.

155 Section 3. Subsection (3) of section 1003.58, Florida  
156 Statutes, is amended to read:

157 1003.58 Students in residential care facilities.—Each  
158 district school board shall provide educational programs  
159 according to rules of the State Board of Education to students  
160 who reside in residential care facilities operated by the  
161 Department of Children and Family Services or the Agency for  
162 Persons with Disabilities.

163 (3) The district school board shall have full and complete  
164 authority in the matter of the assignment and placement of such  
165 students in educational programs. The parent of an exceptional  
166 student shall have the same due process rights as are provided  
167 under s. 1003.57(1)(b) ~~s. 1003.57(1)(e)~~.

168  
169 Notwithstanding the provisions herein, the educational program  
170 at the Marianna Sunland Center in Jackson County shall be  
171 operated by the Department of Education, either directly or  
172 through grants or contractual agreements with other public or  
173 duly accredited educational agencies approved by the Department  
174 of Education.

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Section 4. This act shall take effect July 1, 2009.