

ENROLLED
HB 7089

2009 Legislature

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

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsection (1) of section 1003.57, Florida

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29 Statutes, is amended to read:

30 1003.57 Exceptional students instruction.--

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

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

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

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

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

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

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

83 (c) Notwithstanding any law to the contrary, during the
84 pendency of any proceeding conducted pursuant to this section,

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85 unless the district school board and the parents otherwise
86 agree, the student shall remain in his or her then-current
87 educational assignment or, if applying for initial admission to
88 a public school, shall be assigned, with the consent of the
89 parents, in the public school program until all such proceedings
90 have been completed.

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

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

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

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113 a manifestation of the student's disability, if the student:
 114 1. Carries a weapon to or possesses a weapon at school, on
 115 school premises, or at a school function under the jurisdiction
 116 of the school district;
 117 2. Knowingly possesses or uses illegal drugs, or sells or
 118 solicits the sale of a controlled substance, while at school, on
 119 school premises, or at a school function under the jurisdiction
 120 of the school district; or
 121 3. Has inflicted serious bodily injury upon another person
 122 while at school, on school premises, or at a school function
 123 under the jurisdiction of the school district.
 124 (g) For purposes of paragraph (f), the term:
 125 1. "Controlled substance" means a drug or other substance
 126 identified under Schedule I, Schedule II, Schedule III, Schedule
 127 IV, or Schedule V of the Controlled Substances Act, 21 U.S.C. s.
 128 812(c) and s. 893.02(4).
 129 2. "Weapon" means a device, instrument, material, or
 130 substance, animate or inanimate, which is used for, or is
 131 readily capable of, causing death or serious bodily injury;
 132 however, this definition does not include a pocketknife having a
 133 blade that is less than 2 1/2 inches in length.
 134 Section 2. Section 1003.571, Florida Statutes, is created
 135 to read:
 136 1003.571 Instruction for exceptional students who have a
 137 disability.--
 138 (1) The State Board of Education shall comply with the
 139 Individuals with Disabilities Education Act (IDEA), as amended,
 140 and its implementing regulations after evaluating and

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141 determining that the IDEA, as amended, and its implementing
 142 regulations are consistent with the following principles:

143 (a) Ensuring that all children who have disabilities are
 144 afforded a free and appropriate public education that emphasizes
 145 special education and related services designed to meet their
 146 unique needs and prepare them for further education, employment,
 147 and independent living;

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

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

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

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

156 1003.58 Students in residential care facilities.--Each
 157 district school board shall provide educational programs
 158 according to rules of the State Board of Education to students
 159 who reside in residential care facilities operated by the
 160 Department of Children and Family Services or the Agency for
 161 Persons with Disabilities.

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

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

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