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

26  
27 Be It Enacted by the Legislature of the State of Florida:  
28

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

31 39.0016 Education of abused, neglected, and abandoned  
 32 children; agency agreements; children having or suspected of  
 33 having a disability.--

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

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

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

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

45 (2) AGENCY AGREEMENTS.--

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

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

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

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

63 a.1. Enroll children known to the department in school.

64 The agreement shall provide for continuing the enrollment of a  
65 child known to the department at the same school, if possible,  
66 with the goal of avoiding disruption of education.

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

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

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

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

84 a.1. Provide the department with a general listing of the

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

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

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

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

111 3.(e) A requirement that the department and the district  
112 school board shall cooperate in accessing the services and

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113 supports needed for a child known to the department who has or  
114 is suspected of having a disability to receive an appropriate  
115 education consistent with the Individuals with Disabilities  
116 Education Act and state implementing laws, rules, and  
117 assurances. Coordination of services for a child known to the  
118 department who has or is suspected of having a disability may  
119 include:

120 ~~a.1.~~ Referral for screening.

121 ~~b.2.~~ Sharing of evaluations between the school district  
122 and the department where appropriate.

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

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

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

139 ~~f.6.~~ For each child known to the department 14 years of  
140 age and older, transition planning by the department and all

141 providers, including the department's independent living program  
 142 staff, to meet the requirements of the local school district for  
 143 educational purposes.

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

156 (3) CHILDREN HAVING OR SUSPECTED OF HAVING A DISABILITY.--

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

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

167 a. Having high expectations for these children and  
 168 ensuring their access to the general education curriculum in the

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169 regular classroom, to the maximum extent possible.

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

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

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

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

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

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

196 c. The child is residing in a licensed group care or

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197 therapeutic setting wherein the Individuals with Disabilities  
198 Education Act prohibits staff from acting as a surrogate parent  
199 for educational decisionmaking.

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

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

221 4. A surrogate parent appointed by the district school  
222 board must be accepted by any subsequent school without regard  
223 to where the child is receiving residential care so that a  
224 single surrogate parent can follow the education of the child



225 during his or her entire time in state custody.

226 5. For a child known to the department, the responsibility  
 227 to appoint a surrogate parent resides with both the district  
 228 school board and the court with jurisdiction over the child. If  
 229 the court elects to appoint a surrogate parent, notice shall be  
 230 provided as soon as practicable to the child's school. At any  
 231 time that the court determines that it is in the best interests  
 232 of a child to remove a surrogate parent, the court may appoint a  
 233 new surrogate parent for educational decisionmaking purposes for  
 234 that child.

235 (4) (5) TRAINING.--The department shall incorporate an  
 236 education component into all training programs of the department  
 237 regarding children known to the department. Such training shall  
 238 be coordinated with the Department of Education and the local  
 239 school districts. The department shall offer opportunities for  
 240 education personnel to participate in such training. Such  
 241 coordination shall include, but not be limited to, notice of  
 242 training sessions, opportunities to purchase training materials,  
 243 proposals to avoid duplication of services by offering joint  
 244 training, and incorporation of materials available from the  
 245 Department of Education and local school districts into the  
 246 department training when appropriate. The department training  
 247 components shall include:

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

251 (b) Training for parents in cases in which reunification  
 252 is the goal, or for preadoptive parents when adoption is the

253 | goal, so that such parents learn how to access the services the  
 254 | child known to the department needs and the importance of their  
 255 | involvement in the education of the child known to the  
 256 | department.

257 | (c) Training for caseworkers and foster parents to include  
 258 | information on the right of the child known to the department to  
 259 | an education, the role of an education in the development and  
 260 | adjustment of a child known to the department, the proper ways  
 261 | to access education and related services for the child known to  
 262 | the department, and the importance and strategies for parental  
 263 | involvement in education for the success of the child known to  
 264 | the department.

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

272 | Section 2. Paragraph (p) of subsection (2) of section  
 273 | 39.202, Florida Statutes, is amended to read:

274 | 39.202 Confidentiality of reports and records in cases of  
 275 | child abuse or neglect.--

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

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

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

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

291 39.402 Placement in a shelter.--

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

307 (b) The court shall request that the parents consent to  
 308 provide access to the child's medical records and provide

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

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

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

330 39.701 Judicial review.--

331 (8) The court and any citizen review panel shall take into  
332 consideration the information contained in the social services  
333 study and investigation and all medical, psychological, and  
334 educational records that support the terms of the case plan;  
335 testimony by the social services agency, the parent, the foster  
336 parent or legal custodian, the guardian ad litem or surrogate

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337 parent for educational decisionmaking if one has been appointed  
338 for the child, and any other person deemed appropriate; and any  
339 relevant and material evidence submitted to the court, including  
340 written and oral reports to the extent of their probative value.  
341 These reports and evidence may be received by the court in its  
342 effort to determine the action to be taken with regard to the  
343 child and may be relied upon to the extent of their probative  
344 value, even though not competent in an adjudicatory hearing. In  
345 its deliberations, the court and any citizen review panel shall  
346 seek to determine:

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

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

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

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

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

365 compliance with child support orders.

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

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

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

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

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

392 (i)~~(h)~~ A projected date likely for the child's return home

393 or other permanent placement.

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

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

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

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

407 1003.21 School attendance.--

408 (1)

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

417 (4) Before admitting a child to kindergarten, the  
 418 principal shall require evidence that the child has attained the  
 419 age at which he or she should be admitted in accordance with the  
 420 provisions of subparagraph (1)(a)2. The district school

421 superintendent may require evidence of the age of any child whom  
 422 he or she believes to be within the limits of compulsory  
 423 attendance as provided for by law. If the first prescribed  
 424 evidence is not available, the next evidence obtainable in the  
 425 order set forth below shall be accepted:

426 (g) If none of these evidences can be produced, an  
 427 affidavit of age sworn to by the parent, accompanied by a  
 428 certificate of age signed by a public health officer or by a  
 429 public school physician, or, if neither of these is available in  
 430 the county, by a licensed practicing physician designated by the  
 431 district school board, which certificate states that the health  
 432 officer or physician has examined the child and believes that  
 433 the age as stated in the affidavit is substantially correct. A  
 434 homeless child, as defined in s. 1003.01, and a child who is  
 435 known to the department, as defined in s. 39.0016, shall be  
 436 given temporary exemption from this section for 30 school days.

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

439 1003.22 School-entry health examinations; immunization  
 440 against communicable diseases; exemptions; duties of Department  
 441 of Health.--

442 (1) Each district school board and the governing authority  
 443 of each private school shall require that each child who is  
 444 entitled to admittance to kindergarten, or is entitled to any  
 445 other initial entrance into a public or private school in this  
 446 state, present a certification of a school-entry health  
 447 examination performed within 1 year prior to enrollment in  
 448 school. Each district school board, and the governing authority



449 of each private school, may establish a policy that permits a  
450 student up to 30 school days to present a certification of a  
451 school-entry health examination. A homeless child, as defined in  
452 s. 1003.01, and a child who is known to the department, as  
453 defined in s. 39.0016, shall be given a temporary exemption for  
454 30 school days. Any district school board that establishes such  
455 a policy shall include provisions in its local school health  
456 services plan to assist students in obtaining the health  
457 examinations. However, any child shall be exempt from the  
458 requirement of a health examination upon written request of the  
459 parent of the child stating objections to the examination on  
460 religious grounds.

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

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

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477 | immunizations are obtained.

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