

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Education

BILL: SB 1108

INTRODUCER: Senators Gardiner and Thrasher

SUBJECT: Exceptional Student Education

DATE: March 15, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Klebacha	ED	<b>Pre-meeting</b>
2.	_____	_____	AED	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 1108 provides mechanisms for increased parental involvement, clarifies student eligibility for services, specifies school and program accountability requirements, and expands charter school programs.

The bill provides for the involvement of parents of students with disabilities in meetings, including those related to decisions regarding assessment and placement. The bill also requires school districts to provide services to eligible home school students who enroll in a public school.

The bill defines an Exceptional Student Education Center and specifies the accountability requirements that apply to them. The bill establishes requirements for the reimbursement of federal funds to charter schools. Finally, the bill requires applicants for renewal of a professional educator certificate to earn a minimum of one college credit or the equivalent inservice points in the area of instruction for teaching students with disabilities.

This bill substantially amends sections 1002.20, 1002.33, 1002.41, 1003.57, 1003.58, and 1012.585, and creates sections 1003.5715, 1003.572, and 1008.3415 of the Florida Statutes.

**II. Present Situation:**

Federal law requires states to make a free appropriate public education available to all children with disabilities residing in the state between the ages of 3 and 21, including children with

disabilities who have been suspended or expelled from school.<sup>1</sup> As the state educational agency, the Department of Education (DOE) must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.<sup>2</sup>

For each eligible student or child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, an individual educational plan (IEP) or individual family support plan must be developed, reviewed, and revised.<sup>3</sup> In developing an IEP, the IEP team is required to consider a child's strengths, concerns of the parents for enhancing education, results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child, as well as special factors.<sup>4</sup>

States receiving Individuals with Disabilities Education (IDEA) funds must comply with detailed procedural requirements, including identifying, evaluating, and making placements for students with disabilities and for developing an individualized education program for each student.<sup>5</sup> States must also provide students with disabilities and their parents with certain procedural safeguards, including: notice of any proposal or refusal to change the student's identification, evaluation, or educational placement; the opportunity to present a complaint and to have an impartial due process hearing; and the right to keep the student in his or her current educational placement pending administrative or judicial review proceedings.<sup>6</sup> A student with a disability and his or her parents also have the right to bring a civil action in state court, if they are aggrieved by the decision of the state administrative hearing officer relating to a due process hearing or alternative placement.<sup>7</sup>

### **Exceptional Student Education (ESE) Centers**

There is no definition in state law or rules for an "exceptional education student (ESE) center."<sup>8</sup> The Department of Education (DOE) uses federal reporting criteria to define ESE center schools.<sup>9</sup> The term "educational environment" is a classification that indicates the extent to which students and children with disabilities who are receiving services under federal law<sup>10</sup> attend educational programs with their peers without disabilities.<sup>11</sup> For children and students who do not attend educational programs with a majority of peers without disabilities, the educational

<sup>1</sup> 20 U.S.C. s.1400 et. seq., as amended by P.L. 108-446; 34 C.F.R. s. 300.17.

<sup>2</sup> 34 C.F.R. s. 300.149.

<sup>3</sup> Rule 6A-6.03028(3), F.A.C.

<sup>4</sup> 20 U.S.C. s. 1414(d)(3)(A) and (B).

<sup>5</sup> 20 U.S.C. § 1412. See <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalArea%2C12%2C>. (last visited March 15, 2013.)

<sup>6</sup> 20 U.S.C. § 1415 (b), (c), (d), (e),(f), and (j). There is an exception to keeping a student in his or her current placement if it involves an alternative educational setting.

<sup>7</sup> 20 U.S.C. § 1415(i)(2)

<sup>8</sup> There is a reference to exceptional education student centers in s. 1011.62(1)(f), F.S.

<sup>9</sup> Florida DOE, May 8, 2012. See [http://www.fldoe.org/board/meetings/2012\\_05\\_09/doc3.pdf](http://www.fldoe.org/board/meetings/2012_05_09/doc3.pdf). Telephone conversation with DOE, October 26, 2012.

<sup>10</sup> 20 U.S.C. § 1400 et seq., as amended by the Individuals with Disabilities Education Improvement Act of 2004, P.L.108-446.

<sup>11</sup> *Individuals with Disabilities Education Act (IDEA) Part B Data Dictionary*, Data Accountability Center, under contract with the U.S. Department of Education, Office of Special Education Programs, February 2012. See <https://www.ideadata.org/618DataCollection.asp>.

environment reflects the setting in which they receive special education and related services. The data collected includes the percent of children with individual education plans (IEPs) who are ages 6 through 21 and served inside the regular class 80 percent or more of the day, inside the regular class less than 40 percent of the day, and in separate schools, residential facilities, or homebound or hospital placements.<sup>12</sup>

In May 2012, the State Board of Education adopted the Commissioner of Education's recommendation for student performance and learning gains to be attributed to the home school if the ESE center chooses a school improvement rating.<sup>13</sup>

According to the DOE's June 2012 workshop materials on differentiated accountability:<sup>14</sup>

- ESE centers will now be eligible to receive a school grade with full inclusion of students with disabilities in performance measures.
- ESE centers are treated similar to alternative schools for accountability purposes in that the centers are able to select a regular school grade or a school improvement rating.<sup>15</sup>
- A separate process for identifying ESE centers as alternative schools has been processed through the DOE.
- If the ESE center elects to receive a school improvement rating instead of a school grade, the scores for ESE center students are not only used in the ESE center's school improvement rating but are also credited back to home schools for inclusion in performance measures and learning gains for the home schools' grades.
- For alternative schools that are charter schools, the scores for students are not credited back to home schools. This is new for 2011-2012.
- For ESE centers that are charter schools, scores for students are not credited back to home schools.

The DOE's July 2012 technical assistance paper for calculating school improvement ratings states that beginning in 2011-2012, ESE centers will have the option of receiving a school grade or a school improvement rating.<sup>16</sup>

### III. Effect of Proposed Changes:

#### Parental Involvement

The bill prohibits districts from interfering with meetings in which a parent invites another person to attend (IEP meetings, for example). Private instructional personnel (e.g., a physical therapist) who are employed by the parent or under contract may observe a student in a public

<sup>12</sup> Florida's Part B State Performance Plan for 2005-2012, Florida DOE. See <http://www.fldoe.org/ese/pdf/RevisedSPP.pdf>.

<sup>13</sup> Approval of minutes of February 28, March 27, May 9-10, and May 15, 2012, State Board of Education meetings. The State Board also recommended and adopted, as a priority of the legislative agenda, a change to the law to exempt the performance results of 3,000 students in emergent levels one through three on the Florida Alternate Assessment from applying to the home school grade. See [http://www.fldoe.org/board/meetings/2012\\_07\\_17/minutes.pdf](http://www.fldoe.org/board/meetings/2012_07_17/minutes.pdf). The meeting materials indicate that this recommendation required a statutory change.

<sup>14</sup> Florida's School Grading System 2011-2012 Changes, Differentiated Accountability Academy/Workshop, DOE. June 21, 2012. See [http://www.flbsi.org/ppt/Leadership\\_VII-School\\_Grades.ppt](http://www.flbsi.org/ppt/Leadership_VII-School_Grades.ppt).

<sup>15</sup> Current law (s. 1008.341, F.S.) defines an alternative school as a school that provides dropout prevention and academic intervention services pursuant to s. 1003.53, F.S.

<sup>16</sup> 2012 Guide to Calculating Alternative School Improvement Ratings, DOE, July 2012. See <http://schoolgrades.fldoe.org/pdf/1112/AltSchoolRatingGuide2012.pdf>.

school setting or provide services in the educational setting at a time agreed upon by the private instructional personnel and the school.

Parental consent on IEPs is required for ESE center placement, Florida Alternate Assessment<sup>17</sup> and instruction decisions, unless the district documents that reasonable efforts have been made to obtain consent, the parent failed to respond, or approval was obtained through due process. An IEP team meeting must be held to make these decisions.

Under the bill, a student remains in his or her current educational assignment, pending the resolution of due process proceedings for a complaint, unless the parent and district otherwise agree. This provision substantively codifies current federal law.

### **Eligibility for Services**

Districts are required to provide ESE education related services to eligible home school students who enroll in a public school. For this purpose, the bill provides for funding through the Florida Education Finance Program (FEFP). According to the DOE, a school district is not obligated to provide services to children in home education programs. If the parent of a child currently enrolled in a home education program chooses to enroll the child full time in a public school, the school district must ensure that a free and appropriate public education (FAPE) is made available to the child.<sup>18</sup>

### **Accountability**

The bill defines an ESE center, as well as other settings (e.g., resource rooms) and provides for the choice of a school grade or school improvement rating, at the discretion of the center. The bill specifies that the student achievement scores and learning gains of students who have only been enrolled in or attended an ESE center for grades K -12 are not included in the home school's grade if the student receives a rating of "emergent," which is a performance category on the FAA. The accountability mechanism in the bill codifies the DOE's practice of authorizing a center to select a school grade or school improvement rating without defining the center within the statutory definition of an alternative school.

### **Program Assessment**

The bill requires best practices assessments related to inclusion once every 3 years. A district and school would be required to complete an assessment with a Florida Inclusion Network facilitator,

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<sup>17</sup> All Florida students participate in the state's assessment and accountability system. The Florida Alternate Assessment is designed for students whose participation in the general statewide assessment (FCAT, FCAT 2.0, and EOC) is not appropriate even with accommodations. This assessment measures student academic performance on the Next Generation Sunshine State Standards Access Points (NGSSS-AP) in Language Arts, Mathematics, and Science at three levels of complexity; participatory, supported, and independent. Access Points are academic expectations written specifically for students with significant cognitive disabilities. As part of the Next Generation Sunshine State Standards, access points reflect the essence or core intent of the standards that apply to all students in the same grade, but at reduced levels of complexity. See <http://www.fldoe.org/asp/altassessment.asp>.

<sup>18</sup> *Home Education and Exceptional Student Education Services: Frequently Asked Questions*, DOE, readable at: [http://www.floridaschoolchoice.org/information/home\\_education/files/ESE\\_faqs.pdf](http://www.floridaschoolchoice.org/information/home_education/files/ESE_faqs.pdf).

which provides learning opportunities, consultation, information, and support for educators, parents, and community members.<sup>19</sup>

### **Federal Funding**

The bill establishes requirements for the reimbursement of federal funds to charter schools, including Title I, Title II, and IDEA funds. The sponsor must reimburse the charter school on a monthly basis for all invoices submitted by charter schools for federal funds available for the benefit of charter schools and students.

### **Renewal of Professional Educator Certificate**

The bill also requires applicant for renewal of a professional educator certificate to earn a minimum of one college credit or the equivalent inservice points in the area of instruction for teaching students with disabilities. The requirement may not, however, add to the total hours required by the department for continuing education or inservice training.

## **IV. Constitutional Issues:**

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

## **V. Fiscal Impact Statement:**

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

### C. Government Sector Impact:

The costs, if any, are indeterminate.

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<sup>19</sup> See

[http://www.floridainclusionnetwork.com/Research\\_Centers/CRSRL/Florida\\_Inclusion\\_Network/Home/FIN\\_Facilitator\\_Directory.aspx](http://www.floridainclusionnetwork.com/Research_Centers/CRSRL/Florida_Inclusion_Network/Home/FIN_Facilitator_Directory.aspx).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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