

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Pre-K - 12 Education

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BILL: CS/SB 1368

INTRODUCER: Education Committee and Senator Perry and others

SUBJECT: Exceptional Students

DATE: April 18, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1368 removes the option for the school district receiving an exceptional student with a disability, who resides in a residential facility, to decline to provide or contract for educational instruction. Additionally, the bill:

- Authorizes a parent to request and be granted permission for a student's absence from school for treatment of autism spectrum disorder by a licensed health care practitioner.
- Requires each district school board to adopt an attendance policy authorizing a student's absence for treatment of autism spectrum disorder.
- Revises an exemption relating to parental responsibility for nonattendance of a student to include treatment for autism spectrum disorder.

The bill has no impact on state revenues or expenditures.

The bill takes effect July 1, 2017.

## II. Present Situation:

### Exceptional Student Instruction

Educational Student Education (ESE) is specially designed instruction and related services that are provided to students with disabilities and students who are identified as gifted.<sup>1</sup> Student enrollment in ESE programs is one of the factors considered in determining the funding a school district receives.<sup>2</sup>

The Individuals with Disabilities Education Act (IDEA) requires school districts to make free appropriate public education (FAPE) available to such students ages three through 21.<sup>3</sup> A FAPE must include special education and related services<sup>4</sup> provided by the public school district at no cost to the parent, which meet the standards of the state and are in conformity with the student's Individualized Education Plan (IEP).<sup>5</sup>

Each district school board must provide an appropriate program of special instruction, facilities and services for exceptional students.<sup>6</sup> Each district program must:<sup>7</sup>

- Provide the necessary professional services for diagnosis and evaluation of exceptional students.
- Provide the special instruction, classes, and services within the district school system, in cooperation with the other district school systems or through contractual arrangements with the approved private schools or community facilities.
- Provide, on an annual basis, information describing all programs and methods of instruction available to parents of a sensory-impaired student.
- Provide instruction to homebound or hospitalized students in accordance with the law<sup>8</sup> and rules of the State Board of Education.

An exceptional student with a disability who resides in a residential facility and receives special instruction or services is considered a resident of the state in which the student's parent is a resident.<sup>9</sup> The cost of such instruction, facilities and services for a nonresident student with a disability must be provided by the placing authority in the student's state of residence, such as a public school entity, other placing authority or parent.<sup>10</sup> A nonresident student with a disability

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<sup>1</sup> Section 1003.57(1)(b), F.S.; Rule 6A-6.03411(1)(m)-(n), F.A.C.

<sup>2</sup> See s. 1011.62(1)(c), F.S.

<sup>3</sup> 20 U.S.C. s. 1400(d)(1)(A); 34 C.F.R. s. 300.101; Rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.

<sup>4</sup> "Related services" means "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes." "Related services" also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34(a).

<sup>5</sup> 34 C.F.R. s. 300.17; Rule 6A-6.03411(1)(p), F.A.C. An individualized education plan means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the IDEA. 20 U.S.C. s. 1414(d).

<sup>6</sup> Section 1003.57(1)(b), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at (1)(b)4.

<sup>9</sup> *Id.* at (2)(a)

<sup>10</sup> *Id.*

may not be reported by any school district for full-time equivalent student funding in the Florida Education Finance Program.<sup>11</sup>

Within 10 business days after an exceptional student is placed in a residential care facility by an agency,<sup>12</sup> the agency or private residential care facility licensed by the agency, as appropriate, must provide written notification of the placement to the school district where the student is currently counted for funding and the receiving school district.<sup>13</sup> The exceptional student must be enrolled in school and receive a FAPE, special education, and related services while the notice and procedures regarding payment are pending.<sup>14</sup>

Within 10 business days after receiving the notification, the receiving school district must review the student's IEP to determine whether it can be implemented by the receiving school district or by a provider or facility under contract with the receiving school district.<sup>15</sup> The receiving school district must:<sup>16</sup>

- Provide educational instruction to the student;
- Contract with another provider or facility to provide the educational instruction;
- Contract with the private residential care facility in which the student resides to provide the educational instruction; or
- Decline to provide or contract for educational instruction.

If the receiving school district declines to provide or contract for the educational instruction, the school district in which the legal residence of the student is located must provide or contract for the educational instruction to the student.<sup>17</sup> The school district that provides educational instruction or contracts to provide educational instruction must report the student for funding purposes.<sup>18</sup>

### **Public School Attendance Policies**

Florida law directs district school boards to establish attendance policies defining excused or unexcused absences or tardiness.<sup>19</sup> Specific criteria for determining whether an absence or tardiness is excused or unexcused are determined by the district school board.<sup>20</sup> The parent of a student who is absent from school must justify the absence, and the absence is evaluated based on the school board's attendance policies.<sup>21</sup> If a student is continually sick and repeatedly absent from school, state law requires the student to be under a physician's supervision in order for the

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<sup>11</sup> *Id.*

<sup>12</sup> "Agency" means the Department of Children Families, the Agency for Persons with Disabilities, and the Agency for Healthcare Administration. Section 1003.57(3)(a).

<sup>13</sup> *Id.* at (3)(b).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at (3)(c).

<sup>16</sup> *Id.*

<sup>17</sup> Section 1003.57(3)(c), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 1003.24, F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 1003.26, F.S.

absences to be excused.<sup>22</sup> In such cases, the physician's excuse justifies absences beyond the maximum number of days permitted under the district school board's attendance policy.<sup>23</sup>

State law and state board rule also authorize a public school to grant permission to students, in accordance with the school district's rules, to be absent from school for religious instruction, religious holidays or because religious tenets forbid secular activity during the school day.<sup>24</sup>

### III. Effect of Proposed Changes:

Section 4 removes the option for the school district receiving an exceptional student with a disability, who resides in a residential facility, to decline to provide or contract for educational instruction. Accordingly, this section facilitates a seamless transition for an exceptional student with a disability who is placed in a residential facility by requiring the receiving district to provide a free and appropriate education as required under federal law.

The bill also requires changes to school district attendance policies. Specifically,

- Section 1 requires each district school board to adopt an attendance policy authorizing a student's absence for treatment of autism spectrum disorder.
- Section 2 authorizes a parent to request and be granted permission for a student's absence from school for treatment of autism spectrum disorder by a licensed health care practitioner, which includes, but is not limited to, applied behavior analysis, speech therapy, and occupational therapy.
- Section 3 revises an exemption relating to parental responsibility for nonattendance of a student to include treatment for autism spectrum disorder.

As a result, the bill facilitates access to specialized therapy and treatment by requiring school districts to provide attendance allowances for students with autism spectrum disorder who need these services.

The bill takes effect July 1, 2017.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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<sup>22</sup> Section 1003.24(4), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Sections 1002.20(2)(c) and 1003.21(2)(b), F.S.; Rule 6A-1.09514(1) and (2), F.A.C.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill has no impact on state revenues or expenditures.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections the Florida Statutes: 1002.20, 1003.21, 1003.24 and 1003.57.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

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

**CS by Education on April 3, 2017:**

The committee substitute adds to the bill provisions that:

- Authorizes a parent to request and be granted permission for a student's absence from school for treatment of autism spectrum disorder by a licensed health care practitioner.
- Requires each district school board to adopt an attendance policy authorizing a student's absence for treatment of autism spectrum disorder.
- Revises an exemption relating to parental responsibility for nonattendance of a student to include treatment for autism spectrum disorder.

## B. Amendments:

None.