

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 371 Assistive Technology Devices

**SPONSOR(S):** Ausley

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 772

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Innovation Subcommittee	14 Y, 0 N	Dehmer	Healy
2) Education Committee	18 Y, 0 N	Dehmer	Hassell

### SUMMARY ANALYSIS

Federal law defines an assistive technology device as any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability and requires the school to meet a student's individual education plan (IEP) requirements regarding assistive technology. If the student moves from one school to another within the district, the assistive technology device must be provided at the new school. Whether or not a student may take his or her assistive technology device home is determined on an individual basis and should be specified in the IEP.

Certain agencies are required by law to enter into interagency agreements, as appropriate, to ensure the transaction of assistive technology devices in accordance with the student's individualized family support plan, individual support plan or IEP.

The bill revises provisions related to the use of an assistive technology device by students with disabilities by:

- clarifying that access to and use of the assistive technology device is essential for a student moving from school to home and community;
- specifying an individual work plan as one of the plans that may serve as the basis for issuing an assistive technology device to a student; and
- requiring the Office of Independent Education and Parental Choice, within the Florida Department of Education, to enter into interagency agreements with specified agencies, as appropriate, for the transaction of assistive technology devices.

There is no fiscal impact to the state.

The bill has an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Federal law defines an assistive technology device as any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.<sup>1</sup> The term does not include a medical device that is surgically implanted or the replacement of such device.<sup>2</sup> Federal regulations require each federal public agency to ensure that assistive technology devices are made available to a child with a disability under certain circumstances.<sup>3</sup> Moreover, in order to receive federal assistance under the Assistive Technology Act, a state must assure the U.S. Secretary of Education that the state complies with the federal regulations.<sup>4</sup>

Florida law specifies assistive technology devices as manual wheelchairs, motorized wheelchairs, motorized scooters, voice-synthesized computer modules, optical scanners, talking software, braille printers, environmental control devices for use by a person with quadriplegia, motor vehicle adaptive transportation aids, devices that enable persons with severe speech disabilities to in effect speak, personal transfer systems, and specialty beds, including a demonstrator, that a consumer purchases or accepts transfer of in this state for use by a person with a disability.<sup>5</sup>

##### Special Education Services

Special education services (SES) means specially designed instruction and related services that are provided to exceptional students.<sup>6</sup> Florida law specifies the disabilities that qualify a student for SES.<sup>7</sup> The U.S. Individuals with Disabilities Education Act (IDEA) requires school districts to make a free appropriate public education (FAPE) available to such students ages 3 through 21.<sup>8</sup> A school district, at its discretion, may provide services to eligible children with disabilities below 3 years of age.<sup>9</sup> A FAPE must include special education and related services<sup>10</sup> that are provided by the public school system at

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<sup>1</sup> 20 U.S.C. s. 1401(1)(A).

<sup>2</sup> *Id.* at 1401(1)(B).

<sup>3</sup> 34 C.F.R. s. 300.105(a).

<sup>4</sup> *Id.* at 300.101.

<sup>5</sup> Section 427.802(1), F.S. A person with a disability means any person who has one or more permanent physical or mental limitations that restrict his or her ability to perform the normal activities of daily living and impede his or her capacity to live independently. Section 427.802(2), F.S.

<sup>6</sup> Section 1003.01(3)(b), F.S. Exceptional student means any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who are gifted and students with disabilities who have an intellectual disability; autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; another health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including but not limited to dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in State Board of Education rules pursuant to law. Section 1003.01(3)(a), F.S.

<sup>7</sup> Section 1003.01(3)(a)-(b), F.S.

<sup>8</sup> 20 U.S.C. s. 1400(d)(1)(A); 24 C.F.R. s. 300.101; Rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.

<sup>9</sup> Rules 6A-6.0331 and 6A-6.03026, F.A.C.

<sup>10</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 health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34(a).

no cost to the parent, that meet the standards of the state, and that are in conformity with the student's individual education plan (IEP).<sup>11</sup>

### Individual Education Plans

For each eligible child with a disability served by a school district, or other state agency that provides special education and related services directly, by contract, or through other arrangements, an IEP or individual family support plan must be developed, reviewed and revised.<sup>12</sup>

An IEP team must meet to develop a plan for the student's needs within 30 days of determining a student's eligibility for SES.<sup>13</sup> The multidisciplinary IEP team includes school and district staff and other experts, if necessary.<sup>14</sup> Parents also participate in the plan development, which may not be implemented without parental consent to a student's initial placement into the SES program.<sup>15</sup>

The IEP sets forth a child's academic achievement and functional performance, describes how the child will be included in the general education curriculum, establishes annual goals for the child and describes how those goals will be measured, directs what special education and related services are needed, describes how the child will be appropriately assessed, including the use of alternate assessments, and determines what accommodations may be appropriate for the child's instruction and assessment.<sup>16</sup> All IEP teams must consider whether a student with disability requires assistive technology devices and services.<sup>17</sup>

### Use and Transfer of Devices

Federal law requires the school to meet the student's IEP requirements regarding assistive technology.<sup>18</sup> If the student moves from one school to another school within the district, the assistive technology device must be provided at the new school.<sup>19</sup> The same device does not necessarily need to follow the student, but the transfer of assistive devices from school to school is encouraged because students benefit from continued use of the same device.<sup>20</sup> If the student moves to another district, federal regulation provides that agencies or districts make the equipment available for use in other districts, until the new district adopts the student's prior IEP or executes a new IEP.<sup>21</sup>

Whether or not a student may take his or her assistive technology device home is determined on an individual basis and should be specified in the IEP.<sup>22</sup> If the student requires assistive technology in order to complete homework assignments or practice skills that require the device, such as communication or socialization, it should be specified in the IEP.<sup>23</sup> Not all assistive technology may be required for home use.<sup>24</sup> Use of the assistive technology device over the summer is also determined on an individual basis and should be specified in the IEP.<sup>25</sup>

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<sup>11</sup> 34 C.F.R. s. 300.17; Rule 6A-6.03411(1)(p), F.A.C.

<sup>12</sup> Rule 6A-6.03028(3), F.A.C.

<sup>13</sup> Rules 6A-6.03028(3)(f) and 6A-6.030190(6)(b), F.A.C.

<sup>14</sup> Rules 6A.03028(3)(c), 6A-6.030191(3), and 6A-6.03029(6), F.A.C.

<sup>15</sup> Rule 6A-6.0331(9), F.A.C.

<sup>16</sup> Rules 6A-6.03028(3)(h), 6A-6.03029(3), and 6A-6.030191(4), F.A.C.

<sup>17</sup> 34 C.F.R. s. 300.324(a)(2)(v); Rule 6A-6.03028(3)(g)11., F.A.C.

<sup>18</sup> 34 C.F.R. s. 300.323(e).

<sup>19</sup> *Id.*

<sup>20</sup> Florida Department of Education, Bureau of Exceptional Education and Student Services, *Assistive Technology for Students with Disabilities*, Technical Assistance Paper FY 2013-65 (Aug. 2013), at 13-14.

<sup>21</sup> 34 C.F.R. s. 300.323(e).

<sup>22</sup> Florida Department of Education, Bureau of Exceptional Education and Student Services, *Assistive Technology for Students with Disabilities*, Technical Assistance Paper FY 2013-65 (Aug. 2013), at 12.

<sup>23</sup> Florida Department of Education, Bureau of Exceptional Education and Student Services, *Assistive Technology for Students with Disabilities*, Technical Assistance Paper FY 2013-65 (Aug. 2013), at 12.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

The federal IDEA and regulations specify that it is the school's responsibility to provide transition services.<sup>26</sup> The transition planning must begin by age 14 or grade 8, whichever occurs first.<sup>27</sup> A student's IEP should include a statement of assistive technology needed under transition services, including a statement indicating agency responsibilities and linkages, if appropriate.<sup>28</sup> It is the school district's responsibility to provide a plan for the transition of assistive technology as the student prepares for postsecondary education, vocational placement, independent living and community experiences.<sup>29</sup> If the student will benefit from continued use of the same device, the transition of technology from school to the post-school setting is encouraged.<sup>30</sup> The IEP team must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services, such as assistive technology services and devices.<sup>31</sup> However, if the participating agency fails to provide the transition services and assistive technology defined in the IEP, the school district must reconvene the IEP team to identify alternative strategies in order to meet the transition objective.<sup>32</sup>

Upon request by a student or his or her parent, the district may transfer assistive technology to the postsecondary setting.<sup>33</sup> The transfer must follow the proper interagency agreement procedures, with the receiving agency documenting support of the equipment.<sup>34</sup>

### Interagency Agreements

Certain agencies are required by law to enter into interagency agreements, as appropriate, to ensure the transaction of assistive technology devices in accordance with the student's individualized family support plan, individual support plan, or individual education plan.<sup>35</sup> The interagency agreements provide the framework for ensuring that students with disabilities, their families, educators, and employers are informed about the utilization and coordination of assistive technology devices and services to help such students transition from school to postschool.<sup>36</sup> The agreements also ensure that all agencies are informed about the needed assistive technology, the content of the transition plan, and the post-school support required to meet student needs.<sup>37</sup>

The Florida Interagency Agreement for the Transfer of Assistive Technology was entered in September of 2006, between the following agencies:<sup>38</sup>

- Florida Infants and Toddlers early Intervention Program (Early Steps) of the Division of Children's Medical Services of the Department of Health;
- The Division of Blind Services of the Department of Education;
- The Division of Vocational Rehabilitation of the Department of Education;
- The Voluntary Prekindergarten Education Program of the Department of Education and the Agency for Workforce Innovation; and

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<sup>26</sup> 34 C.F.R. s. 300.320(b).

<sup>27</sup> Rule 6A-6.03028(3)(b)4., F.A.C.

<sup>28</sup> Florida Department of Education, Bureau of Exceptional Education and Student Services, *Assistive Technology for Students with Disabilities*, Technical Assistance Paper FY 2013-65 (Aug. 2013), at 14.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> 34 C.F.R. s. 300.321(b)(3); s. 1003.575, F.S.

<sup>32</sup> Florida Department of Education, Bureau of Exceptional Education and Student Services, *Assistive Technology for Students with Disabilities*, Technical Assistance Paper FY 2013-65 (Aug. 2013), at 14.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Section 1003.575, F.S.

<sup>36</sup> *Id.*

<sup>37</sup> Section 1003.575, F.S.

<sup>38</sup> Florida Department of Education, Bureau of Exceptional Education and Student Services, *Assistive Technology for Students with Disabilities*, Technical Assistance Paper FY 2013-65 (Aug. 2013).

- The Bureau of Exceptional Education and Student Services of the Department of Education.

### **Effect of Proposed Changes**

The bill revises provisions related to the use of an assistive technology device by students with disabilities by:

- clarifying that access to and use of the assistive technology device is essential for a student moving from school to home and community;
- specifying an individual work plan as one of the plans that may serve as the basis for issuing an assistive technology device to a student; and
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#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 1003.575, F.S., relating to assistive technology devices and interagency agreements.

**Section 2.** Provides an effective date of July 1, 2017.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

#### **D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.