

By Senator Gruters

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1 A bill to be entitled
2 An act relating to exceptional student due process
3 hearings; amending s. 1003.57, F.S.; providing that
4 district school boards have the burden to prove by a
5 preponderance of the evidence in all exceptional
6 student due process hearings that any challenged
7 identification, evaluation, and eligibility
8 determination, or lack thereof, was appropriate;
9 amending s. 1003.5715, F.S.; providing that district
10 school boards have the burden to prove by a
11 preponderance of the evidence that any challenged
12 individual education plan is appropriate; providing an
13 effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Paragraph (c) of subsection (1) of section
18 1003.57, Florida Statutes, is amended to read:

19 1003.57 Exceptional students instruction.—

20 (1)

21 (c) A student may not be given special instruction or
22 services as an exceptional student until after he or she has
23 been properly evaluated and found eligible as an exceptional
24 student in the manner prescribed by rules of the State Board of
25 Education. The parent of an exceptional student evaluated and
26 found eligible or ineligible shall be notified of each such
27 evaluation and determination. Such notice must ~~shall~~ contain a
28 statement informing the parent that he or she is entitled to a
29 due process hearing on the identification, evaluation, and

23-01201-22

20221086__

30 eligibility determination, or lack thereof. Such hearings are
31 exempt from ss. 120.569, 120.57, and 286.011, except to the
32 extent that the State Board of Education adopts rules
33 establishing other procedures. Any records created as a result
34 of such hearings are confidential and exempt from s. 119.07(1).
35 The hearing must be conducted by an administrative law judge
36 from the Division of Administrative Hearings pursuant to a
37 contract between the Department of Education and the Division of
38 Administrative Hearings. District school boards have the burden
39 to prove by a preponderance of the evidence in all due process
40 hearings that any challenged identification, evaluation, and
41 eligibility determination, or lack thereof, was appropriate. The
42 decision of the administrative law judge is final, except that
43 any party aggrieved by the finding and decision rendered by the
44 administrative law judge has the right to bring a civil action
45 in the state circuit court. In such an action, the court shall
46 receive the records of the administrative hearing and shall hear
47 additional evidence at the request of either party. In the
48 alternative, in hearings conducted on behalf of a student ~~who is~~
49 identified as gifted, any party aggrieved by the finding and
50 decision rendered by the administrative law judge has the right
51 to request a review of the administrative law judge's order by
52 the district court of appeal as provided in s. 120.68.

53 Section 2. Present subsections (6), (7), and (8) of section
54 1003.5715, Florida Statutes, are redesignated as subsections
55 (7), (8), and (9), respectively, and a new subsection (6) is
56 added to that section, to read:

57 1003.5715 Parental consent; individual education plan.—
58 (6) Pursuant to s. 1003.57(1)(c), district school boards

23-01201-22

20221086__

59 have the burden to prove by a preponderance of the evidence in
60 all due process hearings that any challenged IEP is appropriate.

61 Section 3. This act shall take effect July 1, 2022.