

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1317 Individual Education Plans

**SPONSOR(S):** Tant and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1674

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Secondary Education & Career Development Subcommittee	13 Y, 0 N	Wolff	Sanchez
2) Civil Justice & Property Rights Subcommittee	17 Y, 0 N	Brascomb	Jones
3) Education & Employment Committee	17 Y, 0 N	Wolff	Hassell

**SUMMARY ANALYSIS**

All students who are between the ages of three and 21, and have a disability have the right to a free, appropriate public education. The Individuals with Disabilities Education Act (IDEA) governs how state and public agencies provide early intervention, education, and related services to eligible children with disabilities. States receiving 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 (IEP) for each student. Florida law requires a student's IEP team to begin the planning process and IEP development when the student is in grade seven or when the student attains the age of 12, whichever occurs first.

In Florida, the age of majority is 18 and the rights, privileges, and responsibilities of adults are granted to an individual automatically. As authorized by the IDEA, educational rights for students with disabilities transfer to the student upon attaining the age of majority. Moreover, once a student attains the age of majority, the rights related to access to education records, including the right to consent to their release, shift from the parent to the student.

To support students with disabilities and their parents when the student attains the age of majority while in school, HB 1317 requires school districts to provide information and instruction to a student and his or her parent on self-determination and the legal rights and responsibilities relating to educational decisions that transfer to the student upon turning 18. The information provided must include options for maintaining parental involvement in educational decisionmaking including a Family Educational Rights and Privacy Act waiver, powers of attorney, guardian advocacy and guardianship.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### **Students with Disabilities**

All students who are between the ages of three and 21, and have a disability<sup>1</sup> have the right to a free, appropriate public education (FAPE).<sup>2</sup> It is the responsibility of each state and school district to develop procedures to provide all students with disabilities access to a FAPE in the least restrictive environment.<sup>3</sup> During the 2020-2021 academic year, Florida public schools served 406,944 students with disabilities.<sup>4</sup>

#### Federal Law

##### *Individuals with Disabilities Education Act*

The federal Individuals with Disabilities Education Act (IDEA)<sup>5</sup> governs how state and public agencies provide early intervention, education, and related services to eligible children with disabilities.<sup>6</sup> States receiving 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 (IEP)<sup>7</sup> for each student.<sup>8</sup> In developing an IEP, the IEP team<sup>9</sup> 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>10</sup> Federal law requires that the student's first IEP, which must be in effect when the student turns 16, must include measurable postsecondary goals related to training, education, employment, and where appropriate, independent living skills.<sup>11</sup> The IEP must also specify

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<sup>1</sup> Disabilities that qualify a student as an exceptional student include an intellectual disability; an 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; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; deafness, hard of hearing, or dual sensory impairment; or developmental delays from birth through five years old or if the student is hospitalized or homebound. Section 1003.01(3)(a), F.S.

<sup>2</sup> 20 U.S.C. s. 1412(a)(1); s. 1003.5716, F.S.

<sup>3</sup> Florida Department of Education, *Developing Quality Individual Education Plans*, at 9 (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

<sup>4</sup> Florida Department of Education, Education Information and Accountability Services Data Report, *Membership in Programs for Exceptional Students, Final Survey 2, 2020-21*, <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.stml> (last visited Feb. 18, 2022).

<sup>5</sup> 20 U.S.C. s. 1400 et seq.; 34 C.F.R. s. 300.17.

<sup>6</sup> See 20 U.S.C. s. 1412(a)(1); See also U.S. Department of Education, *National Assessment of IDEA Overview*, at 1-2 (July 2011), available at <https://ies.ed.gov/ncee/pubs/20114026/pdf/20114026.pdf>.

<sup>7</sup> In Florida statute, IEP refers to an "individual education plan." Section 1003.5716, F.S.

<sup>8</sup> 20 U.S.C. s. 1415.

<sup>9</sup> The IEP team is comprised of the student's parent(s), at least one regular education teacher of the student (if the student is or may be participating in the regular education environment), at least one special education teacher of the student, a representative of the local education agency, an individual who can interpret instructional implications of evaluation results (may be the teacher or a agency representative), other individuals who have knowledge or special expertise of the student at the discretion of the parent or agency, and the student when appropriate. 20 U.S.C. s. 1414(d)(1)(B).

<sup>10</sup> 20 U.S.C. s. 1414(d)(3)(A) and (B).

<sup>11</sup> 20 U.S.C. s. 1414(d)(1)(A)(i)(VIII).

the transition services<sup>12</sup> needed to assist the student in reaching those goals.<sup>13</sup> Federal law requires the IEP team to review the student's IEP at least annually to determine whether the student's goals are being achieved and to revise the IEP as necessary.<sup>14</sup>

### *Workforce Innovation and Opportunity Act of 2014*

The federal Workforce Innovation and Opportunity Act of 2014 (WIOA)<sup>15</sup> aims to increase opportunities for individuals facing barriers to employment and focus on the connection between education and career preparation.<sup>16</sup> The WIOA requires that state vocational rehabilitation agencies set aside at least 15 percent of their federal funds to provide pre-employment transition services to eligible individuals with a disability<sup>17</sup> who:

- Are between 14 and 21 years of age;<sup>18</sup> and
- Either:
  - Have a current IEP;<sup>19</sup> or
  - Have or are eligible for an accommodation plan pursuant to s. 504 of the Rehabilitation Act of 1973.<sup>20</sup>

### Florida Law

As the state educational agency, the Florida Department of Education (DOE) exercises general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies.<sup>21</sup> DOE's Bureau of Exceptional Education and Student Services (BEESS) is responsible for ensuring that the requirements of federal law and the educational requirements of the state are implemented.<sup>22</sup> The bureau is required to examine and evaluate exceptional student education (ESE) procedures, records, and programs; provide information and assistance to school districts; and assist the districts in operating effectively and efficiently.<sup>23</sup>

### *Individual Education Plan*

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<sup>12</sup> Under IDEA, transition services are defined as a coordinated set of activities that (1) is designed to be within a results-oriented process focused on improving the academic and functional achievement of a child with a disability to facilitate the child's movement from school to post-school activities; (2) is based on the individual child's needs, strengths, preferences, and interests; and (3) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation. 20 U.S.C. s. 1401(34). Transition services are also defined in Rule 6A-6.03411(1)(nn), F.A.C.

<sup>13</sup> 20 U.S.C. s. 1414(d)(1)(A)(i)(VIII).

<sup>14</sup> 20 U.S.C. s. 1414(d)(4)(a).

<sup>15</sup> Pub. L. No. 113-128, 128 Stat. 1425 (July 22, 2014).

<sup>16</sup> See U.S. Department of Labor, Employment & Training Administration, *WIOA Overview*, <https://www.doleta.gov/wioa/about/overview/> (last visited Feb. 18, 2022).

<sup>17</sup> States may elect a lower minimum age or higher maximum age for receipt of pre-employment services under IDEA. Workforce Innovation Technical Assistance Center, *Pre-employment Transition Services*, <http://www.wintac.org/topic-areas/pre-employment-transition-services> (last visited Feb. 18, 2022).

<sup>18</sup> Section 413.301(1), F.S.

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

<sup>20</sup> *Id.* Section 504 of the Rehabilitation Act of 1973 prohibits any program or activity that receives federal financial assistance from discriminating against an otherwise qualified individual solely by reason of his or her disability. Pub. L. No. 93-112, s. 504, 83 Stat. 355, 361 (1973), as amended and codified in 29 U.S.C. s. 794. State and local agencies that administer federally funded programs or activities may devise an accommodation plan for someone with a disability to allow the disabled person's participation in the program. Florida Department of Education, *Accommodations: Assisting Students with Disabilities*, at 3 (2018), available at <http://www.fldoe.org/core/fileparse.php/7567/urlt/0070069-acco mm-educator.pdf>.

<sup>21</sup> 20 U.S.C. s. 1412(a)(11); 34 C.F.R. s. 300.149.

<sup>22</sup> 34 C.F.R. s. 300.149(a)(1) and (2).

<sup>23</sup> Florida Department of Education, Bureau of Exceptional Student Education and Student Services, *Exceptional Student Education Compliance Protocols 2020-2021*, at 1, available at <http://www.fldoe.org/core/fileparse.php/7673/urlt/MonitoringIntroduction.pdf>.

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 IEP or individual family support plan must be developed, reviewed, and revised, as needed.<sup>24</sup> The IEP is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a Florida student with a disability.<sup>25</sup>

Florida law requires a student's IEP team to begin the planning process and IEP development when the student is in grade seven or when the student attains the age of 12, whichever occurs first.<sup>26</sup> The IEP team must identify the student's need for transition services before the student enters high school or attains the age of 14, whichever occurs first.<sup>27</sup> The student's IEP must be operational and in place for implementation on the first day of the student's first year of high school.<sup>28</sup> The process of identifying the need for transition services and developing an IEP must include:<sup>29</sup>

- Consideration of the student's need for instruction in the area of self-determination and self-advocacy to assist in the student's active and effective participation in IEP meetings;
- Preparation for the student to graduate from high school with a standard high school diploma<sup>30</sup> with a Scholar designation<sup>31</sup> unless the student's parent chooses a Merit designation;<sup>32</sup>
- Information about the school district's high-school level transition services, career and technical education, and collegiate programs available to students with a disability and how to access such programs;
- Information about programs and services available through Florida's Center for Students with Unique Abilities, Florida's Centers for Independent Living, the Division of Vocational Rehabilitation, the Agency for Persons with Disabilities, and the Division of Blind Services; and
- Referral forms, links, and technical support contacts for accessing services and programs.

The IEP in effect when the student enters high school or attains the age 14, or when determined appropriate by the parent and IEP team, must include the following:<sup>33</sup>

- A statement of intent to pursue a standard high school diploma and a Scholar or Merit designation as determined by the parent.
- A statement of intent to receive a standard high school diploma before the student attains age 22 and a description of how the student will complete the graduation requirements. The statement must also specify the outcomes and additional benefits expected by the parent and IEP team at the time of the student's graduation.
- A statement of appropriate measurable long-term postsecondary education and career goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills and the transition services needed to assist the student in meeting those goals.

The required statements in the IEP must be updated annually.<sup>34</sup> Students with disabilities must be reevaluated at least once every three years to determine their continuing eligibility for special education

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<sup>24</sup> Rule 6A-6.03028(3), F.A.C.

<sup>25</sup> Florida Department of Education, *Developing Quality Individual Education Plans*, at 9 (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

<sup>26</sup> Section 1003.5716(1), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Section 1003.5716(1)(a)-(b), F.S.

<sup>30</sup> Section 1003.4282, F.S.

<sup>31</sup> A "Scholar" designation requires a student to meet the requirements of s. 1003.4282, F.S., for a standard high school diploma and satisfy additional specific course requirements in mathematics, science, social studies, foreign language, and electives. *See* s. 1003.4285(1)(a), F.S.

<sup>32</sup> A "Merit" designation requires a student to meet the requirements of s. 1003.4282, F.S., for a standard high school diploma and attain one or more industry certifications from the list established under s. 1003.492, F.S.; S. 1003.4285(1)(b), F.S.

<sup>33</sup> Section 1003.5716(2), F.S.

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

and related services.<sup>35</sup> However, a student's parent or teacher may request an IEP team meeting or a reevaluation at any time.<sup>36</sup>

IEP teams are required to invite representatives of relevant agencies that may provide services after the student exits high school with the consent of the parent or student who has reached the age of majority.<sup>37</sup> Agency involvement in transition planning is based on the nature of the student's needs, the student's disability, whether the student is potentially eligible for services, and the student's postsecondary education and career goals.<sup>38</sup> Agencies frequently involved in the planning and delivery of transition services in Florida include:

- Agency for Persons with Disabilities;
- Center for Independent Living;
- Florida Department of Children and Families;
- Division of Blind Services;
- Division of Vocational Rehabilitation (VR);
- Social Security Administration; local career and technical schools;
- Florida colleges and universities; and
- Other adult service providers.<sup>39</sup>

IEP teams also consider pre-employment transition services<sup>40</sup> through the Division of VR<sup>41</sup> in the development of post-secondary and career goals.<sup>42</sup>

## **Impact of Students Attaining the Age of Majority**

### Federal Law

#### *Individuals with Disabilities Education Act*

The IDEA specifically authorizes states to transfer rights reserved for parents of a student with disabilities to the student once the student attains the age of majority.<sup>43</sup> The IDEA requires that such transfer of rights must be provided for in state law that applies to all children (except for those determined incompetent under state law) and provide for the following:<sup>44</sup>

- The transfer of all rights accorded to parents under the IDEA; and
- Notification to the student and parents of the transfer of rights.

To protect students who have not been determined incompetent but may, nonetheless, be unable to provide informed consent with respect to their educational program, the IDEA requires that states

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<sup>35</sup> Rule 6A-6.0331(7), F.A.C.

<sup>36</sup> See Rule 6A-6.03028, F.A.C.

<sup>37</sup> 34 C.F.R. s.300.321(b)(3); Rule 6A-6.03028(1)(c)9., F.A.C.

<sup>38</sup> Florida Department of Education, *Developing Quality Individual Education Plans*, at 47-48 (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

<sup>39</sup> *Id.* at 48.

<sup>40</sup> Pre-employment services may include may include career exploration counseling, workplace readiness training, community-based work experiences, self-advocacy instruction, peer mentoring, and postsecondary educational counseling for students with a disability. *Id.*

<sup>41</sup> The Division of VR is housed in DOE. VR and VR services mean any service, provided directly or through public or private entities, to enable an individual or group of individuals to achieve an employment outcome, including, but not limited to, medical and vocational diagnosis, an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel; counseling, guidance, and work-related placement services; vocational and other training services; physical and mental restoration services; maintenance for additional costs incurred while participating in rehabilitation; interpreter services for individuals who are deaf; recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate service employment; occupational licenses; tools, equipment, and initial stocks and supplies; transportation; telecommunications, sensory, and other technological aids and devices; rehabilitation technology services; referral services designed to secure needed services from other agencies; transition services; on-the-job or other related personal assistance services; and supported employment services. Sections 413.20(8) and (28), F.S.

<sup>42</sup> Florida Department of Education, *Legislative Bill Analysis for HB 173* (2021), at 3.

<sup>43</sup> 34 C.F.R. s.300.520(a)

<sup>44</sup> *Id.*

establish procedures for appointing an individual to represent the interests of the student for the duration of his or her eligibility for special education services.<sup>45</sup>

### *Family Educational Rights and Privacy Act*

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records.<sup>46</sup> The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.<sup>47</sup>

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."<sup>48</sup>

Generally, FERPA provides the following rights and protections to parents or eligible students:<sup>49</sup>

- The right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records.
- The right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Schools must have written permission from the parent or eligible student in order to release any information from a student's education record.

### Florida Law

In Florida the age of majority is 18 and the rights, privileges, and responsibilities of adults are granted to an individual automatically.<sup>50</sup> As authorized by the IDEA educational rights for students with disabilities transfer to the student upon attaining the age of majority.<sup>51</sup> As required by IDEA, Florida has procedures to protect students with disabilities who cannot provide informed consent related to their educational program.<sup>52</sup> With regard to the protection of educational records, Florida has incorporated the protections of FERPA directly into statute.<sup>53</sup> Therefore, once a student attains the age of majority, the rights related to access to education records, including the right to consent to their release, shift from the parent to the student.<sup>54</sup>

### **Powers of Attorney**

#### Background

A power of attorney is a legal document in which the client (a principal) authorizes a person or entity (an agent) to act on his or her behalf. The type and breadth of authority granted depends on the

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<sup>45</sup> 34 C.F.R. s. 300.520(b)

<sup>46</sup> 20 U.S.C. s. 1232g; 34 CFR Part 99.

<sup>47</sup> U.S. Department of Education, *Family Educational Rights and Privacy Act (FERPA)*, (Aug. 25, 2021), <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last visited Feb. 18, 2022).

<sup>48</sup> *Id.* "Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education. 34 C.F.R. s. 99.3.

<sup>49</sup> U.S. Department of Education, *Family Educational Rights and Privacy Act (FERPA)*, (Aug. 25, 2021), <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last visited Feb. 18, 2022).

<sup>50</sup> Section 743.07, F.S.

<sup>51</sup> Rule 6A-6.03311(8), F.A.C.

<sup>52</sup> Rule 6A-6.03311(8)(e), F.A.C.

<sup>53</sup> Sections 1002.22 and 1002.221, F.S.

<sup>54</sup> 34 C.F.R. s. 99.5

specific language of the power of attorney. A principal may grant very broad authority (a general power of attorney) or may limit the authority to certain specific acts (a limited power of attorney).

### *Executing a Power of Attorney*

An agent must be age 18 or older, or a financial institution that:<sup>55</sup>

- Has trust<sup>56</sup> powers;
- Has a place of business in Florida; and
- Is authorized to conduct trust business in this state.

A power of attorney must be signed by the principal and two witnesses in a notary's presence. If the principal is physically unable to sign the power of attorney, the notary public may sign the principal's name on the power of attorney.<sup>57</sup>

### *Authority that Requires Signed Enumeration*

Certain types of delegated authority have a higher possibility of abuse. Although a principal may delegate this authority to an agent, current law requires each of the powers be individually signed or initialed by the principal.<sup>58</sup> An agent may exercise the following authority if the principal signs or initials next to each specific enumeration of the authority:<sup>59</sup>

- Create or modify trusts;
- Make a gift;
- Create or change rights of survivorship;
- Create or change a beneficiary designation;
- Waive the principal's right to be a beneficiary of a joint and survivor annuity; and
- Disclaim property and powers of appointment.

### *Relying on a Power of Attorney*

A third party who is asked to accept a power of attorney may request and rely on the following:<sup>60</sup>

- A certified English translation of the power of attorney;
- An opinion of counsel as to any matter of law concerning the power of attorney; or
- An affidavit stating:
  - Where the principal is domiciled;
  - The principal is not deceased;
  - The power of attorney has not been suspended or revoked;
  - The agent's authority has not been terminated; and
  - If the affiant is a successor agent, the reason for the predecessor agent's unavailability at the time the authority is exercised.

## **Guardian Advocate**

Guardian advocacy is a process for family members, caregivers, or friends of individuals with a developmental disability to obtain the legal authority to act on their behalf if the person lacks the decisionmaking ability to do some, but not all, of the decisionmaking tasks necessary to care for his or her person or property.<sup>61</sup> This is accomplished without having to declare the person with a developmental disability incapacitated.

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<sup>55</sup> Section 709.2105, F.S.

<sup>56</sup> A trust is a legal instrument used to pass assets to a person or entity (a trustee), who in turn holds those assets for a third party, such as a beneficiary.

<sup>57</sup> Section 709.2105, F.S.

<sup>58</sup> Section 709.2202, F.S.

<sup>59</sup> *Id.*

<sup>60</sup> Section 709.2119, F.S.

<sup>61</sup> Section 393.12(2)(a), F.S.

A petition to appoint a guardian advocate for a person with a developmental disability may be executed by an adult person who is a Florida resident.<sup>62</sup> The petition must be verified by the petitioner and must include statutorily include certain information, including:

- The name, age, and present address of the petitioner and his or her relationship to the person with a developmental disability;
- The name, age, county of residence, and present address of the person with a developmental disability;
- An allegation that the petitioner believes that the person needs a guardian advocate and the factual information on which such belief is based;
- The areas in which the person lacks the decisionmaking ability to make informed decisions about his or her care;
- The legal disabilities to which the person is subject; and
- The name of the proposed guardian advocate.<sup>63</sup>

Notice of the filing of the petition must be given to the person with a developmental disability, both verbally and in writing, in the language of the person and in English.<sup>64</sup> The notice must:<sup>65</sup>

- Be given to the person with a developmental disability's next of kin, any designated health care surrogate, an attorney-in-fact designated in a durable power of attorney, and such other persons as the court may direct;
- Include a copy of the petition to appoint a guardian advocate;
- State that a hearing will be held to inquire into the capacity of the person with a developmental disability to exercise the rights enumerated in the petition, including the date of the hearing on the petition; and
- State that the person with a developmental disability has the right to be represented by counsel of the person's own choice and the court must initially appoint counsel.

Within three days after a petition has been filed, the court must appoint an attorney to represent a person with a developmental disability who is the subject of a petition to appoint a guardian advocate.<sup>66</sup> The person with a developmental disability may substitute his or her own attorney for the attorney appointed by the court.<sup>67</sup>

If the court finds the person with a developmental disability requires the appointment of a guardian advocate, the order appointing the guardian advocate must contain findings of facts and conclusions of law supporting that determination.<sup>68</sup>

Upon compliance with all of the statutory requirements, letters of guardian advocacy must be issued to the guardian advocate.

## Guardianship

When a court deems an individual legally incompetent (incapable of making some or all decisions for himself or herself), a third party, often termed a "guardian" or substitute or surrogate decision maker, is appointed to make decisions on that individual's behalf.<sup>69</sup> Most often, appointing a substitute decision maker occurs through a formal guardianship proceeding. In the U.S., guardianship proceedings are

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<sup>62</sup> Section 393.12 (3), F.S.

<sup>63</sup> Section 393.12(3)(a)-(f), F.S.

<sup>64</sup> Section 393.12(4)(a), F.S.

<sup>65</sup> Section 393.12(4)(a)-(c), F.S.

<sup>66</sup> Section 393.12(5), F.S.

<sup>67</sup> Id.

<sup>68</sup> Section 393.12(8), F.S.

<sup>69</sup> Martinis, J, *Supported decisionmaking: Protecting rights, ensuring choices*, BIFOCAL: A Journal of the ABA Commission on Law and Aging, 36(5), pgs. 107-110 (2015), available at [https://www.americanbar.org/groups/law\\_aging/publications/bifocal/vol\\_36/issue\\_5\\_june2015/supported-decision-making/#:~:text=Supported%20Decision%20Making%20protects%20and,independence%2C%20safety%2C%20and%20employment](https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_36/issue_5_june2015/supported-decision-making/#:~:text=Supported%20Decision%20Making%20protects%20and,independence%2C%20safety%2C%20and%20employment)

governed by individual state law, with each state establishing its own statutes, policies, and procedures. In many states, a person may not be placed under guardianship if there is a less restrictive option available.<sup>70</sup> When an individual is found to lack legal capacity to make her or his own decisions, the court appoints a third-party guardian or conservator who has the authority to make decisions for the individual, who thereby becomes a ward of the state.<sup>71</sup>

Guardianship is divided into two types. “Limited” or “partial guardianship” occurs when an individual has been deemed incapable of making decisions in only specific areas of life, and a guardian has the authority to decide for the individual in those specific areas only. Alternatively, “full” or “plenary” guardianship occurs when the court has found that an individual lacks capacity to make all legal decisions, and the guardian is authorized to make all decisions for the ward.<sup>72</sup>

Substitute decision makers are guided by two decisionmaking standards. A substituted judgment standard is used where a guardian must make decisions that the patient would have wanted, if capable. In contrast, a best-interest standard is used where a guardian must make decisions based on what the guardian determines to be in the ward’s best interest. Most state laws indicate that a substituted judgment standard should guide guardian decision making, and that a best interest standard is allowable when guardians lack sufficient evidence to determine what decision the ward would have made if she or he had the capacity.<sup>73</sup>

Adjudicating a person totally incapacitated and in need of a guardian deprives the person of his or her civil and legal rights.<sup>74</sup> The Florida Legislature has recognized that the least restrictive form of guardianship should be used to ensure the most appropriate level of care and the protection of the person’s rights.<sup>75</sup>

In Florida, the process to determine an individual’s incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual is incapacitated, including the rights the alleged incapacitated person is incapable of exercising.<sup>76</sup> Once a person has been adjudicated incapacitated, the court appoints a guardian, and letters of guardianship are issued.<sup>77</sup> The order appointing a guardian must be consistent with the ward’s welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.<sup>78</sup>

### **Effect of Proposed Changes**

To support students with disabilities and their parents when the student attains the age of majority while in school, the bill requires school districts to provide information and instruction to a student and his or her parent on self-determination and the legal rights and responsibilities relating to educational decisions that transfer to the student upon attaining the age of 18. The information provided must include options for maintaining parental involvement in educational decisionmaking including a Family Educational Rights and Privacy Act waiver, powers of attorney, guardian advocacy, and guardianship. The bill requires that this information must be shared with students and their parents at least one year prior to the student reaching the age of majority.

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<sup>70</sup> Quality Trust for Individuals with Disabilities, *Supported decisionmaking: An Agenda for Action* (2014), <http://jennyhatchjusticeproject.org/node/264> (last visited Feb. 10, 2022).

<sup>71</sup> Jameson, J, et al., *Guardianship and the potential of supported decision making with individuals with disabilities*, Research and Practice for Persons with Severe Disabilities, 40(1), pgs. 36-51 (2014), on file with the Education & Employment Committee.

<sup>72</sup> Blanck, P, and Martinis, J, “*The right to make choices*”: *The National Resource Center for Supported Decisionmaking*, Inclusion, 3, pgs. 24-33 (2015), available at [http://www.supporteddecisionmaking.org/sites/default/files/inclusion\\_blanck\\_martinis\\_2015.pdf](http://www.supporteddecisionmaking.org/sites/default/files/inclusion_blanck_martinis_2015.pdf).

<sup>73</sup> Shalowitz, DI, et al., *The accuracy of surrogate decision makers: A systematic review*, Archives of Internal Medicine, 166(5), pgs. 493-497 (2006), available at <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/409986>.

<sup>74</sup> Section 744.101(1), F.S.

<sup>75</sup> Section 744.101(2), F.S.

<sup>76</sup> Section 744.3201, F.S.

<sup>77</sup> Sections 744.3371 through 744.345, F.S.

<sup>78</sup> Section 744.2005, F.S.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 1003.5716, F.S.; relating to transition to postsecondary education and career opportunities.

**Section 2:** Provides an effective date of July 1, 2022.

**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:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.