

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 173 Care of Students with Epilepsy or Seizure Disorders

SPONSOR(S): Early Learning & Elementary Education Subcommittee, Duran, Gottlieb and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 340

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Early Learning & Elementary Education Subcommittee	16 Y, 0 N, As CS	Sleap	Brink
2) Secondary Education & Career Development Subcommittee	14 Y, 0 N	Sleap	Sanchez
3) Education & Employment Committee			

SUMMARY ANALYSIS

To provide care for Florida's public school students affected by epilepsy or seizure disorders while at school, the bill creates an individualized seizure action plan (ISAP) which informs school personnel of the unique health care services required by the student and how to respond in emergency situations. The bill requires a school to implement an ISAP once a parent submits it to the school principal and school nurse.

The bill requires an ISAP to:

- include specified information, such as recommended care, symptoms, prescribed rescue medication, and contact information for medical assistance;
- be developed by a medical professional in consultation with a parent and signed by both individuals;
- be submitted by a parent to the school principal and school nurse or other appropriate employee; and
- remain in effect until the parent submits a revised ISAP.

The bill requires a school to provide employees whose duties include regular contact with a student with an ISAP, the following: notice of the student's condition, information on providing care for the student in an emergency, and parental and emergency contact information.

The bill requires a school nurse or an appropriate school employee to:

- coordinate the provision of epilepsy and seizure disorder care, including administering medication, as outlined in a student's ISAP; and
- verify that school employees, whose duties include regular contact with a student with an ISAP, have completed training in the care of students with epilepsy and seizure disorders.

To assist schools in meeting the training requirements under the bill, the Department of Education must identify on its website one or more free online training courses provided by a nonprofit national organization.

The bill requires a school to provide epilepsy or seizure disorder care to a student based upon the student's ISAP, individualized educational plan (IEP), or a Section 504 Accommodation Plan (504 Plan), as applicable, and does not absolve or limit the school of its obligation to provide a student special instruction, services, or accommodations as required under federal and state law.

The fiscal impact of the bill is indeterminate. See Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Children with Epilepsy or Seizure Disorder

Epilepsy is a common disorder of the brain that causes recurring seizures.¹ Epilepsy affects people of all ages, but children and older adults are more likely to have epilepsy. Seizures are the main sign of epilepsy and most people can control the disorder with treatment.² In 2015, the Centers for Disease Control and Prevention estimated that 470,000 children in the United States and 27,300 children in Florida had active epilepsy.³ A child aged 17 years or younger would be considered as having active epilepsy if the parent or guardian reports the following:⁴

- a doctor or health care provider has told the parent or guardian that the child had epilepsy or seizure disorder; and
- the child currently has epilepsy or seizure disorder.

National and state epilepsy organizations provide support and advocacy for individuals and families affected by epilepsy, as well as support and resources on epilepsy and seizure first aid to the public.⁵ These organizations provide training to school personnel and school nurses who work with children and youth, resources to schools, and epilepsy awareness school curriculum.⁶ For parents of students with epilepsy, resources are made available such as seizure action plans, as well as a model Section 504 Accommodation Plan (504 Plan).⁷

Seizure Action Plan for Schools

A seizure action plan helps a student's school prevent or respond to emergency situations by providing information about the type of seizure(s) a student may experience; protocols for administering necessary medicine; and emergency contact information, including a student's medical providers.⁸

¹ Centers for Disease Control and Prevention, CDC Healthy Schools, *Epilepsy*, <https://www.cdc.gov/healthyschools/npaio/epilepsy.htm> (last visited Jan. 31, 2022).

² *Id.*

³ Centers for Disease Control and Prevention, *Epilepsy Data and Statistics*, <https://www.cdc.gov/epilepsy/data/index.html> (last visited Jan. 31, 2022). The CDC epilepsy estimates are based on 2015 population numbers.

⁴ *Id.*

⁵ Epilepsy Foundation, *About the Foundation*, <https://www.epilepsy.com/about-us/about-foundation> (last visited Jan. 31, 2022); Epilepsy Alliance America, *Programs and Services*, <https://www.epilepsyallianceamerica.org/programs-services/> (last visited Jan. 31, 2022); Epilepsy Florida, *Digital Resources*, <https://www.epilepsyfl.com/digital-resources/> (last visited Jan. 31, 2022).

⁶ Epilepsy Foundation, *Schools and Seizure Preparedness*, <https://www.epilepsy.com/living-epilepsy/schools-and-seizure-preparedness> (last visited Jan. 31, 2022); Epilepsy Alliance America, *On-Demand Seizure First Aid Training for School Personnel*, <https://www.epilepsyallianceamerica.org/on-demand-seizure-first-aid-training-for-school-personnel/> (last visited Jan. 31, 2022).

⁷ Epilepsy Foundation, *Model Section 504 Plan for a student with epilepsy* (2015), available at https://www.epilepsynorcal.org/wp-content/uploads/2015/07/Sample_504.pdf.

⁸ Epilepsy Foundation, *Seizure Action Plan Specific for Schools* (Jan. 2020), at 1, available at https://www.epilepsy.com/sites/core/files/atoms/files/SCHOOL%20Seizure%20Action%20Plan%202020-April7_FILLABLE.pdf; Epilepsy Alliance America, *Seizure Action Plan*, <https://www.epilepsyallianceamerica.org/seizure-action-plan/> (last visited Jan. 31, 2022); Epilepsy Florida, *Seizure Action Plan for School*, available at https://www.epilepsyfl.com/wp-content/uploads/2020/08/WritableSeizure_Action_Plan.pdf.

Florida Students

In Florida, during the 2019-2020 school year, district school health programs⁹ reported a total of 17,282 students with epilepsy or seizure disorders.¹⁰ Federal and state law requires students identified as having a disability and needing exceptional student education services or accommodations, which may include a student with epilepsy or seizure disorder, to be provided a free appropriate public education (FAPE) as outlined in an individualized educational plan (IEP) or a 504 Plan.¹¹

School nurses may also create an individual healthcare plan (IHP) for students with health care needs that, if not addressed, may negatively affect, or have the potential to affect, attendance and or academic performance.¹² In a school setting, the IHP is the counterpart of the nursing care plan and supports communication among nursing staff to promote the continuity of care for a student.¹³ Priority for an IHP must be given to a student who requires significant health services at school, has a medical diagnosis which may result in a health crisis, or has health conditions addressed in an IEP or 504 Plan.¹⁴ In the 2019-2020 school year, 90,826 student IHPs were completed by 1,157 registered nurses.¹⁵

Depending on a student's health condition, an Emergency Action Plan (EAP) or an Emergency Care Plan may be initiated and developed by the school nurse to provide instruction on addressing the health care needs or appropriate response to a student's emergency health care issue.¹⁶ An EAP provides step-by-step instructions for responding in an emergency and is created to be used by non-nursing school personnel.¹⁷ A student's EAP is distributed to appropriate school personnel, and the school nurse provides training to staff on responding to a student emergency.¹⁸

Though not currently required, the development of an IHP and EAP for a student with epilepsy or a seizure disorder is best practice.¹⁹ Whenever there is a known risk for a potential medical emergency, as there is in the management of students with epilepsy and seizure disorders, the school nurse should create, at a minimum, an EAP.²⁰

School Health Services Program

District school boards are responsible for attending to health, safety, and other matters relating to the welfare of students,²¹ including the responsibility to establish emergency procedures for life threatening emergencies.²²

The Department of Health has the responsibility, in cooperation with the Department of Education (DOE), to supervise the administration of the school health services program and perform periodic program reviews.²³ County health departments, district school boards, and local school health advisory

⁹ Section 381.0056, F.S.; Rule 64F-6.002, F.A.C.

¹⁰ Florida Department of Education, Agency Analysis of 2022 House Bill 173, pg. 3 (Oct. 20, 2021).

¹¹ 34 C.F.R. s. 104.33; 34 C.F.R.; 300.101; 34 C.F.R. 300.112; Section 1003.57, F.S.; Rules 6A-6.0331 and 6A-6.030152, F.A.C.

¹² Florida Department of Education, Agency Analysis of 2022 House Bill 173, pg. 3 (Oct. 20, 2021).; *See also* National Association of School Nurses, *Use of Individualized Healthcare Plans to Support School Health Services Position Statement* (Jan. 2020), <https://www.nasn.org/advocacy/professional-practice-documents/position-statements/ps-ihps#:~:text=It%20is%20the%20position%20of,more%20complex%20school%20nursing%20services>. (last visited Jan. 31, 2022).

¹³ National Association of School Nurses, *Use of Individualized Healthcare Plans to Support School Health Services Position Statement* (Jan. 2020), <https://www.nasn.org/advocacy/professional-practice-documents/position-statements/ps-ihps#:~:text=It%20is%20the%20position%20of,more%20complex%20school%20nursing%20services>. (last visited Jan. 31, 2022).

¹⁴ *Id.*

¹⁵ Florida Department of Education, Agency Analysis of 2022 House Bill 173, pg. 3 (Oct. 20, 2021).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 1001.42(8), F.S.

²² Section 1006.062(6), F.S.

²³ Section 381.0056(3), F.S.

committees jointly develop school health services plans, which must include provisions for meeting emergency needs at each school.²⁴

The school health services plan describes the health services to be provided by a school.²⁵ For example, the plan must address:²⁶

- Specified physical screenings.
- Health counseling.
- Meeting emergency health needs in each school.
- Consultation with a student's parent or guardian regarding the need for health attention by the family physician, dentist, or other specialist when definitive diagnosis or treatment is indicated.
- Maintenance of records on incidents of health problems, corrective measures taken, and such other information as may be needed to plan and evaluate health programs.

In attending to student health, the district school board is required to:²⁷

- include health services and health education as part of the health services plan;
- provide inservice health training for school personnel;
- make available adequate physical facilities for health services; and
- at the beginning of each school year:
 - provide parents and guardians with information on helping children to be physically active and eat healthy foods; and
 - inform parents or guardians in writing that their children who are students in the district schools will receive specified health services as provided for in the district health services plan, with the option for a student to be exempt from any of these services if his or her parent or guardian requests such exemption in writing.

All employees who staff school health rooms must be currently certified in first aid and cardiopulmonary resuscitation (CPR).²⁸ In addition, each school must have at least two school staff members who are not school health room staff and are currently certified to provide first aid and CPR.²⁹

In the absence of negligence, no person is liable for any injury caused by an act or omission in the administration of school health services.³⁰

Provision of Medical Services by School Board Personnel

Nonmedical assistive personnel may perform health-related services upon completion of child-specific training by authorized licensed health personnel.³¹ All procedures must be monitored by the authorized licensed health personnel and may include administering emergency injectable medication.³² Except for certain invasive medical services prohibited by law,³³ the determination of whether nonmedical district school board personnel may perform specific health-related services is determined by authorized licensed health personnel.³⁴

The Administration of Medication by School Board Personnel

²⁴ Section 381.0056(4)(a), F.S.; *See also* Rule 64F-6.002, F.A.C.

²⁵ Section 381.0056(2)(e), F.S.

²⁶ Section 381.0056(4)(a), F.S.

²⁷ Section 381.0056(6), F.S.

²⁸ Rule 64F-6.004(2), F.A.C.

²⁹ *Id.* at (3)

³⁰ Section 381.0056(8), F.S.

³¹ Section 1006.062(4), F.S. Authorized personnel include a registered nurse or advanced practice registered nurse licensed under chapter 464, a physician licensed pursuant to chapter 458 or chapter 459, or a physician assistant licensed pursuant to chapter 458 or chapter 459.

³² *Id.*

³³ Section 1006.062(3), F.S.

³⁴ Section 1006.062(5), F.S.

District school board personnel may assist students in the administration of prescription medication.³⁵ School personnel designated to assist in the administration of medication must be trained by authorized licensed health personnel.³⁶

A school district must adopt policies and procedures which govern the administration of prescription medication by school personnel. The policies and procedures must require the student's parent to provide a written statement granting the principal or his or her designee with permission to assist in the administration of the medication and the necessity for the medication to be provided during the school day.³⁷ Each prescribed medication to be administered must be received, counted, and stored in its original container.³⁸ When not in use, the medication must be under lock and key in a location designated by the school principal.³⁹

School personnel administering medication are exempt from liability for civil damages when acting as an ordinarily reasonably prudent person would have acted under the same or similar circumstances.⁴⁰

Under current law, school district bus operators and attendants must be provided certified CPR and first aid training prior to transporting students and must receive refresher in-service training at least every two years.⁴¹ However, a school bus operator and attendant may not give medicine and must limit their assistance to a student to what may normally be expected of a reasonable, prudent person or as specified in the student's IEP.⁴²

Effect of Proposed Changes

To provide care for Florida's public school students affected by epilepsy or a seizure disorder while at school, the bill creates an individualized seizure action plan (ISAP), which informs school personnel of the unique health care services required for a student and how to respond in emergency situations.

Individualized Seizure Action Plan

The bill defines an ISAP as a document that outlines a set of procedural guidelines and specific directions for the provision of health care and emergency services by a school for a student who has epilepsy or seizure disorders.

The bill requires a student's ISAP to be developed and signed by a medical professional, in consultation with the student's parent, and include the following information:

- Written orders from the student's medical professional outlining the student's epilepsy or seizure disorder recommended care.
- The parent's signature.
- The student's epilepsy or seizure disorder symptoms.
- Any accommodations the student requires for school trips, after-school programs and activities, class parties, and any other school-related activities.
- When and whom to call for medical assistance.
- The student's ability to manage and level of understanding of his or her epilepsy or seizure disorder.
- How to maintain communication with the student, the student's parent, the student's health care team, school nurse, and educational staff.
- Any rescue medication prescribed by the student's medical professional and how and when to administer the medication.

³⁵ Section 1006.062(1), F.S.

³⁶ Section 1006.062(1)(a), F.S.

³⁷ Section 1006.062(1)(b), F.S.

³⁸ Section 1006.062(1)(b)2., F.S.

³⁹ *Id.*

⁴⁰ Section 1006.062(2), F.S.

⁴¹ Rule 6A-3.0121(2)(b)3., F.A.C.

⁴² *Id.*

The bill authorizes the following medical professionals to develop and sign an ISAP:

- a physician licensed under chapter 458 to practice medicine or chapter 459 to practice osteopathic medicine;
- a physician assistant licensed under chapter 458 or chapter 459 to perform medical services delegated by a supervising physician; or
- an advanced practice registered nurse licensed under s. 464.012.

Parental Obligations

To initiate implementation of an ISAP, the bill requires the parent of a student with epilepsy or a seizure disorder to submit an ISAP to the school principal and school nurse or other appropriate school employee. A parent should submit an ISAP before or at the beginning of the school year, upon enrollment, or as soon as practicable following a diagnosis. The provisions of an ISAP submitted by the parent must remain in effect until the parent submits a revised ISAP, signed by a medical professional, which identifies any changes to the student's condition.

Obligations of a School

The bill requires a school to provide epilepsy or seizure disorder care to a student based upon the student's ISAP, IEP, or 504 Plan, as applicable. Implementation of an ISAP does not absolve or limit the school of its obligation to provide a student special instruction, services, or accommodations as required under federal and state law.

Additionally, a school must provide each school employee, whose duties include regular contact with a student with an ISAP, the following:

- Notice of the student's condition.
- Information from the ISAP on how to provide the recommended care for the student if the student presents symptoms.
- Contact information for the student's parent and emergency contacts.

The bill authorizes a school to implement training and student supports for the care of students with epilepsy or seizure disorder regardless of whether a parent submits an ISAP.

Obligations of School Personnel

The bill requires a school nurse or an appropriate school employee who receives an ISAP to perform the following duties:

- Coordinate the provision of epilepsy and seizure disorder care at the school for the student, including administering anti-seizure and rescue medications as prescribed in law and outlined in the student's ISAP.
- Verify that each school employee whose duties include regular contact with the student has completed training in the care of students with epilepsy and seizure disorders. The training must include how to recognize the symptoms of and provide care for epilepsy and seizure disorders.

Obligations of the Department of Education

The bill requires the DOE to identify on its website one or more online training courses to assist schools in meeting the training requirements specified in the bill. The courses must be provided by a nonprofit national organization that supports the welfare of individuals with epilepsy and seizure disorders and must be available at no cost to schools.

B. SECTION DIRECTORY:

Section 1. Creates s. 1006.0626, F.S.; providing definitions; requiring a school to provide epilepsy or seizure disorder care to a student under certain circumstances; providing requirements for the implementation of an individualized seizure action plan for a student with epilepsy or a seizure disorder; providing that an individualized seizure action plan remains in effect until certain criteria are met; providing that implementation of such plan does not absolve or limit other specified duties of the school; authorizing a school to provide training and supports to a student in the absence of such a plan; providing requirements for such plans; requiring a school nurse or appropriate school employee to coordinate the care of such students and verify the training of certain school employees relating to the care of the students; providing requirements for such training; requiring the Department of Education to identify certain training courses on its website; requiring schools to provide specified information to certain school employees.

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:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate. The number of individualized seizure action plans (ISAP) that will be submitted by parents is unknown. Since the submission of an ISAP initiates the training requirements for school personnel who have regular contact with the student, the number of personnel who will be required to complete training is unknown, however, the training must be available online and be provided at no cost to schools. According to the Department of Education, school districts will incur additional expenses related to the training for actual time spent in training by school personnel and the associated payroll expenses.⁴³

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

⁴³ Florida Department of Education, Agency Analysis of 2022 House Bill 173, pg. 5 (Oct. 20, 2021).
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DATE: 2/2/2022

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2022, the Early Learning & Elementary Education Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from HB 173 in the following ways:

- Adds an osteopathic physician licensed under ch. 459 as a medical professional who may sign an Individualized Seizure Action Plan (ISAP).
- Removes definitions for “school employee” and “student.”
- Requires a school to provide epilepsy or seizure disorder care pursuant to a student’s ISAP, Individual Education Plan, or 504 Plan, as applicable.
- Provides that a parent may initiate implementation of an ISAP by submitting it to the school principal and school nurse or other appropriate employee.
- Provides a timeframe for the submission of an ISAP and requires the ISAP to remain in effect until a parent submits a revised ISAP.
- Clarifies that an ISAP does not absolve the school’s obligation to serve students under federal and state disability laws.
- Authorizes a school to provide training and services outlined in the bill regardless of whether a student has an ISAP.
- Removes physical activities as a separate ISAP item as those activities are covered under “school-related activities.”
- Clarifies that a school nurse is required to verify that each school employee whose duties include regular contact with a student with an ISAP, which would include school bus drivers, completes training in the care of students with epilepsy and seizure disorders.
- Requires the DOE to identify providers of free, online training on its website.
- Removes the requirement for specified individuals to receive training every 2 years.
- Removes the requirement to obtain authorization for the sharing of a student’s medical information.
- Removes waivers from liability for school employees providing epilepsy care and immunity from discipline by the Board of Nursing.

The bill analysis is drafted to the committee substitute adopted by the Early Learning & Elementary Education Subcommittee.