

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 223 Public School Student Progression for Students With Disabilities

**SPONSOR(S):** Education Quality Subcommittee, Bartleman, Hawkins and others

**TIED BILLS:** None. **IDEN./SIM. BILLS:** CS/SB 290

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**FINAL HOUSE FLOOR ACTION:** 113 Y's      0 N's      **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 223 passed the house on May 3, 2023, as CS/SB 290.

All students who have a disability and are between the ages of three and 21, 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.

The bill allows for the parent of a student, who has a disability and an individual education plan (IEP), who is enrolled in a public school prekindergarten program at the age of four and is fully funded through the Florida Education Finance Program (FEFP), to decide, in consultation with the individual education plan team, if their student should be retained.

The bill requires that a four-year old student with an IEP, who has been retained in a public school prekindergarten program that was fully funded through the FEFP and has demonstrated a substantial deficiency in early literacy skills, receive instruction in early literacy skills.

The bill also revises the "good cause exemptions" from mandatory retention, by allowing a student, in grade 3, with a learning disability and who is severely below grade-level, be promoted to grade 4, if the student was retained in a prekindergarten program.

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

The bill was approved by the Governor on May 17, 2023, ch. 2023-91, L.O.F., and will become effective on July 1, 2023.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF 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>

#### *Individuals with Disabilities Education Act*

The federal Individuals with Disabilities Education Act (IDEA)<sup>4</sup> governs how state and public agencies provide early intervention, education, and related services to eligible children with disabilities.<sup>5</sup> The IDEA was enacted in 1975 and was most recently reauthorized in 2004.<sup>6</sup> The purpose of the IDEA is to:

- Ensure that all children with disabilities are provided with a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- Ensure that the rights of children with disabilities and their parents are protected;
- Assist states, localities, educational service agencies,<sup>7</sup> and federal agencies to provide for the education of all children with disabilities; and
- Assess and ensure the effectiveness of efforts to educate children with disabilities.<sup>8</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>9</sup> for each student.<sup>10</sup> In developing an IEP, the IEP team<sup>11</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

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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> 20 U.S.C. s. 1400 et seq.; 34 C.F.R. s. 300.17.

<sup>5</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>6</sup> U.S. Department of Education, *OSEP Fast Facts: IDEA 45<sup>th</sup> Anniversary*, November 2020, <https://sites.ed.gov/idea/osep-fast-facts-idea-45th-anniversary/> (last visited May 3, 2023).

<sup>7</sup> "Educational service agency" means a regional public multiservice agency authorized by state law to develop, manage, and provide services or programs to local education agencies or school boards and recognized as an administrative agency for purposes of providing special education and related services within elementary and secondary schools in the state. 34 C.F.R. s. 300.12.

<sup>8</sup> 20 U.S.C. s. 1400(d), U.S. Department of Education, *National Assessment of IDEA Overview*, at 2, available at <https://ies.ed.gov/ncee/pubs/20114026/pdf/20114026.pdf>.

<sup>9</sup> In Florida statute, IEP refers to an "individual education plan." Section 1003.5716, F.S.

<sup>10</sup> 20 U.S.C. s. 1415.

<sup>11</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 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).

needs of the child, as well as special factors.<sup>12</sup> Federal law requires that the student's first IEP, which must be in effect when the student turns the age of 16, must include measurable postsecondary goals related to training, education, employment, and where appropriate, independent living skills.<sup>13</sup> The IEP must also specify the transition services<sup>14</sup> needed to assist the student in reaching those goals.<sup>15</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>16</sup>

### *Florida Law Governing Exceptional Student Education*

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>17</sup> The DOE's Bureau of Exceptional Education and Student Services (bureau) is responsible for ensuring that the requirements of federal law and the educational requirements of the state are implemented.<sup>18</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>19</sup>

### *Individual Education Plan in Florida*

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>20</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>21</sup>

Students with disabilities must be reevaluated at least once every three years to determine their continuing eligibility for special education and related services.<sup>22</sup> However, a student's parent or teacher may request an IEP team meeting or a reevaluation at any time.<sup>23</sup>

### Voluntary Prekindergarten Program

In 2004, the Legislature established the Voluntary Prekindergarten (VPK) program, a voluntary, free prekindergarten program offered to eligible four-year-old children in the year before admission to kindergarten.<sup>24</sup> A child must be a Florida resident and attain four years of age on or before September

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<sup>12</sup> 20 U.S.C. s. 1414(d)(3)(A) and (B).

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

<sup>14</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>15</sup> 20 U.S.C. s. 1414(d)(1)(A)(i)(VIII).

<sup>16</sup> 20 U.S.C. s. 1414(d)(4)(a).

<sup>17</sup> 20 U.S.C. s. 1412(a)(11); 34 C.F.R. s. 300.149.

<sup>18</sup> 34 C.F.R. s. 300.149(a)(1) and (2).

<sup>19</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>.

<sup>20</sup> Rule 6A-6.03028(3), F.A.C.

<sup>21</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>22</sup> Rule 6A-6.0331(7), F.A.C.

<sup>23</sup> See Rule 6A-6.03028, F.A.C.

<sup>24</sup> Section 1, ch. 2004-484, L.O.F.; part V, ch. 1002, F.S.; see also Art. IX, s. 1(b)-(c), Fla. Const. The VPK program originated from a ballot initiative proposing an amendment to the Florida Constitution in the November 2002 general election. The amendment required

1 of the program year to be eligible for the VPK program.<sup>25</sup> The child is eligible for the VPK program during that program year or the subsequent program year and remains eligible until enrollment in kindergarten or attaining six years of age by February 1 of any school year.<sup>26</sup> Parents may choose either a school-year program or summer program offered by either a public school or private prekindergarten provider.<sup>27</sup>

Voluntary Prekindergarten Education Programs			
Program Characteristics	School Year-Programs		Summer Program <sup>28</sup>
	Public School <sup>29</sup>	Private Prekindergarten <sup>30</sup>	
Provider Type	Public school	Private prekindergarten provider	Public school or private prekindergarten provider
Minimum Program Length	540 instructional hours	540 instructional hours	300 instructional hours

An additional option for parents of VPK-eligible children with a current IEP is the VPK specialized instructional services (SIS) program.<sup>31</sup> VPK SIS is available outside the traditional VPK classroom setting, and allows a parent to choose specialized services instead of a traditional VPK school year or summer program. The parent can choose services consistent with their child's IEP from an approved VPK SIS provider.<sup>32</sup> Services may include, but are not limited to, applied behavior analysis, speech-language pathology, occupational therapy, physical therapy, and listening and spoken language specialists.<sup>33</sup> Parents and providers work together to complete required forms and the local early learning coalition pays VPK SIS providers directly for services delivered to children in the program based on the schedule of services form.<sup>34</sup>

Funding for each student is the same as for traditional VPK, but based on the rates these specialists charge for their services. Therefore, students in VPK SIS may receive fewer hours of service than students in traditional VPK.<sup>35</sup>

### Funding for Prekindergarten Students with Disabilities

Students with disabilities and an IEP may participate in a prekindergarten program offered by a public school district and these students are fully funded in the Florida Education Finance Program (FEFP).

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the Legislature to establish a free prekindergarten education program for every four-year old child residing in Florida by the 2005 academic year.

<sup>25</sup> Section 1002.53(2), F.S. Funds appropriated for the VPK program may not be used to enroll eligible students participating in the Gardiner Scholarship Program. *See* s. 1002.385(4)(a), F.S.

<sup>26</sup> Section 1002.53(2), F.S. Children who attain five years of age on or before September 1 of the academic year are eligible for admission to public kindergarten. Section 1003.21(1)(a)2., F.S.

<sup>27</sup> Section 1002.53(3), F.S.

<sup>28</sup> Section 1002.61, F.S.

<sup>29</sup> Section 1002.63, F.S.

<sup>30</sup> Section 1002.55, F.S.

<sup>31</sup> Section 1002.53(3)(d), F.S.

<sup>32</sup> Section 1002.66, F.S.; *see also* rule 6A-6.03033, F.A.C; Florida's Office of Early Learning, *Specialized Instructional Service Providers*, <http://www.floridaearlylearning.com/vpk/vpk-providers/specialized-instructional-services-providers> (last visited May 3, 2023).

<sup>33</sup> Section 1002.66(2), F.S.

<sup>34</sup> Section 1002.66, F.S.; *see also* rule 6M-8.500, F.A.C.

<sup>35</sup> *Id.*

## Florida Education Finance Program

In 1973, the Florida Legislature enacted the Florida Education Finance Program (FEFP) “to guarantee to each student in the Florida public educational system the availability of programs and services appropriate to his or her educational needs which are substantially equal to those available to any similar student notwithstanding geographic differences and varying local economic factors.”<sup>36</sup> The FEFP allocates funds to each school district based on student enrollment.<sup>37</sup> Students with disabilities and an IEP, attending a public school district prekindergarten exceptional student education (ESE) program, are funded with state and local funds through the FEFP.<sup>38</sup>

The FEFP uses a unit of measure for each student called a full-time equivalent (FTE) student. One FTE equals one school year of instruction provided to a student.<sup>39</sup> FEFP funds are calculated by multiplying the number of unweighted FTE students in each of the funded education programs by cost factors to obtain weighted FTE students. The program cost factors reflect the relative cost of servicing students in each of the education program.<sup>40</sup> The ESE program cost factors for Fiscal Year 2022-23 are as follows:<sup>41</sup>

<i>Programs for Exceptional Student Education</i>	<i>Cost Factors</i>
111 – Pre-K- grade 3 with ESE Services	1.126
112 – Grades 4 - 8 with ESE Services	1.000
113 – Grades 9 - 12 with ESE Services	0.999
254 – Support Level 4	3.674
255 – Support Level 5	5.401

An IEP is established for each ESE student which documents the required level of educational needs or services and additional funding that is required to serve the student. For ESE students with a disability, there are five defined support levels with Level 1 being the lowest level of need and Level 5 being the highest.

Weighted FTE students are then multiplied by a base student allocation, as determined by the Legislature<sup>42</sup> (\$4,587.40 for FY 2022-23),<sup>43</sup> and by a district cost differential<sup>44</sup> to determine the Base Funding from state and local funds.<sup>45</sup>

Additionally, ESE services for students whose level of service is less than Support Levels 4 and 5 are funded through the ESE Guaranteed Allocation.<sup>46</sup> This allocation provides for the additional services needed for exceptional students.<sup>47</sup>

### Kindergarten Readiness

Beginning with the 2022-23 school year, all public and private VPK providers will use a coordinated screening and progress monitoring program (CSPMP) measures learning gains and outcomes based on performance standards in early literacy and mathematics, as well as performance in oral language

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<sup>36</sup> Chapter 73-345, L.O.F.

<sup>37</sup> See s. 1011.62(1)(d)1., F.S.

<sup>38</sup> Florida Department of Education, Bureau of School Business Services, Office of Funding and Financial Reporting, *Funding for Florida School Districts 2021-22* (2021), available at <https://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf>.

<sup>39</sup> Section 1011.61(1)(a), F.S.

<sup>40</sup> Section 1011.62(1), F.S.

<sup>41</sup> Specific Appropriation 86, s. 2, ch. 2022-156, L.O.F.

<sup>42</sup> Section 1011.62(1)(b), F.S.

<sup>43</sup> Specific Appropriations 8 and 92, s. 2, ch. 2020-111, L.O.F.

<sup>44</sup> Section 1011.62(2), F.S.

<sup>45</sup> Section 1011.62(1)(s), F.S.

<sup>46</sup> Section 1011.62(1)(e), F.S.

<sup>47</sup> Florida Department of Education, Bureau of School Business Services, Office of Funding and Financial Reporting, *Funding for Florida School Districts 2021-22* (2021), at 20, available at <https://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf>.

development, phonological awareness, knowledge of print and letters, decoding, fluency, vocabulary, and comprehension.<sup>48</sup>

For students in the VPK program through grade 2, the CSPMP is administered three times a year by each school district and VPK provider, within the first 30 days of the program year, midyear, and within the last 30 days before the end of the program year.<sup>49</sup> Results of the CSPMP provide data for VPK program accountability, baseline data to the DOE regarding each student's kindergarten readiness, and assess how well educational goals and curricular standards are being met.<sup>50</sup> Results must also identify students with a substantial deficiency in reading, including students with dyslexia and other learning disorders.<sup>51</sup>

A VPK program student who exhibits a substantial deficiency in early literacy skills must be referred to the local school district and may be eligible to receive intensive reading interventions before participating in kindergarten.<sup>52</sup>

### Florida 3<sup>rd</sup> Grade Student Retention

Florida law provides that to be promoted to grade 4, a student must score a Level 2 or higher on the statewide, standardized English Language Arts (ELA) assessment<sup>53</sup> for grade 3.<sup>54</sup> However, some grade 3 students who score below a Level 2 may be exempted from the retention requirement and be promoted to grade 4 through a good cause exemption.<sup>55</sup> Florida law provides for several good cause exceptions including specific exceptions for students with disabilities. A student with disabilities may be promoted if: their IEP indicates that participation in the statewide assessment program is not appropriate; or they take the statewide, standardized ELA assessment and have an IEP or a Section 504 plan that reflects that the student has received intensive instruction in reading or ELA for more than 2 years but still demonstrates a deficiency and was previously retained in kindergarten or grades 1, 2, or 3.<sup>56</sup>

### **Effect of the Bill**

The bill allows the parent of a student with disabilities who is enrolled in a public school prekindergarten program at the age of four and who is fully funded through the FEFP, the authority, in consultation with the individual education plan team, to retain their child. If such student is retained, and the student demonstrates a substantial deficiency in early literacy skills, the bill requires the student to receive instruction in early literacy skills.

The bill also revises the "good cause exemptions" from mandatory retention, by allowing a student, in grade 3, with a learning disability and who is severely below grade-level, be promoted to grade 4, if the student was retained in prekindergarten.

The bill provides that a student in a voluntary prekindergarten education program who exhibits a substantial deficiency in early literacy skills and based on the results of the administration of the final

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<sup>48</sup> Section 1008.25(8)(a), F.S.; *See also* s. 1002.68, F.S.

<sup>49</sup> Section 1008.25(8)(b)1., F.S.; Rule 6M-8.620, F.A.C. The DOE contracts with Renaissance Learning, Inc. to implement the CSPMP as Florida's Assessment of Student Thinking (FAST) using Star Early Literacy. *See* Florida Department of Education, Division of Early Learning, *Florida's Assessment of Student Thinking (FAST) using Star Early Literacy* (May 20, 2022), available at <https://www.floridaearlylearning.com/Content/Uploads/floridaearlylearning.com/files/DEL%20Memo-%20FAST%20-Star%20Early%20Literacy.pdf>.

<sup>50</sup> Section 1008.25(8)(a), F.S.

<sup>51</sup> *Id.*

<sup>52</sup> Section 1008.25(5)(b), F.S.

<sup>53</sup> Section 1008.22, F.S.

<sup>54</sup> Section 1008.25(5), F.S.

<sup>55</sup> Section 1008.25(c), F.S.

<sup>56</sup> Section 1008.25(6)(b), F.S.

coordinated screening and progress monitoring must be referred to the local school district and may be eligible to receive instruction in early literacy skills before participating in kindergarten.

**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 retention of a prekindergarten student with an individual education plan (IEP) would have no fiscal impact on the state. Prekindergarten and kindergarten students have the same program cost factor, so the Florida Education Finance Program funding for a retained prekindergarten student would be the same as a student that was promoted to kindergarten.