

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Committee on Education

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BILL: CS/SB 290

INTRODUCER: Education Pre-K -12 Committee and Senator Jones and others

SUBJECT: Public School Student Progression for Students with Disabilities

DATE: March 20, 2023      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sagues</u>	<u>Bouck</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Gray</u>	<u>Elwell</u>	<u>AED</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

SB 290 authorizes a parent to retain his or her child in prekindergarten, in consultation with the individual education plan team, if that child has a disability, an individual education plan (IEP), is enrolled in a public school prekindergarten program at the age of four, and is fully funded through the Florida Education Finance Program (FEFP).

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, instruction in such skills.

The bill also revises the “good cause exemptions” from mandatory retention, which allows a student in grade 3, who has 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 have a fiscal impact.

This bill takes effect on July 1, 2023.

## II. 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, and federal agencies to provide for the education of all children with disabilities;
- Assist states in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention;
- Ensure that educators and parents have the necessary tools to improve educational results for children with disabilities; and
- Assess and ensure the effectiveness of efforts to educate children with disabilities.<sup>7</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>8</sup> for each student.<sup>9</sup> In developing an IEP, the IEP team 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,

<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* (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>, at 9.

<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* (July 2011), available at <https://ies.ed.gov/ncee/pubs/20114026/pdf/20114026.pdf>, at 1-2.

<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 Mar. 9, 2023).

<sup>7</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>8</sup> In Florida statute, IEP refers to an "individual education plan." Section 1003.5716, F.S.

<sup>9</sup> 20 U.S.C. s. 1415.

developmental, and functional needs of the child, as well as special factors. 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>10</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>11</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>12</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>13</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>14</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>15</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>16</sup> However, a student's parent or teacher may request an IEP team meeting or a reevaluation at any time.<sup>17</sup>

### ***Voluntary Prekindergarten Program***

In 2004, the Legislature established the Voluntary Prekindergarten program (VPK), a voluntary, free prekindergarten program offered to eligible four-year-old children in the year before admission to kindergarten. A child must be a Florida resident and attain four years of age on or before September 1 of the program year to be eligible for the VPK program. 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. Parents may choose either a school-year program or summer program offered by either a public school or private prekindergarten provider.<sup>18</sup>

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<sup>10</sup> 20 U.S.C. s. 1414(d)

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

<sup>12</sup> 34 C.F.R. s. 300.149(a)(1) and (2).

<sup>13</sup> Florida Department of Education, Bureau of Exceptional Student Education and Student Services, *Exceptional Student Education Compliance Protocols 2020-2021*, available at <http://www.fldoe.org/core/fileparse.php/7673/urlt/MonitoringIntroduction.pdf> at 1.

<sup>14</sup> Rule 6A-6.03028(3), F.A.C.

<sup>15</sup> Florida Department of Education, *Developing Quality Individual Education Plans* (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf> at 9.

<sup>16</sup> Rule 6A-6.0331(7), F.A.C.

<sup>17</sup> See Rule 6A-6.03028, F.A.C.

<sup>18</sup> Section 1002.53, F.S.

<b>Voluntary Prekindergarten Education Programs</b>			
<b>Program Characteristics</b>	<b>School Year-Programs</b>		<b>Summer Program<sup>19</sup></b>
	<b>Public School<sup>20</sup></b>	<b>Private Prekindergarten<sup>21</sup></b>	
<b>Provider Type</b>	Public school	Private prekindergarten provider	Public school or private prekindergarten provider
<b>Minimum Program Length</b>	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>22</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>23</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. 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>24</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>25</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).

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>26</sup> The FEFP allocates funds to each school district based on student

<sup>19</sup> Section 1002.61, F.S.

<sup>20</sup> Section 1002.63, F.S.

<sup>21</sup> Section 1002.55, F.S.

<sup>22</sup> Section 1002.53(3)(d), F.S.

<sup>23</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 Jan. 31, 2023).

<sup>24</sup> Section 1002.66, F.S.; *see also* rule 6M-8.500, F.A.C.

<sup>25</sup> Section 1002.66, F.S.; *see also* rule 6M-8.500, F.A.C.

<sup>26</sup> Chapter 73-345, Laws of Fla.

enrollment.<sup>27</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>28</sup>

### Kindergarten Readiness

In 2022-2023 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 development, phonological awareness, knowledge of print and letters, decoding, fluency, vocabulary, and comprehension.<sup>29</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>30</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. Results must also identify students with a substantial deficiency in reading, including students with dyslexia and other learning disorders.<sup>31</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>32</sup>

### Florida Third 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<sup>33</sup> assessment for grade 3. 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. Florida law provides for several good cause exemptions including specific exceptions for students with disabilities. A student with disabilities may be promoted if the:

- Student's IEP indicates that participation in the statewide assessment program is not appropriate; or
- Student takes the statewide, standardized English Language Arts (ELA) assessment and who have an IEP or a Section 504 plan that reflects that the student has received intensive

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<sup>27</sup> Section 1011.62(1)(d)1., F.S.

<sup>28</sup> Florida Department of Education, Bureau of School Business Services, Office of Funding and Financial Reporting, *Funding for Florida School Districts 2022-23* (2022), available at <https://www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf>.

<sup>29</sup> Section 1008.25(8)(a), F.S.; See also Section 1002.68, F.S.

<sup>30</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>31</sup> Section 1008.25(8)(a), F.S.

<sup>32</sup> Section 1008.25(5)(b), F.S.

<sup>33</sup> Section 1008.22, F.S.

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>34</sup>

### III. Effect of Proposed Changes:

CS/SB 290 modifies s. 1008.25, F.S., to allow 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 Florida Education Finance Program (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 such 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 provides that a student who has been retained in a voluntary prekindergarten education program and who exhibits a substantial deficiency in early literacy skills based on the results of the administration of the final coordinated screening and progress monitoring must be referred to the local school district and may be eligible to receive instruction in such skills before participating in kindergarten.

This bill takes effect on July 1, 2023.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

None.

#### E. Other Constitutional Issues:

None.

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<sup>34</sup> Section 1008.25, F.S. *See* Section 1008.212(2), F.S.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1008.25 of the Florida Statutes.

**IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Education Pre-K – 12 on March 14, 2023:**

The committee substitute removes the term “intensive reading interventions” and replaces it with “instruction in early literacy skills.”

The committee substitute also removes an unnecessary cross-reference.

## B. Amendments:

None.