

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

The Florida K-20 Education Code¹ uses numerous terms describing various types of disabilities. Several of these terms have been superseded in common usage within the field of special education. For example, the term “mental retardation” has been replaced in common usage by the term “intellectual disability.”²

The federal Individuals with Disabilities Education Act (IDEA) defines a “child with a disability” as follows:

(A) In general

The term “child with a disability” means a child—(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9

The term “child with a disability” for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and (ii) who, by reason thereof, needs special education and related services.³

Some of the terms used in the current IDEA (e.g., mental retardation) have been superseded in common usage within the field of special education.

The IDEA defines the term “individualized education program” or “IEP” as a “written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 1414(d) [of

¹ Chapters 1000-1013, F.S.

² See Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, *Intellectual Disability*, at <http://www.cdc.gov/ncbddd/dd/ddmr.htm> (last visited Mar. 21, 2008); American Association on Intellectual and Developmental Disabilities, *Press Release: World’s Oldest Organization on Intellectual Disability Has a Progressive New Name* (Nov. 2, 2006), available at http://www.aaidd.org/About_AAIDD/name_change_PRdreen.htm (last visited Mar. 21, 2008).

³ 20 U.S.C. § 1401(3).

the IDEA].”⁴ In Florida, the Department of Education (DOE) has historically used the term “individual educational plan” when referring to an IEP.⁵

Proposed Changes:

The bill replaces several terms used throughout the Florida K-20 Education Code which describe various types of disabilities. The following table displays the new terms established by the bill and the corresponding terms used in current law which are being replaced:

| Current Term in Florida Law | HB 1313 Proposed Term |
|---|---|
| Students with handicapping conditions | Students with disabilities |
| Impaired or learning disabled persons | Persons with learning disabilities |
| Individual education plan | Individual educational plan |
| Mental retardation; Mentally handicapped; Trainable mentally handicapped; Profoundly mentally handicapped; or Educable mentally handicapped | Intellectual disability |
| Physical impairment; or Severely physically handicapped | Orthopedic impairment, traumatic brain injury, or other health impairment |
| Serious emotional disturbance; or Emotionally handicapped | Emotional or behavioral disability |
| Autism; or Autistic | Autism spectrum disorder |
| Hearing impaired | Deaf or hard of hearing |
| Dual sensory impaired | No change |
| Profoundly handicapped (includes profoundly mentally handicapped, dual sensory impaired, serious emotional disturbance, and autism) | As listed above by specific disability |

The bill substitutes the new terms listed in the above table for terms used in current law to describe various disabilities for purposes of:

- A requirement that students with disabilities have an equal opportunity to be selected for enrollment in a charter school;⁶
- Student eligibility requirements for the John M. McKay Scholarships for Students with Disabilities Program;⁷
- The definition of “exceptional student” for purposes of public K-12 education;⁸
- Student eligibility requirements for special programs and related services for children with disabilities who are 3 years of age or older (preschool children)⁹ and for special programs for children with disabilities who are younger than 3 years of age (infants and toddlers);^{10,11}

⁴ 20 U.S.C. § 1401(14).

⁵ See, e.g., Florida Department of Education, *Developing Quality Individual Educational Plans: A Guide for Instructional Personnel and Families* (2000), available at <http://www.fldoe.org/ese/pubxhome.asp> (last visited Mar. 21, 2008); rule 6A-6.03026(4), F.A.C.

⁶ See § 1002.33(10)(f), F.S.

⁷ See § 1002.39(1), F.S.

⁸ See § 1003.01(3)(a), F.S.

⁹ See Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. §§ 1411-1419).

¹⁰ See Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. §§ 1431-1445).

¹¹ See § 1003.21(1)(e), F.S.

- Special high school graduation requirements for students with disabilities;¹² and
- Substitute admission and graduation requirements of public postsecondary educational institutions for students with disabilities.¹³

The bill deletes a provision authorizing district school boards to adopt rules concerning the admission of eligible children 3 years of age or older to special programs and related services. According to DOE, admissions for these special programs and related services are governed by State Board of Education rule and not school board rules.¹⁴

The bill also authorizes the State Board of Education to adopt rules concerning services for children with disabilities younger than 3 years of age (i.e., infants and toddlers).

The bill provides an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1. Amends section 1002.33, F.S., revising disability terms in requirement that students with disabilities have an equal opportunity to be selected for enrollment in a charter school.

Section 2. Amends section 1002.39, F.S., revising disability terms in student eligibility requirements for the John M. McKay Scholarships for Students with Disabilities Program.

Section 3. Amends section 1003.01, F.S., revising disability terms in the definition of “exceptional student” for purposes of public K-12 education.

Section 4. Amends section 1003.21, F.S., revising disability terms in student eligibility requirements for special programs and related services for children with disabilities.

Section 5. Amends section 1003.438, F.S., revising disability terms in special high school graduation requirements for students with disabilities.

Section 6. Amends section 1007.02, F.S., revising disability terms in the Enhanced New Needed Opportunity for Better Life and Education for Students with Disabilities (ENNOBLES) Act, which established substitute admission and graduation requirements of public postsecondary educational institutions for students with disabilities.¹⁵

Section 7. Amends section 1007.264, F.S., revising disability terms in substitute admission requirements of public postsecondary educational institutions for students with disabilities.

Section 8. Amends section 1007.265, F.S., revising disability terms in substitute graduation requirements of public postsecondary educational institutions for students with disabilities

Section 9. Provides an effective date of July 1, 2008.

¹² See § 1003.438, F.S.

¹³ See §§ 1007.02(2), 1007.264(1) & 1007.265(1), F.S.

¹⁴ See rule 6A-6.03026, F.A.C.

¹⁵ See §§ 1, 4 & 5, ch. 2003-8, L.O.F. (2003), available at Florida Department of State, http://election.dos.state.fl.us/laws/03laws/ch_2003-008.pdf (last visited Mar. 21, 2008).

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:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the State Board of Education to adopt rules concerning services for children with disabilities younger than 3 years of age. In addition, DOE reports that the bill in effect requires modification of four state board rules.^{16,17}

¹⁶ Florida Department of Education, Government Relations, *2008 Agency Bill Analysis of HB 1313*, 2 (Mar. 10, 2008).

¹⁷ See rules 6-1.0996 (Graduation Requirements for Certain Students with Disabilities), 6A-4.01793 (Specialization Requirements for Endorsement in Severe or Profound Disabilities – Academic Class), 6A-4.01796 (Specialization Requirements for Endorsement in Autism – Academic Class) & 6A-6.03026 (Special Programs for Prekindergarten Children with Disabilities), F.A.C.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill deletes authority for district school boards to adopt rules concerning the admission of eligible children 3 years of age or older to special programs and related services. The bill also authorizes the State Board of Education to adopt rules concerning services for children with disabilities younger than 3 years of age. These provisions do not appear to be expressed in the bill's title as required by the State Constitution.¹⁸

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 18, 2008, the Committee on K-12 adopted four amendments offered by Representative Precourt:

- Amendment 1 (Lines 61-69). The amendment clarifies that students with specific learning disabilities include, but are not limited to, students with dyslexia, dyscalculia, or developmental aphasia.¹⁹
- Amendment 2 (Lines 77-89). The amendment is technical in nature. It revises provisions of the bill for internal consistency by conforming to similar provisions in current law. The amendment also addresses drafting issues raised in this staff analysis by revising the bill's title to provide notice of changes to the rulemaking authority of the State Board of Education and school districts (see III.C. DRAFTING ISSUES OR OTHER COMMENTS).
- Amendment 3 (Lines 102-106). The amendment clarifies that students with specific learning disabilities include, but are not limited to, students with dyslexia, dyscalculia, or developmental aphasia.²⁰
- Amendment 4 (Line 154). The amendment revises the catchline of section 1007.264, F.S., to clarify that the section applies to persons with disabilities and is not restricted to persons with learning disabilities.

¹⁸ See § 6, Art. III of the State Constitution ("Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.").

¹⁹ According to the Learning Disabilities Association of America, "dyslexia" is reading and related language-based learning disability, "dyscalculia" involves problems with arithmetic and mathematical concepts, and "developmental aphasia" involves trouble understanding spoken language and poor reading comprehension. See Learning Disabilities Association of America, *Learning Disabilities: Signs, Symptoms, and Strategies*, at http://www.lidaamerica.org/aboutld/parents/ld_basics/ld.asp (last visited Mar. 21, 2008).

²⁰ See *id.*