

**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.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: CS/SB 318

INTRODUCER: Education Pre-K - 12 Committee and Senator Constantine

SUBJECT: Exceptional Students with Disabilities/Cost

DATE: April 3, 2008                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.			EA	
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill revises requirements relating to the delivery of educational instruction and student funding when an exceptional student with disabilities is placed or referred to a private residential care facility in another district. In particular, the bill:

- Requires timely notification by the Department of Children and Family Services or the Agency for Persons with Disabilities when the placement or referral of an exceptional student is made by the department or agency to a private residential care facility that crosses school district lines and is primarily to meet the student’s residential or other non-educational needs;
- Requires the school district in which the facility is located to review the student’s IEP, provide or contract for educational instruction to the student, or decline to do so;
- Provides that, if the school district declines to contract or provide instruction, the school district in which the student was last enrolled is responsible for providing or contracting for instruction; and
- Specifies that the school district, which provides or contracts to provide instruction, reports the student for funding.

The bill substantially amends sections 1003.57 and 1003.58 of the Florida Statutes.

## II. Present Situation:

### **Free and Appropriate Public Education (FAPE)**

Federal law requires states to make a free appropriate public education available to all children with disabilities residing in the state between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.<sup>1</sup> The state educational agency must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.<sup>2</sup>

Federal Child Find obligations require all children with disabilities residing in the state, including children with disabilities who are homeless or wards of the state and children with disabilities who are attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, to be identified, located, and evaluated.<sup>3</sup> States must also ensure that a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.<sup>4</sup>

### **Exceptional Students in Florida**

Under current law, an exceptional student is any student who has been determined eligible for a special program in accordance with State Board of Education (SBE) rule and includes students who are gifted and students with disabilities.<sup>5</sup> The law further defines the term “exceptional students with disabilities.”<sup>6</sup>

### **Special Education Services**

The law defines special education services as specially designed instruction and related services as are needed for an exceptional student to benefit from education, and may include: transportation; diagnostic and evaluation services; social services; physical and occupational therapy; speech and language therapy; job placement; orientation and mobility training; braille, typists, and readers for the blind; interpreters and auditory amplification; rehabilitation counseling; transition services; mental health services; guidance and career counseling; specified materials, assistive technology devices, and other specialized equipment; and other services as approved by SBE rules.<sup>7</sup>

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<sup>1</sup> 20 U.S.C. s. 1412.

<sup>2</sup> 34 C.F.R. s. 300.149

<sup>3</sup> 20 U.S.C. s. 1412 *See also* 34 C.F.R. s. 300.111

<sup>4</sup> *Id.*

<sup>5</sup> s. 1003.01(3)(a), F.S.

<sup>6</sup> Exceptional students with disabilities are those who are mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospital and homebound, autistic, developmentally delayed children, ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in SBE rules. *See also* 34 C.F.R. s. 300.8

<sup>7</sup> s. 1003.01(3)(b), F.S.

**District School Boards**

District school boards are tasked with the following:<sup>8</sup>

- Provide for an appropriate program of special instruction, facilities, and services for exceptional students, as prescribed by the State Board of Education (SBE) as acceptable in accordance with s. 1003.57, F.S.; and
- Provide, in accordance with s. 1003.58, F.S., alternative educational programs, according to SBE rules, to students who reside in residential care facilities operated by the DCF.

The law prohibits a student from being given special instruction or services as an exceptional student until he or she has been properly evaluated, classified and placed in the manner prescribed by SBE rule.<sup>9</sup> The parent of an exceptional student evaluated, placed, or denied placement must be notified of each evaluation, placement, or denial. In addition, parents must be notified of the right to a due process hearing.<sup>10</sup>

State law and administrative rule require district school boards to provide for an appropriate program of special instruction, facilities, and services for exceptional students either within the district school system, in cooperation with other district school systems, or through contracts with approved private schools or community facilities that meet the standards established by the Commissioner of Education.<sup>11</sup> The DOE notes that in some instances, a district, as specified by the individual educational plan (IEP) team, would initiate the placement of the student and assume financial responsibility.

According to the DOE, some school districts have entered into multi-district agreements for the provision of ESE services. The DOE notes that this arrangement typically occurs when a district has the capacity to serve a unique population of students and neighboring districts contract for the provision of those services (e.g., a “center school” or other specialized program). A written agreement specifies the party responsible for developing and implementing the IEP, transportation, program and staff supervision, funding, and the dissolution of the agreement. The DOE notes that the district serving the student (the receiving district) commonly enrolls the student and receives the funding generated through the Florida Education Finance Program (FEFP).<sup>12</sup>

The 2007-2008 General Appropriations Act prohibits school districts that provided educational services in 2006-2007 for exceptional students who are residents of other districts from discontinuing the provision of services without the prior approval of the DOE.<sup>13</sup> The department requires these districts to initiate the approval process by submitting a notice of intent to the DOE. The notice must include the following: a copy of the applicable written agreement for out-

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<sup>8</sup> s. 1001.42(4)(l) and (m), F.S., and s. 1002.42(12), F.S.

<sup>9</sup> s. 1003.57(1)(e), F.S.

<sup>10</sup> *Id.* See also 34 C.F.R. s. 300.121

<sup>11</sup> s. 1003.57(1)(b), F.S.

<sup>12</sup> According to the DOE, some students with disabilities are enrolled in private schools (day or residential programs) by their parents. Districts have an obligation to expend a proportionate share of their federal Individuals with Disabilities Education Act (IDEA) funds on services or support to students with disabilities who attend private elementary and secondary schools located in their districts.

<sup>13</sup> Specific Appropriation 86, ch. 2007-72, L.O.F.

of-district placement as required by administrative rule;<sup>14</sup> a statement of concurrence from the district in which the students reside that the agreement would be dissolved; a general description of how the students would be served by that district; and an estimate of the total number of FTE by program area that would be affected by the cessation of out-of-district placement.<sup>15</sup> Districts were advised that the written agreement for out-of-district placements may only be dissolved upon written approval by the department of an amendment to the district's policies and procedures for the provision of specially designed instruction and related services for these students.<sup>16</sup>

### **Contracts with Approved Private Schools and Community Facilities<sup>17</sup>**

When the district school board determines that no special education program offered by it, a cooperating district school board, or a state agency can adequately provide the educational program for the student, the school district must provide special education programs with approved private schools or community facilities through contracts, according to criteria specified in rule.

Districts must assure that the proposed program at the private school or community facility is appropriate to meet the educational needs of students who are placed through the contracts. However, this provision does not limit the responsibility of agencies other than the state's school districts to provide or pay for some or all of the cost of a free appropriate education to be provided to children with disabilities. Contracts between the district school board and private schools or community facilities must contain specific information, including:

- Method of determining charges and sharing costs with other agencies for the placements under the contract, including the projected total cost to the district;
- Identification of financial responsibility; and
- Method of resolving interagency disputes when the school board initiates action to secure reimbursement from other agencies.

Prior to executing contracts, districts must ensure that the private school or community facility meet specific criteria, including health, safety, and welfare certificates and inspections, staffing by qualified personnel, and a written description of the support services that are available and would be provided to each student placed under the contract, in accordance with the student's IEP. As well, these criteria must be met for an exceptional student enrolled in a special program in a private school or community facility to generate FEFP funds for the district in the appropriate cost categories. Contracts between school districts and private schools or community facilities for the provision of educational facilities to exceptional students may not extend beyond one school fiscal year.

The district responsibilities under the contract include selecting an appropriate school or facility in consultation with the parent, verifying that the student is a resident of the school district and is

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<sup>14</sup> Rule 6A-6.03411, F.A.C.

<sup>15</sup> Memorandum from the Department of Education, to District Superintendents and Exceptional Student Education Administrators, October 5, 2007.

<sup>16</sup> *Id.*

<sup>17</sup> Rule 6A-6.0361, F.A.C. *See also* 34 C.F.R. s. 154, methods relating to ensuring services.

enrolled in or applied for admittance to a district school educational program, and providing for the cost of the student's educational program, as specified in the contract.

### **Students in Residential Care Facilities<sup>18</sup>**

District school boards must provide educational programs to students who reside in residential care facilities operated by the DCF or the APWD, according to SBE rules. However, the law prohibits school districts from being charged for any rent, maintenance, utilities, or overhead at these facilities. As well, districts have full and complete authority in assigning and placing these students in educational programs. Districts are required to have a written agreement with the DCF and the APWD that outlines the duties and responsibilities of each party.

A district may provide the educational component of a residential placement for exceptional students when the placement is made by another public agency for the primary purpose of addressing residential and other non-educational needs.<sup>19</sup> In this instance, the student's IEP must state that the placement is not required in order for the student to benefit from special education which could otherwise be provided by the district during the day. Under these circumstances, the DOE notes that the district may be financially responsible for the educational component of the placement. The DOE further notes that some, but not all, districts have agreements with private residential facilities to fund the educational component. A district's decision to provide the education component is made on a case-by-case basis that considers the placement agency, the private facility, the district in which the student was previously enrolled, the parent's residence, and the location of the facility.

On August 15, 2007, the Commissioner of Education signed an order regarding a complaint filed on behalf of a student with a disability against the Orange County School District, the Seminole County School District, and the Palm Beach County School District.<sup>20</sup> The complaint was related to the determination of which school district was responsible for payment of the educational costs for a student placed by the APWD in a private residential facility in Seminole County. The parents of the student were residents of Palm Beach County. When the facility closed, the APWD transferred the student to another residential facility in Orange County. Based on state and federal requirements related to residency and to district obligations to provide FAPE, the order assigned the responsibility for paying for the educational portion of the student's placement to Palm Beach County School District, the district in which the parents reside.<sup>21</sup>

### **OPPAGA Review<sup>22</sup>**

At the request of the Legislature, OPPAGA is reviewing the provision of exceptional student education services in residential facilities, including the notification of school districts when

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<sup>18</sup> ss. 402.22 and 1003.58, F.S. Section. 402.22(2) and (4), F.S., requires educational programs to be received from the districts for students who are ages 5 through 18 under the residential care of the DCF or the APWD. The law also requires funding for the programs through the FEFP for the district. The law allows districts to provide educational programs to prekindergarten students. The law allows the DOE, the DCF, and the APWD to adopt rules for the transition of students from the residential facility.

<sup>19</sup> Rule 6A-6.0361(2)(b), F.A.C.

<sup>20</sup> DOE, March 24, 2008.

<sup>21</sup> *In the Matter of J.A.C.*, Case No. DOE 2007 1394-FOI, August 15, 2007.

<sup>22</sup> *OPPAGA Business Plan for 2007-2008*. p. 8.

students transfer from one facility to another and the allocation of financial costs for those services. The report will be released this month.

### **III. Effect of Proposed Changes:**

The bill revises requirements relating to the delivery of educational instruction and student funding when an exceptional student with disabilities is placed or referred to a private residential care facility in another district. In particular, the bill:

- Requires timely notification by the Department of Children and Family Services or the Agency for Persons with Disabilities when the placement or referral of an exceptional student is made by the department or agency to a private residential care facility that crosses school district lines and is primarily to meet the student's residential or other non-educational needs;
- Requires the school district in which the facility is located to review the student's IEP, provide or contract for educational instruction to the student, or decline to do so;
- Provides that, if the school district declines to contract or provide instruction, the school district in which the student was last enrolled is responsible for providing or contracting for instruction; and
- Specifies that the school district, which provides or contracts to provide instruction, reports the student for funding.

### **IV. Constitutional Issues:**

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

### **V. Fiscal Impact Statement:**

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

None.

**C. Government Sector Impact:**

The DOE has indicated that the bill may have an indeterminate fiscal impact. The DOE notes that many students in all FEFP classifications receive their education through formal and informal inter-district agreements.

According to the DOE, each of these students is funded appropriately in the district providing the service through the FEFP or other sources. Some inter-district agreements provide for compensation beyond FEFP funding for extra costs incurred. The law provides for cooperation with school boards of adjoining districts and the settlement of disagreements through the DOE.<sup>23</sup> The DOE's decision is binding on both districts.<sup>24</sup>

Additionally, the bill's provisions relating to the placement of an exceptional students with disabilities in a private residential facility are silent on the distribution of IDEA funds. The bill may apply to a private school student who is parentally placed in a private residential facility. Children who are placed in or referred to private schools or facilities by the state or appropriate school districts are provided special education and related services at no cost to their parents.<sup>25</sup> There are more limited obligations for school districts to children with disabilities when the public agency made a free and appropriate public education available and the parents elected to place them in a private school or facility without the public agency's consent or referral.<sup>26</sup>

The DOE notes that under IDEA, the district where the school is located would be responsible for Child Find and for considering the student in its IDEA proportionate share obligation. The student would have no individual right to services.

The DOE further notes that the FEFP funding program and all DOE data systems rely on reporting students where they are served. The DOE indicates that the requirements in the bill would result in an additional complexity for the financial management of all districts.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

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<sup>23</sup> s. 1001.42(4)(d), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> 20 U.S.C. s. 1412(a)(10)(B)(i) and (C)(i)

<sup>26</sup> *Id.*

**CS by Education Pre-K – 12 on April 1, 2008:**

## CS for SB 318:

- Requires timely notification by the Department of Children and Family Services or the Agency for Persons with Disabilities when the placement or referral of an exceptional student is made by the department or agency to a private residential care facility that crosses school district lines and is primarily to meet the student's residential or other non-educational needs;
- Requires the school district in which the facility is located to review the student's IEP, provide or contract for educational instruction to the student, or decline to do so;
- Provides that, if the school district declines to contract or provide instruction, the school district in which the student was last enrolled is responsible for providing or contracting for instruction;
- Specifies that the school district that provides or contracts to provide instruction reports the student for funding; and
- Removes the provisions relating to the parent's school district of residence as the determining factor for the delivery of educational instruction and the report of a student for funding purposes.

**B. Amendments:**

None.