

1                                   A bill to be entitled  
 2           An act relating to exceptional students; amending s.  
 3           1003.57, F.S.; revising provisions relating to due process  
 4           hearings for exceptional students; requiring that such  
 5           hearings be conducted by an administrative law judge from  
 6           the Division of Administrative Hearings pursuant to a  
 7           contract with the Department of Education; providing that  
 8           any party to a hearing related to gifted students may  
 9           request that the findings or decision be reviewed by the  
 10          district court of appeal; authorizing a district school  
 11          board to consider a change in placement for a student who  
 12          has a disability if the student engages in behavior that  
 13          violates the district school board's code of student  
 14          conduct; providing for the removal and placement of such  
 15          student in an alternative educational setting for a  
 16          limited period; specifying the grounds for removal;  
 17          providing definitions for the terms "controlled substance"  
 18          and "weapon"; creating s. 1003.571, F.S.; requiring that  
 19          the State Board of Education comply with the Individuals  
 20          with Disabilities Education Act after evaluating and  
 21          determining that such act is consistent with certain  
 22          principles; requiring that the State Board of Education  
 23          adopt rules; amending s. 1003.58, F.S.; conforming a  
 24          cross-reference; providing an effective date.

25  
 26    Be It Enacted by the Legislature of the State of Florida:

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 28          Section 1.   Subsection (1) of section 1003.57, Florida

29 Statutes, is amended to read:

30 1003.57 Exceptional students instruction.--

31 (1) (a) Each district school board shall provide for an  
 32 appropriate program of special instruction, facilities, and  
 33 services for exceptional students as prescribed by the State  
 34 Board of Education as acceptable, including provisions that:

35 1.~~(a)~~ The district school board provide the necessary  
 36 professional services for diagnosis and evaluation of  
 37 exceptional students.

38 2.~~(b)~~ The district school board provide the special  
 39 instruction, classes, and services, either within the district  
 40 school system, in cooperation with other district school  
 41 systems, or through contractual arrangements with approved  
 42 private schools or community facilities that meet standards  
 43 established by the commissioner.

44 3.~~(c)~~ The district school board annually provide  
 45 information describing the Florida School for the Deaf and the  
 46 Blind and all other programs and methods of instruction  
 47 available to the parent of a sensory-impaired student.

48 4.~~(d)~~ The district school board, once every 3 years,  
 49 submit to the department its proposed procedures for the  
 50 provision of special instruction and services for exceptional  
 51 students.

52 (b)~~(e)~~ A student may not be given special instruction or  
 53 services as an exceptional student until after he or she has  
 54 been properly evaluated, classified, and placed in the manner  
 55 prescribed by rules of the State Board of Education. The parent  
 56 of an exceptional student evaluated and placed or denied

57 placement in a program of special education shall be notified of  
 58 each such evaluation and placement or denial. Such notice shall  
 59 contain a statement informing the parent that he or she is  
 60 entitled to a due process hearing on the identification,  
 61 evaluation, and placement, or lack thereof. Such hearings are  
 62 ~~shall be exempt from the provisions of~~ ss. 120.569, 120.57, and  
 63 286.011, except to the extent that the State Board of Education  
 64 adopts rules establishing other procedures. ~~and~~ Any records  
 65 created as a result of such hearings are ~~shall be~~ confidential  
 66 and exempt from ~~the provisions of~~ s. 119.07(1). The hearing must  
 67 be conducted by an administrative law judge from the Division of  
 68 Administrative Hearings pursuant to a contract between the  
 69 Department of Education and the Division of Administrative  
 70 Hearings of the Department of Management Services. The decision  
 71 of the administrative law judge is ~~shall be~~ final, except that  
 72 any party aggrieved by the finding and decision rendered by the  
 73 administrative law judge has ~~shall have~~ the right to bring a  
 74 civil action in the state circuit court. In such an action, the  
 75 court shall receive the records of the administrative hearing  
 76 and shall hear additional evidence at the request of either  
 77 party. In the alternative, in hearings conducted on behalf of a  
 78 student who is identified as gifted, any party aggrieved by the  
 79 finding and decision rendered by the administrative law judge  
 80 has ~~shall have~~ the right to request a ~~an impartial~~ review of the  
 81 administrative law judge's order by the district court of appeal  
 82 as provided in ~~by~~ s. 120.68.

83 (c) Notwithstanding any law to the contrary, during the  
 84 pendency of any proceeding conducted pursuant to this section,

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85 unless the district school board and the parents otherwise  
86 agree, the student shall remain in his or her then-current  
87 educational assignment or, if applying for initial admission to  
88 a public school, shall be assigned, with the consent of the  
89 parents, in the public school program until all such proceedings  
90 have been completed.

91 (d)~~(f)~~ In providing for the education of exceptional  
92 students, the district school superintendent, principals, and  
93 teachers shall utilize the regular school facilities and adapt  
94 them to the needs of exceptional students to the maximum extent  
95 appropriate. Segregation of exceptional students shall occur  
96 only if the nature or severity of the exceptionality is such  
97 that education in regular classes with the use of supplementary  
98 aids and services cannot be achieved satisfactorily.

99 (e)~~(g)~~ In addition to the services agreed to in a  
100 student's individual educational ~~education~~ plan, the district  
101 school superintendent shall fully inform the parent of a student  
102 having a physical or developmental disability of all available  
103 services that are appropriate for the student's disability. The  
104 superintendent shall provide the student's parent with a summary  
105 of the student's rights.

106 (f) School personnel may consider any unique circumstances  
107 on a case-by-case basis when determining whether a change in  
108 placement is appropriate for a student who has a disability and  
109 violates a district school board's code of student conduct.  
110 School personnel may remove and place such student in an interim  
111 alternative educational setting for not more than 45 school  
112 days, without regard to whether the behavior is determined to be

113 a manifestation of the student's disability, if the student:

114 1. Carries a weapon to or possesses a weapon at school, on  
 115 school premises, or at a school function under the jurisdiction  
 116 of the school district;

117 2. Knowingly possesses or uses illegal drugs, or sells or  
 118 solicits the sale of a controlled substance, while at school, on  
 119 school premises, or at a school function under the jurisdiction  
 120 of the school district; or

121 3. Has inflicted serious bodily injury upon another person  
 122 while at school, on school premises, or at a school function  
 123 under the jurisdiction of the school district.

124 (g) For purposes of paragraph (f), the term:

125 1. "Controlled substance" means a drug or other substance  
 126 identified under Schedule I, Schedule II, Schedule III, Schedule  
 127 IV, or Schedule V of the Controlled Substances Act, 21 U.S.C. s.  
 128 812(c) and s. 893.02(4).

129 2. "Weapon" means a device, instrument, material, or  
 130 substance, animate or inanimate, which is used for, or is  
 131 readily capable of, causing death or serious bodily injury;  
 132 however, this definition does not include a pocketknife having a  
 133 blade that is less than 2 1/2 inches in length.

134 Section 2. Section 1003.571, Florida Statutes, is created  
 135 to read:

136 1003.571 Instruction for exceptional students who have a  
 137 disability.--

138 (1) The State Board of Education shall comply with the  
 139 Individuals with Disabilities Education Act (IDEA), as amended,  
 140 and its implementing regulations after evaluating and

141 determining that the IDEA, as amended, and its implementing  
 142 regulations are consistent with the following principles:

143 (a) Ensuring that all children who have disabilities are  
 144 afforded a free and appropriate public education that emphasizes  
 145 special education and related services designed to meet their  
 146 unique needs and prepare them for further education, employment,  
 147 and independent living;

148 (b) Ensuring that the rights of children who have  
 149 disabilities and their parents are protected; and

150 (c) Assessing and ensuring the effectiveness of efforts to  
 151 educate children who have disabilities.

152 (2) The State Board of Education shall adopt rules  
 153 pursuant to ss. 120.536(1) and 120.54 to implement this section.

154 Section 3. Subsection (3) of section 1003.58, Florida  
 155 Statutes, is amended to read:

156 1003.58 Students in residential care facilities.--Each  
 157 district school board shall provide educational programs  
 158 according to rules of the State Board of Education to students  
 159 who reside in residential care facilities operated by the  
 160 Department of Children and Family Services or the Agency for  
 161 Persons with Disabilities.

162 (3) The district school board shall have full and complete  
 163 authority in the matter of the assignment and placement of such  
 164 students in educational programs. The parent of an exceptional  
 165 student shall have the same due process rights as are provided  
 166 under s. 1003.57(1)(b) ~~s. 1003.57(1)(c)~~.

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168 Notwithstanding the provisions herein, the educational program  
169 at the Marianna Sunland Center in Jackson County shall be  
170 operated by the Department of Education, either directly or  
171 through grants or contractual agreements with other public or  
172 duly accredited educational agencies approved by the Department  
173 of Education.

174 Section 4. This act shall take effect July 1, 2009.