

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 1128

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

SUBJECT: Education/Children in Shelter Care or Foster Care

DATE: March 20, 2009

REVISED: _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--------------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill defines a surrogate parent as an individual appointed to act in the place of a parent in making educational decisions and safeguarding a child's rights under the Individuals with Disabilities Education Act (IDEA). The bill specifies the responsibilities of the school district and the courts for appointing a surrogate parent for a dependent child or a child in foster care who has or is suspected of having a disability. The bill prescribes the circumstances under which the appointment must be made.

The bill:

- Specifies the qualifications for a surrogate parent;
- Allows a guardian ad litem to be appointed by the court as a surrogate parent;
- Specifies the duties, responsibilities, and procedural safeguards of a surrogate parent;
- Provides that a surrogate parent may not be held liable for actions taken in good faith to protect a student's education rights;
- Specifies the circumstances under which an individual would no longer continue to serve as a surrogate parent;
- Provides access to confidential reports and records of child abuse for a local school district employee who is designated to act as a liaison between the school district, the

Department of Children and Family Services (DCF), and the principal of the child's school;

- Requires a court order to appoint or terminate a surrogate parent;
- Authorizes the court to enter an order granting access to medical records and education records of children placed in shelter care to the court, the DCF, the DCF contract providers, and the child's guardian ad litem and attorney;
- Provides that judicial and citizen panel reviews of dependency cases must consider a surrogate parent's testimony, determine who has the right to make educational decisions for the child, and if necessary, appoint a surrogate parent for the child or refer the child to a district school board for the appointment; and
- Provides a temporary exemption for dependent children and children in foster care from providing proof of age and school entry health examinations and immunizations prior to attending school.

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

This bill substantially amends ss. 39.0016, 39.202, 39.402, 39.701, 1003.21, 1003.22, and 1003.57, F.S.

II. Present Situation:

Individuals with Disabilities Education Act

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.¹ 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.²

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.³ 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.⁴

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.⁵ The law further defines the term “exceptional

¹ 20 U.S.C. s. 1412.

² 34 C.F.R. s. 300.149

³ 20 U.S.C. s. 1412 *See also* 34 C.F.R. s. 300.111

⁴ *Id.*

⁵ s. 1003.01(3)(a), F.S.

students with disabilities.”⁶ The law defines special education services as specially designed instruction and related services as are needed for an exceptional student to benefit from education.

For initial evaluations only, if the child is a ward of the state and is not residing with his or her parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child has a disability if:⁷

- Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
- The rights of the parents of the child have been terminated in accordance with state law; or
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

District School Boards

District school boards are tasked with the following:⁸

- 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.⁹ 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.¹⁰

State law requires district school boards to provide for an appropriate program of special instruction, classes, 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.¹¹

⁶ Exceptional students with disabilities are those who have an intellectual disability; autism spectrum disorder; speech impairment; language impairment; orthopedic impairment; other health impairment; traumatic brain injury; visual impairment; emotional or behavioral disability; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in State Board of Education rules. *See also* 34 C.F.R. s. 300.8

⁷ 34 CFR s. 300.300(a)(2)

⁸ s. 1001.42(4)(l) and (m), F.S.

⁹ s. 1003.57(1)(e), F.S.

¹⁰ *Id.* *See also* 34 C.F.R. s. 300.121

¹¹ s. 1003.57(1)(b), F.S.

The DCF is tasked with cooperating with the DOE and local school districts to access services and support for children who are dependent¹² or sheltered.¹³

Surrogate Parents under IDEA

Pursuant to IDEA, each public agency must ensure that the rights of a child are protected by determining the need for, and assigning, a surrogate parent whenever:¹⁴

- No parent¹⁵ can be identified;
- The public agency, after reasonable efforts, cannot locate a parent;
- The child is a ward of the state under the laws of that state; or
- The child is an unaccompanied homeless youth as defined by the McKinney-Vento Homeless Assistance Act.¹⁶

A surrogate parent cannot be an employee of the state education agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents, even if they are employed by an agency that is involved in the education or care of the child, until an alternate surrogate parent is appointed.¹⁷

Florida administrative rule establishes minimum qualifications, procedures for appointments, responsibilities, limits, rights, liabilities and allowable compensation for surrogate parents.¹⁸ Local school districts must appoint a surrogate parent for any child who has or is suspected of having a disability as soon as the child is determined to be dependent and to be without a parent to act on his or her behalf.¹⁹

Education Records

The Family Educational Rights and Privacy Act (FERPA) limits the authority of schools to release education records to third parties.²⁰ A parent or eligible student must provide a signed

¹² s. 39.01(15), F.S. Section 39.0016, F.S., defines the term "children known to the department" as children who are found to be dependent or children in shelter care.

¹³ Pursuant to s. 30.01(68), F.S., "shelter" means placement with a relative or nonrelative, or in a licensed facility, for the temporary care of a child who is alleged or has been found to be dependent, pending court disposition.

¹⁴ 34 CFR s.300.519(a)-(b)

¹⁵ "Parent" includes the biological or adoptive parent of a child, a foster parent (unless state law prohibits a foster parent from acting as a parent), a guardian, an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, an individual who is legally responsible for the child's welfare, or a surrogate parent. *See* 34 C.F.R. 300.30. The Florida School Code (s. 1000.21(5), F.S.) defines "parent" as either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of a parent.

¹⁶ 34 C.F.R. s. 300.300

¹⁷ 34 C.F.R. s. 300.519(a), (b) and (f).

¹⁸ Rule 6A-6.0333, F.A.C.

¹⁹ s. 39.0016(4)(c)5., F.S.

²⁰ 20 U.S.C. s. 1232g(b)(1) and 34 C.F.R. s. 99.31. *See* U.S. Department of Education, Family Educational Rights and Privacy Act (FERPA), *Final Rule*, 34 CFR Part 99, *Section-by-Section Analysis*, December 2008.

U.S. Dept. of Education, Family Education and Privacy Rights Act (FERPA), available at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>. (last visited March 14, 2009). Section 1002.22(3), F.S., makes a student's education records confidential and exempt from s. 119.07(1), F.S.

and dated written consent before a student's education records may be released.²¹ The law does allow schools to disclose education records, without consent, to comply with a judicial order or lawfully issued subpoena and to parties that include the following:²² school officials, including teachers, with a legitimate educational interest; officials at other schools to which a student is transferring; appropriate parties in connection with financial aid to a student; and appropriate officials in cases of health and safety emergencies.²³

The DCF and community-based care providers may have access to a child's education records without the consent of the child or the child's parent.²⁴ The law allows for the release of confidential information contained in child abuse records to the principal of the child's school, who is authorized to further release the information as necessary to provide the child with education services.²⁵

Multi-School District Agreements for Exceptional Students with Disabilities²⁶

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).

Contracts with Approved Private Schools and Community Facilities²⁷

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 ensure 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, other agencies may be required 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:

²¹ 34 C.F.R. s. 99.3. A parent includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

²² 20 U.S.C. s. 1232g(b)(1) and 34 C.F.R. s. 99.31.

²³ 34 C.F.R. s. 99.36(b) provides that educational information in connection with an emergency to protect the health and safety of a student may be released to teachers in the school and at other schools.

²⁴ s. 1002.22(3)(d)14., F.S.

²⁵ s. 39.202(2)(p), F.S.

²⁶ DOE bill analysis, March 24, 2008.

²⁷ Rule 6A-6.0361, F.A.C. *See also* 34 C.F.R. s. 154, methods relating to ensuring services.

- Method of determining charges and sharing costs with other agencies for the placement, 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.

Districts must ensure that the private school or community facility meet specific criteria 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. The district responsibilities under the contract include verifying that the student is a resident of the school district and is 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 Facilities²⁸

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.²⁹ 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.³⁰

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.³¹ 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

²⁸ ss. 402.22 and 1003.58, F.S. Section 402.22(2) and (6), F.S., requires educational programs to be offered by 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.

²⁹ Rule 6A-6.0361(2)(b), F.A.C.

³⁰ DOE, March 24, 2008.

³¹ *Id.*

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.³²

Office of Program Policy Analysis and Government Accountability (OPPAGA) Review

OPPAGA recently reviewed the provision of exceptional student education services in residential facilities, including the notification of school districts when students transfer from one facility to another and the allocation of financial costs for those services.³³ The report notes that the DOE has established a cooperative agreement with the Department of Juvenile Justice to address educational services for students in juvenile justice facilities; however, the DOE has not established such agreements with the other state agencies that cover all exceptional students in residential facilities regulated by state agencies.³⁴ Further, the report notes that the Legislature could consider setting a deadline in proviso for the DOE to complete interagency agreements and amending current law to clarify the responsibility regarding funding and the responsibility for managing exceptional students in residential facilities.³⁵

III. Effect of Proposed Changes:

Surrogate Parents

The bill defines a surrogate parent as an individual appointed to act in the place of a parent in making educational decisions and safeguarding the child's rights under IDEA.

The bill specifies the following qualifications for a surrogate parent:

- Must be least 18 years of age;
- May be a court-appointed guardian ad litem, relative or other adult involved in the child's life, regardless of whether he or she has physical custody of the child;
- May be a person who acts in a parental role to a child, such as a foster parent or relative caregiver, even if employed by such agency;
- May not be an employee of the DOE, the local school district, a community-based care provider, the DCF, or any other public or private agency involved in the education or care of the child; and
- May not be group home staff or therapeutic foster home parents.

The bill requires a district school superintendent or a dependency court to appoint a surrogate parent for a dependent child or a child in foster care who has or is suspected of having a disability, if no parent can be located or a court of competent jurisdiction has determined that no one with the authority is willing or able to make educational decisions for the child. The dependency court may also appoint a surrogate parent for any child under its jurisdiction.

³² *In the Matter of J.A.C.*, Case No. DOE 2007 1394-FOI, August 15, 2007.

³³ *OPPAGA Business Plan for 2007-2008*, p. 8.

³⁴ *Responsibility for the Education of Exceptional Students in Residential Treatment Facilities Needs Clarification*, Report No. 08-27, OPPAGA, April 2008.

³⁵ *Id.*

The bill requires the district school superintendent to accept the court appointed surrogate parent or to appoint a surrogate parent within 30 days after notice that the child meets the criteria and no court appointment has been made. Additionally, the bill requires a district school superintendent to accept another district's appointee without regard to where the child receives residential care.

For court appointed surrogate parents, the bill requires timely notice to the child's school. The court may appoint a new surrogate parent to make educational decisions if it is in the best interests of the child.

A court order is required to appoint or terminate a surrogate parent. The bill specifies the duties, responsibilities, and procedural safeguards of a surrogate parent and provides that a surrogate parent may not be held liable for actions taken in good faith to protect a student's education rights. Additionally, the bill specifies the circumstances under which an individual would no longer continue to serve as a surrogate parent.

The bill provides access to confidential reports and records of child abuse to a local school district employee who is designated to act as a liaison between the school district, the DCF, and the principal of the child's school.

For children placed in shelter care, the bill requires the court to request the parent's consent to access the child's medical and education records to the court, the DCF or its contract providers, and the child's guardian ad litem and attorney. The court may also order the parents to provide medical information to these parties. If a parent is unavailable or withholds consent, and the court determines that access is necessary, the court must enter an order granting access to the records. The bill also authorizes the court to appoint a surrogate parent for the child or to refer the child to a district school superintendent for the appointment if the child has or is suspected of having a disability and the parent is unavailable.

The bill provides that judicial and citizen panel reviews of dependency cases must include consideration of testimony from a surrogate parent. In reviewing a case, the court and the panel must determine who has the right to make educational decisions for the child and, if necessary, the court may appoint a surrogate parent for the child or refer the child to a district school superintendent for the appointment. In these reviews, consideration must be given to evidence from the community-based provider related to the appropriateness of the educational setting and coordination with the school district.

The bill also provides a temporary exemption for dependent children and children in foster care from providing proof of age and school entry health examinations and immunizations prior to attending school.

Under the bill, s. 39.0016(2)(c), F.S., is amended to provide that an agency agreement between the DCF and the DOE for the education and related care of dependent children and children in foster care would establish "standards" rather than "goals." The DCF noted a potential impact on the department if this change is interpreted to create a cause of action for failure of the DCF or a community-based provider to comply.

Placement of Exceptional Students with Disabilities in Private Residential Care Facilities

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

- Requires timely notification by the DCF, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or a licensed private residential care facility when the placement of an exceptional student is made by an agency to a private residential care facility that crosses school district lines and is primarily used to meet the student's residential or other non-educational needs;
- Specifies that notification must be provided to the school district where the student is currently counted for funding purposes under s. 1011.62, F.S., and the school district where the residential facility is located;
- Requires the DOE to develop procedures for notifying school districts when an exceptional student is placed in a residential care facility;
- 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 legally resides, is responsible for providing or contracting for instruction;
- Specifies that the school district, which provides or contracts to provide instruction, reports the student for funding;
- Provides that school districts with inter-district agreements for providing and paying for educational services are not subject to the provisions of the bill, with the exception of timely reviewing a student's IEP; and
- Requires an interagency cooperative agreement and rules to implement the notification requirements.

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:

According to the DOE, there may be some additional costs to surrogate parents whose testimony is needed for judicial review of the status of a child under s. 39.071, F.S.

C. Government Sector Impact:

The DCF noted that the surrogate parent provisions of the bill have no fiscal impact on the agency. Current administrative rule allows school districts to compensate surrogate parents.³⁶ According to the DOE, there may be some additional costs to school districts that continue to compensate surrogate parents for training and travel.

The bill clarifies the determination of school district responsibility for the provision of educational services for exceptional students with disabilities served in private residential care facilities across district lines, and therefore establishes school district fiscal responsibility for reporting the student for funding under the Florida Education Finance Program.

The DOE notes that many of these students currently receive their education through formal and informal inter-district agreements. The bill provides a solution for the provision of services and funding for instances where agreements cannot be reached, and it also holds harmless multi-district written agreements which specify the provision of service and funding, except for the ten day timeline for the review of the student's IEP.

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.)

CS by Education Pre-K-12 on March 18, 2009:

CS for SB 1128:

- Allows a guardian ad litem to be appointed by the court as a surrogate parent;
- Removes the provision requiring the appointment of a surrogate parent for a child who resides in a licensed group care or therapeutic setting;
- Specifies the circumstances under which an individual would no longer continue to serve as a surrogate parent;
- Requires a court order to appoint or terminate a surrogate parent;

³⁶ Rule 6A-6.0333(7), F.A.C.

- Specifies the duties, responsibilities, and procedural safeguards of a surrogate parent;
- Provides that a surrogate parent may not be held liable for actions taken in good faith to protect a student's education rights; and
- Provides that a district school superintendent rather than the school board has responsibilities related to the appointment of a surrogate parent.

The committee substitute also revises the requirements relating to the delivery of educational instruction and student funding when an exceptional student with disabilities is placed in a private residential care facility in another district to:

- Provide for timely notification when a placement is made in a facility that crosses school district lines and is primarily used to meet the student's residential or other non-educational needs;
- Determine the responsibility for providing or contracting for instruction and reporting a student for funding; and
- Hold harmless school districts with inter-district agreements for providing and paying for educational services.

B. Amendments:

None.