

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB PT 09-02 Exceptional Students

SPONSOR(S): PreK-12 Policy Committee

TIED BILLS: IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	PreK-12 Policy Committee		Paulson	Ahearn
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

A state is eligible to receive funds under the Individuals with Disabilities Education Act (IDEA) if it submits a plan which ensures the state meets the IDEA requirements. Also, State rules, regulations, and policies must conform to the purposes of the IDEA in order for the state to receive funds.

Florida’s application for Fiscal Year 2008 under Part B of the IDEA received conditional approval based upon several assurances made by the State. One “assurance” made was that Florida statutes, regulations, policies, and procedures are consistent with the IDEA and its implementing regulations, and that all changes necessary to State law would be made by no later than June 30, 2009.

The conditional approval also addressed certain concerns regarding Florida’s due process safeguards and discipline and placement of children with disabilities in alternative educational settings.

The bill revises the due process hearing requirements to make sure that parents of students with disabilities are able to present new evidence in an appeal, establishes procedures and definitions relating to the discipline and placement of children with disabilities in alternative educational settings, and requires the State Board of Education to adopt rules to comply with the IDEA and its implementing regulations. All of these changes align Florida Statutes with the IDEA.

The bill makes changes necessary to ensure the continued receipt of federal funding under the IDEA. See FISCAL COMMENTS section of this analysis.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Individuals with Disabilities Education Act

The federal Individuals with Disabilities Education Act (IDEA), as amended in 2004, requires that all children with disabilities have access to free appropriate public education and that the rights of such children and their parents are protected. The law also requires that efforts to educate children with disabilities are assessed for effectiveness.¹

A state is eligible to receive funds under the IDEA if it submits a plan which meets the IDEA requirements.² Also, State rules, regulations, and policies must conform to the purposes of the IDEA in order for the state to receive funds.³

For the 2008-2009 fiscal year, Florida received the following federal funds under Part B of the IDEA: \$598,437,209 for school-age children and \$18,170,242 for preschool children.⁴

Florida's application for 2008-2009 fiscal year under Part B of the IDEA received conditional approval based upon several assurances made by the State. One "assurance" made was that Florida statutes, regulations, policies, and procedures are consistent with the IDEA and its implementing regulations, and that all changes necessary to State law would be made by no later than June 30, 2009.⁵

As more fully discussed below, the conditional approval also addressed certain concerns regarding Florida's due process safeguards and discipline and placement of children with disabilities in alternative educational settings.⁶

¹ 20 U.S.C. 1400(d).

² See 20 U.S.C. 1412.

³ 20 U.S.C. 1407(a).

⁴ Analysis of SB 2038, Florida Department of Education, March 2, 2009.

⁵ Letter from the Acting Director, Office of Special Education Programs, U.S. Department of Education to Commissioner, Florida Department of Education, July 1, 2008; see 34 C.F.R. §§ 300.516(c)(2) and 300.530(i)(4) for specific regulations.

⁶ *Id.*

Due Process Safeguards

Current Law

The IDEA requires that any party aggrieved pursuant to a determination regarding identification, evaluation, and placement of a student with a disability has the right to present new evidence in any appeal.⁷

In Florida, the district school board must notify the parent of an exceptional student evaluated and placed or denied placement in a program of special education of each such evaluation or denial. Such notice must contain a statement informing the parent that he or she is entitled to a due process hearing on the identification, evaluation, and placement, or lack thereof. The hearing must be conducted by an administrative law judge from the Division of Administrative Hearings. The decision of the administrative law judge is final, except that any party aggrieved by the finding and decision rendered by the administrative law judge has the right to bring a civil action in the circuit court. In such an action, the court receives the records of the administrative hearing and hears additional evidence at the request of either party. In the alternative, any party aggrieved by the finding and decision rendered by the administrative law judge has the right to request an impartial review of the administrative law judge's order by the district court of appeal.⁸ If the administrative law judge ruled in favor of the district school board and the board appealed to the district court of appeal, the parent of a student with a disability would not be able to present new evidence, which is required by IDEA.

Effect of Proposed Changes

The bill revises Florida's due process hearing requirements by restricting appeal rights to state circuit court in cases involving the identification, evaluation, or placement of students with disabilities. Accordingly, either party can submit new evidence, thus aligning Florida's law with the IDEA.

Discipline and Placement in Alternative Educational Settings

Current Law

The IDEA provides that school personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct. The IDEA limits such placement to no more than 10 school days. During an alternative placement, the child must continue to receive educational services and, as appropriate, a behavioral assessment or intervention services designed to eliminate the behavior problem.⁹

The IDEA limits an alternative placement to 45 days, regardless of whether the behavior is determined to be a result of the child's disability, if the child:

- Carries a "weapon" to or possesses a weapon at school or school functions;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a "controlled substance" while at school or a school function; or
- Has inflicted serious bodily injury while at school or a school function.¹⁰

The IDEA defines "weapon" as a "weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length."¹¹ Florida does not define "weapon" in any law relating to education. However, a definition does exist in Chapter

⁷ 34 C.F.R. 300.516(c)(2).

⁸ Section 1003.57(1)(e), F.S.

⁹ 20 U.S.C. 1415(k)(1)(A), (B), & (D).

¹⁰ 20 U.S.C. 1415(k)(1)(G).

¹¹ 20 U.S.C. 1415(k)(7)(C); *see* 18 U.S.C. 930(g)(2).

790, F.S., relating to weapons and firearms. "Weapon" is defined as "any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife."¹²

The IDEA defines "controlled substance" as "a drug or other substance identified under schedule I, II, III, IV, or V" in the federal Controlled Substances Act.¹³ Florida does not define "controlled substance" in any law relating to education. However, Chapter 893, F.S., relating to drug abuse prevention and control, defines "controlled substance" in terms similar to those of the Controlled Substances Act.¹⁴

Effect of Proposed Changes

The bill creates a provision which allows school personnel to remove a student who has a disability and violates the code of student conduct and to place that student in an alternative educational setting, for no more than 45 school days, if the student:

- Carries a weapon to or possesses a weapon at school or school functions;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school or a school function; or
- Has inflicted serious bodily injury while at school or a school function.

This provision is nearly identical to one found in the IDEA.

For purposes of this provision, the bill defines the term "weapon" to mean "a device, instrument, material, or substance, animate or inanimate, which is used for, or is readily capable of, causing death or serious bodily injury; however, this definition does not include a pocketknife having a blade that is less than 2 ½ inches in length." This definition is consistent with the IDEA. The bill also defines "controlled substance" by reference to the definition in Florida Statutes and the definition in the federal Controlled Substances Act, thereby aligning it with the IDEA.

Compliance with the IDEA

Current Law

The IDEA requires a state to align its statutes, rules, regulations and policies with the purposes of the IDEA in order for the state to receive funds.¹⁵ The purposes defined in the IDEA are:

- That all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for future education, employment, and independent living;
- That the rights of children with disabilities and parents of such children are protected; and
- That the efforts to educate children with disabilities are assessed for effectiveness.

Florida law includes language indicating the "intent" of the Legislature that the K-20 education accountability system complies with the requirements of the IDEA.¹⁶ The Joint Administrative Procedures Committee (JAPC) advised DOE that this language does not sufficiently support compliance with the requirements of the IDEA.¹⁷ Additionally, JAPC raised concerns about the State Board of Education's ability to adopt rules to comply with the IDEA without specific statutory authority.

¹² Section 790.001(13), F.S.

¹³ 20 U.S.C. 1415(k)(7)(A); *see* 21 U.S.C. 12(c)

¹⁴ Section 893.02(4), F.S.; *see* section 893.03, F.S.

¹⁵ 20 U.S.C. 1407(a).

¹⁶ Section 1008.31(1)(a), F.S.

¹⁷ Analysis of SB 2038, Department of Education, March 2, 2009.

JAPC recommended the creation of specific legislative authority to participate in the IDEA after an agency evaluation of whether the IDEA is consistent with legislatively defined objectives.¹⁸

Effect of Proposed Changes

The bill creates a new section of law that requires the State Board of Education to comply with the IDEA and its implementing regulations, after the State Board of Education evaluates and determines that the IDEA, as amended, and its implementing regulations are consistent with the following principles:

- That all children who have disabilities are afforded a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- That the rights of children who have disabilities and their parents are protected; and
- That the efforts to educate children with disabilities are assessed for effectiveness.¹⁹

JAPC comments:

[The bill] does accomplish the primary task of giving DOE the go-ahead to implement the IDEA and all of the ... federal requirements as long as they evaluate it and determine that it helps exceptional students. JAPC would be able to review the rules, question whether any new provisions required by the [Federal Government] are consistent with Florida's principles ..., and move forward much better than we can now. Most importantly, it emphasizes that state agencies cannot implement federal programs without explicit authority from the State (i.e., Legislature).²⁰

B. SECTION DIRECTORY:

Section 1: Amends s. 1003.56, F.S.; revises provisions relating to due process hearing for exceptional students; authorizes district school board to consider a change in placement for a student who has a disability if the student violates the code of student conduct; provides for the removal and placement of such student in an alternative educational setting for a limited period; provides definitions for the terms "weapon" and "controlled substance."

Section 2: Creates s. 1003.571, F.S.; requires that the State Board of Education comply with the IDEA if the act is consistent with certain principles; requires that the State Board of Education adopt rules to comply with the act.

Section 3: Amends s. 1003.58; conforms a cross-reference.

Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

¹⁸ Staff Analysis of SB 2038, Education Pre-K – 12 Committee, March 12, 2009.

¹⁹ 20 U.S.C. 1400(d).

²⁰ E-mail from Chief Attorney, Joint Administrative Procedures Committee, March 9, 2009.

2. Expenditures:

The bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill makes changes necessary for the continued receipt of federal funding under the IDEA. For the 2008-2009 fiscal year, Florida received \$598,437,209 for school-children and \$18,170,242 for preschool children under Part B of the IDEA.²¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require a city or county to expend funds or take any action requiring the expenditure of funds. The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the State Board of Education to adopt rules in order to comply with the IDEA.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

N/A.

²¹ Analysis of SB 2038, Department of Education, March 10, 2009.