

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 279 w/CS Abused, Neglected and Abandoned Children  
**SPONSOR(S):** Mealor  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1232

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Children's Services (Sub)	7 Y, 0 N	Walsh	Liem
2) Future of Florida's Families	16 Y, 0 N w/CS	Walsh	Liem
3) Education K-20	26 Y, 0 N w/CS	Carlson	Bohannon
4) Human Services Appropriations (Sub)			
5) Appropriations			

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### SUMMARY ANALYSIS

Committee Substitute for HB 279 requires the Department of Children and Families ("DCF" or "department") or the community-based-care lead agencies acting on its behalf (the department) to enter into agreements with the Department of Education ("DOE") and with district school boards regarding the education of children known to the department.

The CS further specifies that it is creating goals, not rights enforceable in court; and that the provisions of the bill must be accomplished within existing appropriations.

It also requires that the department provide specific training regarding the education of children known to the department. DCF reports that it can develop and implement this training within existing resources.

The CS allows the department access to the school records of children known to the department, consistent with the Family Educational Rights and Privacy Act.

The bill appears not to have any fiscal impact on state government.

The bill has an effective date of July 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0279c.edk.doc  
**DATE:** March 11, 2004

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |

For any principle that received a “no” above, please explain:

The bill adds additional duties that will be performed by the Department of Children and Families, community-based care lead agencies, the Department of Education, and district school boards.

### B. EFFECT OF PROPOSED CHANGES:

#### Background

Many children in foster care struggle academically and socially. Compared with other students, children in foster care have poorer academic performance and classroom achievement, have poorer attendance records, and change schools more frequently.<sup>1</sup> Frequent school changes often lead to repeated adjustment by these children to different educational experiences, expectations and environments, at a time when their home lives are disrupted.<sup>2</sup> According to a study conducted by the School Board of Broward County, students who were placed in foster care were more likely to be retained within grade, and scored lower on standardized achievement tests, as compared to children not living in foster care.<sup>3</sup> This is an issue being discussed nationwide, and those involved in the debate agree that communication and cooperation among the social service agencies, the schools, and the caregivers, may improve outcomes for these children.<sup>4</sup>

Some interagency agreements exist at the local district and/or county level. In Broward County, DCF has interagency agreements with the following agencies: the Department of Juvenile Justice (Circuit 17), the School Board of Broward County, and the Chiefs of Police Association. These agreements address some but not all of the elements required by this legislation.

In addition, DCF committed as part of its Performance Improvement Plan (PIP), entered into with the federal Administration for Children and Families,<sup>5</sup> to develop a model working agreement with DOE to improve communication to better identify and address foster children’s educational needs. This will address several of the requirements imposed by the bill. However, that agreement still has not been completed, despite its agreed-to December 31, 2003, achievement date.

#### Effect of CS/HB 279

<sup>1</sup> *From Barriers to Successful Collaboration: Public Schools and Child Welfare Working Together*, Sandra J. Altshuler, *Social Work*, p. 52, January 2003 [internal citations omitted].

<sup>2</sup> *School Support for Foster Families*, Wendy Schwartz, ERIC/CUE Digest, ED434189, September, 2000.

<sup>3</sup> *Research Brief*, January 2003.

<sup>4</sup> See, e.g., *Lost in the Shuffle Revisited: The Education Law Center’s Report on the Education of Children in Foster Care in Pennsylvania*, January 2002.

<sup>5</sup> Outcome Well-Being 2 Children Receive Appropriate Service to Meet their Educational Needs, Item 21 Education Needs of the Child, Action Step 1, Florida PIP 04/01/03, page 71.

CS/HB 279 proposes to integrate more fully the educational resources provided by local school districts into the stream of services provided to children known to the department.<sup>6</sup>

Goals, not Rights: The CS establishes goals, not rights enforceable in court, and requires that its provisions must be accomplished within existing appropriations.

Agreement with Department of Education: It requires that the department enter into an agreement with the Department of Education (DOE) regarding the education and related care of children known to the department. That agreement is intended to provide those children educational access.

Agreements with District School Boards: It requires that the department enter into agreements with district school boards and other educational entities regarding children known to the department who are school-age or those who are younger than school age but who would otherwise qualify for services from the district.

The agreements must include requirements that the department:

- Enroll the child in school or continue enrollment in the current school to avoid disruption
- Notify the school and the school district of the name and phone number of the child's caregiver
- Establish a protocol for information sharing between DCF and the lead agency and the school district
- Notify the school district notice of and allow it access to its case planning and review process.

The agreements must also include requirements that the district school boards:

- Provide the department a general listing of the services and information available to facilitate educational access for these children
- Identify all services provided by the school and school district, which services the school district believes are reasonably necessary to meet the educational needs of a particular child
- Determine whether transportation is available which would avoid a change in school assignment when a child known to the department changes residential placement. The department, the district school board, and DOE are required to assess the availability of federal, charitable, or grant funding to pay for this transportation.
- Provide individualized student intervention or individual educational plans when such intervention services are needed. These plans are to include strategies to enable the child to receive a high school diploma.

Finally, the agreements must include requirements that the department and the district school board cooperate in accessing the services needed for a child who has or is suspected of having a disability.

Training: The bill requires the department to incorporate an "education component" into all their training programs related to children known to the department. The department must provide educational personnel the opportunity to participate in this training. The training components must include:

- Training for surrogate parents on the effects of abuse on a child's ability to learn
- Training for parents and preadoptive parents on accessing educational services
- Training for caseworkers and foster parents on a child's right to an education
- Training of department and school-leased contractors on the education of children
- Training of caseworkers regarding the services available through DOE and the local school districts.

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<sup>6</sup> The definition of "children known to the department" purposely excludes children who receive voluntary protective services, which are services provided to a family which permit the children to remain safely in their own homes. See s. 39.301(14), F.S. Since such children remain in their own homes, their ongoing educational experiences are undisturbed.

Information sharing: Section 39.0014, F.S., requires agencies to provide information to DCF in fulfillment of DCF's Chapter 39 responsibilities. However, access to student educational records is governed by s. 1002.22, F.S. Specifically, s. 1002.22(3)(d), F.S., lists 13 entities which may receive "personally identifiable records or reports of a student ... without the consent of a student or the student's parent." Neither DCF nor the community-based care lead agencies acting on its behalf is among the thirteen.

In order to facilitate the sharing of information about a child's educational plans and progress, CS/HB 279 amends s. 1022.22(3)(d), F.S., to allow access to student records by the department, consistent with the Family Educational Rights and Privacy Act.

C. SECTION DIRECTORY:

Section 1: Creates s. 39.0016, F.S.; defines "children known to the department"; defines "department"; provides that the CS establishes goals and not rights; that nothing in the CS requires delivery of a particular service or level of service above existing appropriations; and that no cause of action accrues from the adoption of these goals or failure to provide funding for their attainment; requires the department to enter into agreements with DOE, district school boards and other educational entities, and specifies department and district school board requirements; requires department to provide certain specific training.

Section 2: Amends s. 1002.22(3)(d), F.S.; allows access to student records by the department, consistent with the Family Educational Rights and Privacy Act.

Section 3: Provides an effective date of July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

DCF reports that it can develop and implement the required training within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Based on the requirements of the CS, district school boards will need to determine whether "transportation is available" for approximately 10,000 children known to the department. Upon such a determination, the department, the district school board, and DOE must "assess the availability of federal, charitable, or grant funding" to pay for this transportation.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

##### 2. Other:

None

#### B. RULE-MAKING AUTHORITY:

None

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Education has taken the position that it cannot share information related to students known to the Department of Children and Families because of limitations contained in the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g(b) (FERPA), which precludes the sharing of student records or reports by a state educational agency with certain third parties without parental consent. However, FERPA does allow for sharing of information in certain circumstances, and the Florida version, codified in s. 1002.34, F.S., likewise does. The issue may be whether DCF or a lead agency acting on behalf of DCF can legally be considered *in loco parentis* in cases where a child is found to be dependent or is in a shelter. If so, DOE should be able to share student information with DCF or the lead agency and their employee caseworkers in the same way that they currently share information with foster parents and court-appointed legal guardians.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its February 3, 2004, meeting, the Subcommittee on Children's Services adopted 13 amendments to HB 279. Those amendments were mostly technical in nature, addressing the drafting issues identified earlier, and included adoption of an amendment to s. 1002.22(3)(d), F.S., which allows the DCF or its community-based care lead agency as appropriate, to access student records.

At its February 17, 2004, meeting, the Committee on the Future of Florida's Families adopted 12 of the amendments presented by the Subcommittee on Children's Services. In addition, the Committee adopted two additional clarifying amendments, one of which was an amendment to an amendment adopted by the Subcommittee on Children's Services. The Committee then adopted HB 279 as a Committee Substitute.

The Committee on Education K-20 adopted 1 amendment on March 8, 2004. The amendment provides that the provision of student records or reports by DOE to DCF or a lead agency acting on behalf of DCF allowed for in section 2 of the bill (amending s. 1002.22(3), F.S.) must be consistent with the Family Educational Rights and Privacy Act (FERPA).

This analysis is drafted to the Committee Substitute.