

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Exceptional Student Education Services

Florida law defines an “exceptional student” as:

Any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who are gifted and students with disabilities 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 State Board of Education rules pursuant to s. 1003.21(1)(e).¹

Each district school board in Florida is required to provide exceptional student education (ESE) services, i.e., an appropriate program of special instruction, facilities, and services, to exceptional students from ages three to 21 years as prescribed by State Board of Education (SBE) rule.² School districts may provide such services within the district school system, in cooperation with other district school systems, or through contractual agreements with an approved private school or community facility.³

According to the bill analysis from the Department of Education (DOE), numerous, but not all, Florida school districts, under the aforementioned statutory, have entered into multi-district agreements for the provision of ESE services. The bill analysis states:

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. The specially designed instruction and related services are developed by the district serving the students using evaluative data collected through a variety of methods. The district serving the students develops the individual educational plans (IEPs) and receives the funding generated through the Florida Education Finance Program, also permitting the student to benefit from other funding sources. Districts have been successfully providing services to students with disabilities in this manner.⁴

Rule adopted by the SBE governs contracts between a school district and a private school or community facility for the provision of ESE services. A school district may contract with such entities if it determines that no special educational program offered by it, a cooperating district school board, or a state agency can adequately provide the ESE services.⁵ These contracts may provide for either:

¹ Section 1003.01(3)(a), F.S.

² Section 1003.57(1), F.S.

³ Section 1003.57(1)(b), F.S. See also ss. 1001.42(4)(l) and 1002.42(12), F.S.

⁴ Florida Department of Education Bill Analysis for House Bill 557.

⁵ Rule 6A-6.0361(1), F.A.C.

- A non-residential interagency program for an exceptional student which includes the provision of educational programming in accordance with the IEP; or
- The educational component of a residential placement for an exceptional student when such placement is made by another public agency for the primary purpose of addressing residential or other non-educational needs.⁶

For these contracts, the rule further requires the school district to verify that the student is a resident of the school district and is enrolled in, or has made application for admittance to, a district school educational program; however, the rule does not require verification that the student's parent is a resident of the district.⁷ The rule also: (a) requires that the contracts identify the method of determining charges and sharing costs with other agencies for students placed under the contract, including the projected total cost to the district;⁸ and (b) specifies that the exceptional student served under the contract generates Florida Education Finance Program funds for the school district under s. 1011.62, F.S.⁹

ESE Services for Agency Residential Facility Placements

Statute requires district school boards to provide educational programs for students who reside in a residential care facility operated by the Department of Children and Family Services (DCF) or the Agency for Persons with Disabilities (APD). The district school board is not to be charged for any rent, maintenance, utilities, or overhead for the residential care facilities; rather, such expenses are to be provided by the DCF or APD, as appropriate.¹⁰

Further, statute provides that district school boards have the "full and complete authority" to determine the assignment and placement of such students in an appropriate educational program.¹¹ Each district school board must have a written agreement with the DCF and APD that delineates each entity's respective obligations concerning the provision of educational services for such students.¹²

ESE Services for Residential Facility Placements when the Parent is Out-of-State

In some instances, exceptional students, whose parents live out-of-state, may be placed in a Florida residential facility. Statute provides that the residency status of these students is determined by the state in which the student's parents reside. The cost of instruction, facilities, and services must be paid by the placing authority in the student's state of residence, such as a public school entity, other placing authority, or parent. Such students may not be reported by any district for funding purposes. Residential care facilities that serve out-of-state students are responsible for billing the student's home state or parents for the student's education costs.¹³

Effect of Proposed Changes

House Bill 557 specifies which school district is financially responsible for the provision of ESE services under the following three circumstances:

- When a student receives ESE services in a school district other than their assigned school district;

⁶ Rule 6A-6.0361(2), F.A.C.

⁷ Rule 6A-6.0361(2), F.A.C.

⁸ Rule 6A-6.0361(5)(f), F.A.C.

⁹ Rule 6A-6.0361(7), F.A.C.

¹⁰ Section 1003.58, F.S.

¹¹ Section 1003.58(3), F.S.

¹² Section 1003.58(4), F.S.

¹³ Section 1003.57(2)(a), F.S.

- When a student no longer resides in the parent's home, but receives ESE services in a school district other than the district where the parent resides; or
- When a student resides in a residential facility in a district other than the student's assigned school district.

The bill provides that under these three circumstances that the school district where the student's parent resides will be responsible for the costs of ESE services. Further, the bill specifies that in the case of a student who no longer resides in the parent's home, the school district where the student last resided with the parent must pay for ESE services.

C. SECTION DIRECTORY:

Section 1.: Amends section 1003.57, F.S.; specifying that parental residence determines which school district is financially responsible for providing ESE services to certain students.

Section 2.: Amends section 1003.58, F.S.; specifying that parental residence determines which school district is financially responsible for providing ESE services to certain students in residential facilities.

Section 3.: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

According to the DOE, this bill may generate indeterminate costs because it would require changing the methods of reporting for the FEFP funding program and DOE data systems. Please see FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The fiscal impact of this bill on local governments is indeterminate. Please see FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a fiscal impact on the private sector.

D. FISCAL COMMENTS:

According to the DOE bill analysis:

This bill has significant fiscal implications, but the impact is indeterminate. The bill would apply to all students with disabilities who are served by school districts other than their or [sic] their parents' districts of residence. Many students of all FEFP classifications are receiving their education through interdistrict agreements, formal and informal. Each of these students is funded appropriately in the district providing the service through the FEFP or other sources. Some interdistrict agreements provide

for compensation beyond FEFP funding for extra costs incurred. Section 1001.42(4)(d), F.S., provides for cooperation with school boards of adjoining districts and the settlement of disagreements through the Department of Education.

The FEFP funding program and all Department of Education data systems rely on reporting students where they are served. Requiring the total cost of all students with disabilities to be paid by the district of residence of the student or parent will introduce additional complexity to the financial management of all districts. Additionally, there would be the costs for new services, such as locating parental residences and holding meetings to determine details of the IEP and compliance with federal laws.¹⁴

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds because ESE services are funded, "from state general revenue, federal funds, and local tax revenue," through the FEFP.¹⁵ Changes to the FEFP and DOE reporting systems may be required to insure that the school district held financially responsible under the bill receives FEFP funding for the exceptional student. Please see FISCAL COMMENTS.

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the school district where a student is assigned or the district where the student's parent resides to pay for the costs of ESE services that are provided in another school district. This requirement raises the following issues:

- The term "assigned" is not defined. For clarity, consideration may be given to defining that term.
- The bill does not differentiate between students placed by: a district pursuant to an IEP team decision; another agency; or those unilaterally privately placed by their parents. Financial responsibility under current law depends on the authority making the placement. Consideration might be given to drawing these distinctions.
- There are numerous interdistrict agreements in Florida that allocate financial responsibility to the district serving the student, rather than the district where the student's parent resides. Consideration might be given to exempting contractual arrangements between school districts that allocate financial responsibility for ESE services in these situations.

¹⁴ Florida Department of Education Bill Analysis for House Bill 557.

¹⁵ *Florida Could Avoid \$1.5 Million Annually in ESE Costs for Out-of-State Students who are Placed in Private Residential Facilities*, Office of Program Policy Analysis and Government Accountability, Report. No. 03-58, October 2003.

- The bill does not address how residency would be determined in a joint custody situation where the parents live in different school districts or when a student becomes 18 and moves to a district different than that of his parent.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2007, the Committee on Education Innovation and Career Preparation adopted two amendments and reported the bill favorably with a recommended council substitute.

The amendments:

- Remove the provisions of the bill that required the school district where a parent resides to pay for the cost of ESE services when the child is served in a different school district.
- Require the Agency for Persons with Disabilities and the Department of Children and Families when it places an exceptional student in a private residential care facility to:
 - Provide at least 30 days advance notice to the student's assigned school district and to the school district where the facility is located.
 - Make best efforts to ensure that an agreement concerning the cost of the placement is entered into between the assigned school district and the school district where the facility is located.
- Require the Office of Program Policy and Government Accountability to study and report on:
 - Agency practices for notifying and consulting with school districts when placing in-state, exceptional students in private residential facilities.
 - Agency and school district practices for the allocation of financial and other responsibilities associated with the provision of educational services to in-state, exceptional students who are placed by agencies in private residential facilities.