

**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.)

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Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

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BILL: SB 2700

INTRODUCER: Senator Wise

SUBJECT: Students With Disabilities/Use of Terminology

DATE: March 31, 2008

REVISED: 4/1/2008

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	<b>Fav/1 amendment</b>
2.			HE	
3.			EA	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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

**I. Summary:**

The bill revises the definition of an “exceptional student” and makes other changes for students with disabilities in the following provisions of the Florida K-20 Education Code:

- Eligibility requirements for special programs for students with disabilities;
- Eligibility requirements for special programs and related services for children with disabilities who are three years of age or older (preschool children) and for children with disabilities who are younger than three years of age (infants and toddlers);
- Special high school graduation requirements for students with disabilities;
- Substitute admission, graduation, and upper level division requirements of public postsecondary educational institutions for students with disabilities; and
- Student eligibility requirements for the John M. McKay Scholarships for Students with Disabilities Program.

This bill substantially amends sections 1002.33, 1002.39, 1003.01, 1003.21, 1003.438, 1007.02, 1007.264, and 1007.265, of the Florida Statutes.

## II. Present Situation:

### **Free and Appropriate Public Education (FAPE)**

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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

### **Child with a Disability**

The federal Individuals with Disabilities Education Act (IDEA) defines a “child with a disability” as a child:<sup>5</sup>

- With mental retardation; hearing impairments (including deafness); speech or language impairments; visual impairments (including blindness); serious emotional disturbance (referred to as “emotional disturbance”); orthopedic impairments; autism; traumatic brain injury; other health impairments; or specific learning disabilities;<sup>6</sup> and
- Who, for this reason needs special education and related services.

Additionally, the law defines a child who is ages three through nine with a disability as a child who:<sup>7</sup>

- Is experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and
- Needs, for this reason, special education and related services.

### **Exceptional Students in Florida**

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

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<sup>1</sup> 20 U.S.C. s. 1412.

<sup>2</sup> 34 C.F.R. s. 300.149

<sup>3</sup> 20 U.S.C. s. 1412 *See also* 34 C.F.R. s. 300.111

<sup>4</sup> *Id.*

<sup>5</sup> 20 U.S.C. § 1401(3)

<sup>6</sup> 34 C.F.R. s. 300.8 further defines these terms.

<sup>7</sup> *Id.* This definition includes any subset of this age range, including children who are ages three through five.

who are gifted and students with disabilities.<sup>8</sup> The law further defines the term “exceptional students with disabilities.”<sup>9</sup>

### **Special Education Services**

The law defines special education services as specially designed instruction and related services as are needed for an exceptional student to benefit from education, and may include: transportation; diagnostic and evaluation services; social services; physical and occupational therapy; speech and language therapy; job placement; orientation and mobility training; braille, typists, and readers for the blind; interpreters and auditory amplification; rehabilitation counseling; transition services; mental health services; guidance and career counseling; specified materials, assistive technology devices, and other specialized equipment; and other services as approved by SBE rules.<sup>10</sup>

State law and administrative rule require district school boards to provide for an appropriate program of special instruction, facilities, 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.<sup>11</sup>

## **III. Effect of Proposed Changes:**

### **Definitions of Disabilities**

The bill revises the definitions of disabilities in the following: s. 1002.39, F.S., (the student eligibility requirements for the John M. McKay Scholarships for Students with Disabilities Program); s. 1003.01, F.S., (eligibility for special programs for students with disabilities); s. 1003.21, F.S., (eligibility for special programs and related services for children with disabilities who are three years of age or older (preschool children) and for children with disabilities who are younger than three years of age (infants and toddlers); s. 1003.438, F.S., (special high school graduation requirements for students with disabilities); and s. 1007.02, F.S., (eligibility requirements for the FCAT waiver<sup>12</sup> and reasonable substitution of admission, graduation, and upper-level division requirements of public postsecondary educational institutions).

The bill includes specific terms that are not currently used in the IDEA or the Florida K-20 Education Code:<sup>13</sup>

- Autism spectrum disorder;
- Emotional or behavioral disability; and
- Intellectual disability.

<sup>8</sup> s. 1003.01(3)(a), F.S.

<sup>9</sup> Exceptional students with disabilities are those 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 five years; or children, ages birth through two years, with established conditions that are identified in SBE rules. Rules 6A-6.03027 and 6A-6.03031, F.A.C., define children who are developmentally delayed.

<sup>10</sup> s. 1003.01(3)(b), F.S.

<sup>11</sup> s. 1003.57(1)(b), F.S.

<sup>12</sup> ss. 1003.428(8)(b) and 1003.43(11)(b), F.S.

<sup>13</sup> 34 C.F.R. 300.8(c) uses the terms “autism,” “emotional disturbance,” and “mental retardation.”

According to the DOE, these terms reflect current use in special education and are supported by stakeholders that include school district staff, families, and advocacy groups.<sup>14</sup> The terms “autism” and “autism spectrum disorder” are often used interchangeably. The latter term represents the broad spectrum of clinical characteristics that now define autism.<sup>15</sup> While the National Institute of Mental Health uses a broad term, pervasive developmental disorder, that includes autistic disorder, Asperger syndrome, pervasive developmental disorder—not otherwise specified, Rett’s syndrome, and childhood disintegrative disorder, the National Institute of Child Health and Human Development includes a different range of disorders.<sup>16</sup> According to the DOE, the term “emotional or behavioral disability or disorder” is commonly used among experts in the field.<sup>17</sup> The DOE also notes that “intellectual disability” is the preferred term for mental retardation and is used by national private and governmental organizations.<sup>18</sup>

The bill uses the terms “orthopedic impairment,” “other health impairment,” and “traumatic brain injury,” which are consistent with the IDEA terms. Additionally, the bill adds as a subset of a learning disability the terms “dyslexia,” “developmental aphasia,” and “dyscalculia” to ss. 1003.01 and 1003.438, F.S. The first two terms are specifically included in the IDEA. Although the IDEA defines a specific learning disability to include a disorder involving mathematical calculations, it does not specifically use the term “dyscalculia.”<sup>19</sup> However, the term is currently used in ss. 1002.39 and 1007.02, F.S.

The DOE notes that administrative rules would need to be changed for graduation requirements for certain students with disabilities, specialization requirements for endorsement in severe or profound disabilities and autism, and special programs for prekindergarten children with disabilities.

### **Individual Educational Plan (IEP)**

Federal law defines the term “individualized education program” or “IEP” to mean a written statement for each child with a disability that includes specific components.<sup>20</sup> There are references in the Florida K-20 Education Code and other provisions of state law that use the term “individual education plan.”<sup>21</sup> The Department of Education (DOE) administrative rules use the term “individual educational plan.”<sup>22</sup> The bill amends s. 1002.39, F.S., relating to the McKay scholarship program to conform to the term used in the DOE’s administrative rules. However,

<sup>14</sup> DOE, March 28, 2008.

<sup>15</sup> Chris Plauché Johnson, MD, MEd, Scott M. Myers, MD and the Council on Children With Disabilities, *Identification and Evaluation of Children with Autism Spectrum Disorders*, Pediatrics, Vol. 120 No.5, November 2007.

<sup>16</sup> See <http://www.nimh.nih.gov/health/publications/autism/complete-publication.shtml> and <http://www.nichd.nih.gov/health/topics/asd.cfm> These terms are defined in the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition (DSMV-IV-TR)*, 2000.

<sup>17</sup> The National Association of School Psychologists published a position statement on the definition of emotional or behavioral disorders. See [http://www.nasponline.org/about\\_nasp/positionpapers/ebd.pdf](http://www.nasponline.org/about_nasp/positionpapers/ebd.pdf)

<sup>18</sup> See Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, *Intellectual Disability* <http://www.cdc.gov/ncbddd/dd/ddmr.htm> and American Association on Intellectual and Developmental Disabilities, [http://www.aaidd.org/About\\_AAIDD/name\\_change\\_PRdreen.htm](http://www.aaidd.org/About_AAIDD/name_change_PRdreen.htm)

<sup>19</sup> 34 C.F.R. s. 300.8(c)(10)

<sup>20</sup> 20 U.S.C. § 1414

<sup>21</sup> See ss. 393.0651, 393.12, 393.18, 394.496, 409.9071, and 411.224, F.S.

<sup>22</sup> Rules 6A-6.03028 and 6A-6.0331, F.A.C.

there are other provisions in the Florida K-20 Education Code that do not conform to the DOE rule. These provisions are not amended by the bill.<sup>23</sup>

**Other**

The bill also changes the reference to handicapped students to students with disabilities in the provision related to eligible charter school students. The bill removes a reference to the eligibility of students enrolled in certain readiness programs. According to the DOE, this change would allow greater flexibility in providing services to children with disabilities under the age of three in accordance with specific SBE rules. The bill allows the SBE to adopt rules relating to special education and services for children with disabilities who are younger than three years of age.

**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:**

None.

**C. Government Sector Impact:**

The DOE notes that the changes in the bill to the statutory terms do not affect the eligibility criteria for students with disabilities.

**VI. Technical Deficiencies:**

A title amendment is needed to reference the elimination of a district school board's authority to adopt rules (lines 79-80) relating to the eligibility for admission of children with disabilities who are age three to public special education and related services.

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<sup>23</sup> ss. 1003.428, 1003.57, 1003.575, 1003.576, 1008.22, 1008.25, F.S.

**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.)

None.

- B. **Amendments:**

**Barcode 855138 by Education Pre-K - 12:**  
Title amendment.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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