



561974

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2009	.	
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	.	
	.	

The Committee on Education Pre-K - 12 (Storms) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 39.0016, Florida Statutes, is amended to
read:

39.0016 Education of abused, neglected, and abandoned
children; agency agreements; children having or suspected of
having a disability.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Children known to the department" means children who



561974

12 are found to be dependent or children in shelter care.

13 (b) "Department" means the Department of Children and
14 Family Services or a community-based care lead agency acting on
15 behalf of the Department of Children and Family Services, as
16 appropriate.

17 (c) "Surrogate parent" means an individual appointed to act
18 in the place of a parent in educational decisionmaking and in
19 safeguarding a child's rights under the Individuals with
20 Disabilities Education Act and this section.

21 ~~(2) The provisions of this section establish goals and not~~
22 ~~rights. This section does not require the delivery of any~~
23 ~~particular service or level of service in excess of existing~~
24 ~~appropriations. A person may not maintain a cause of action~~
25 ~~against the state or any of its subdivisions, agencies,~~
26 ~~contractors, subcontractors, or agents based upon this section~~
27 ~~becoming law or failure by the Legislature to provide adequate~~
28 ~~funding for the achievement of these goals. This section does~~
29 ~~not require the expenditure of funds to meet the goals~~
30 ~~established in this section except funds specifically~~
31 ~~appropriated for such purpose.~~

32 (2) AGENCY AGREEMENTS.-

33 (a)~~(3)~~ The department shall enter into an agreement with
34 the Department of Education regarding the education and related
35 care of children known to the department. Such agreement shall
36 be designed to provide educational access to children known to
37 the department for the purpose of facilitating the delivery of
38 services or programs to children known to the department. The
39 agreement shall avoid duplication of services or programs and
40 shall provide for combining resources to maximize the



561974

41 availability or delivery of services or programs.

42 ~~(b)(4)~~ The department shall enter into agreements with
43 district school boards or other local educational entities
44 regarding education and related services for children known to
45 the department who are of school age and children known to the
46 department who are younger than school age but who would
47 otherwise qualify for services from the district school board.
48 Such agreements shall include, but are not limited to:

49 ~~1.(a)~~ A requirement that the department shall:

50 ~~a.1.~~ Enroll children known to the department in school. The
51 agreement shall provide for continuing the enrollment of a child
52 known to the department at the same school, if possible, with
53 the goal of avoiding disruption of education.

54 ~~b.2.~~ Notify the school and school district in which a child
55 known to the department is enrolled of the name and phone number
56 of the child known to the department caregiver and caseworker
57 for child safety purposes.

58 ~~c.3.~~ Establish a protocol for the department to share
59 information about a child known to the department with the
60 school district, consistent with the Family Educational Rights
61 and Privacy Act, since the sharing of information will assist
62 each agency in obtaining education and related services for the
63 benefit of the child.

64 ~~d.4.~~ Notify the school district of the department's case
65 planning for a child known to the department, both at the time
66 of plan development and plan review. Within the plan development
67 or review process, the school district may provide information
68 regarding the child known to the department if the school
69 district deems it desirable and appropriate.



561974

70 ~~2.(b)~~ A requirement that the district school board shall:
71 ~~a.1.~~ Provide the department with a general listing of the
72 services and information available from the district school
73 board, ~~including, but not limited to, the current Sunshine State~~
74 ~~Standards, the Surrogate Parent Training Manual, and other~~
75 ~~resources accessible through the Department of Education or~~
76 ~~local school districts~~ to facilitate educational access for a
77 child known to the department.
78 ~~b.2.~~ Identify all educational and other services provided
79 by the school and school district which the school district
80 believes are reasonably necessary to meet the educational needs
81 of a child known to the department.
82 ~~c.3.~~ Determine whether transportation is available for a
83 child known to the department when such transportation will
84 avoid a change in school assignment due to a change in
85 residential placement. Recognizing that continued enrollment in
86 the same school throughout the time the child known to the
87 department is in out-of-home care is preferable unless
88 enrollment in the same school would be unsafe or otherwise
89 impractical, the department, the district school board, and the
90 Department of Education shall assess the availability of
91 federal, charitable, or grant funding for such transportation.
92 ~~d.4.~~ Provide individualized student intervention or an
93 individual educational plan when a determination has been made
94 through legally appropriate criteria that intervention services
95 are required. The intervention or individual educational plan
96 must include strategies to enable the child known to the
97 department to maximize the attainment of educational goals.
98 ~~3.(e)~~ A requirement that the department and the district



561974

99 school board shall cooperate in accessing the services and
100 supports needed for a child known to the department who has or
101 is suspected of having a disability to receive an appropriate
102 education consistent with the Individuals with Disabilities
103 Education Act and state implementing laws, rules, and
104 assurances. Coordination of services for a child known to the
105 department who has or is suspected of having a disability may
106 include:

107 ~~a.1.~~ Referral for screening.

108 ~~b.2.~~ Sharing of evaluations between the school district and
109 the department where appropriate.

110 ~~c.3.~~ Provision of education and related services
111 appropriate for the needs and abilities of the child known to
112 the department.

113 ~~d.4.~~ Coordination of services and plans between the school
114 and the residential setting to avoid duplication or conflicting
115 service plans.

116 ~~e.5.~~ Appointment of a surrogate parent, consistent with the
117 Individuals with Disabilities Education Act and pursuant to
118 subsection (3), for educational purposes for a child known to
119 the department who qualifies ~~as soon as the child is determined~~
120 ~~to be dependent and without a parent to act for the child. The~~
121 ~~surrogate parent shall be appointed by the school district~~
122 ~~without regard to where the child known to the department is~~
123 ~~placed so that one surrogate parent can follow the education of~~
124 ~~the child known to the department during his or her entire time~~
125 ~~in state custody.~~

126 ~~f.6.~~ For each child known to the department 14 years of age
127 and older, transition planning by the department and all



561974

128 providers, including the department's independent living program
129 staff, to meet the requirements of the local school district for
130 educational purposes.

131 (c) This subsection establishes standards and not rights.
132 This subsection does not require the delivery of any particular
133 service or level of service in excess of existing
134 appropriations. A person may not maintain a cause of action
135 against the state or any of its subdivisions, agencies,
136 contractors, subcontractors, or agents based upon this
137 subsection becoming law or failure by the Legislature to provide
138 adequate funding for the achievement of these standards. This
139 subsection does not require the expenditure of funds to meet the
140 standards established in this subsection except funds
141 specifically appropriated for such purpose.

142 (3) CHILDREN HAVING OR SUSPECTED OF HAVING A DISABILITY.—

143 (a)1. The Legislature finds that disability is a natural
144 part of the human experience and in no way diminishes the right
145 of individuals to participate in or contribute to society.
146 Improving educational results for children with disabilities is
147 an essential element of our public policy of ensuring equality
148 of opportunity, full participation, independent living, and
149 economic self-sufficiency for individuals with disabilities.

150 2. The Legislature also finds that research and experience
151 have shown that the education of children with disabilities can
152 be made more effective by:

153 a. Having high expectations for these children and ensuring
154 their access to the general education curriculum in the regular
155 classroom, to the maximum extent possible.

156 b. Providing appropriate exceptional student education,



561974

157 related services, and aids and supports in the least restrictive
158 environment appropriate for these children.

159 c. Having a trained, interested, and consistent educational
160 decisionmaker for the child when the parent is determined to be
161 legally unavailable or when the foster parent is unwilling, has
162 no significant relationship with the child, or is not trained in
163 the exceptional student education process.

164 3. It is, therefore, the intent of the Legislature that all
165 children with disabilities known to the department, consistent
166 with the Individuals with Disabilities Education Act, have
167 available to them a free, appropriate public education that
168 emphasizes exceptional student education and related services
169 designed to meet their unique needs and prepare them for further
170 education, employment, and independent living and that the
171 rights of children with disabilities are protected.

172 (b)1. Each district superintendent or dependency court must
173 appoint a surrogate parent for a child known to the department
174 who has or is suspected of having a disability, as defined in s.
175 1003.01(3), when:

176 a. After reasonable efforts, no parent can be located; or

177 b. A court of competent jurisdiction over a child has
178 determined that no person has the authority under the
179 Individuals with Disabilities Education Act or that no person
180 having such authority is willing or able to serve as the
181 educational decisionmaker for the child.

182 2. The dependency court may appoint a surrogate parent for
183 any child who is under its jurisdiction. A surrogate parent
184 appointed by the court must be at least 18 years old. The court
185 may not appoint an employee of the Department of Education, the



561974

186 local school district, a community-based care provider, the
187 Department of Children and Family Services, or any other public
188 or private agency involved in the education or care of the
189 child, since appointment of those persons is prohibited by
190 federal law. However, a person who acts in a parental role to a
191 child, such as a foster parent or relative caregiver, is not
192 prohibited from serving as a surrogate parent if employed by
193 such agency, willing to serve, and knowledgeable about the child
194 and about the exceptional student education process. Group home
195 staff and therapeutic foster home parents may not be appointed.
196 The surrogate parent may be a court-appointed guardian ad litem,
197 a relative, or other adult involved in the child's life
198 regardless of whether that person has physical custody of the
199 child.

200 3. The district superintendent must accept the appointment
201 of the court or must appoint a surrogate parent within 30 days
202 after notice that the child meets the criteria in this paragraph
203 and no court appointment has been made.

204 4. A surrogate parent appointed by the district
205 superintendent must be accepted by any subsequent school without
206 regard to where the child is receiving residential care so that
207 a single surrogate parent can follow the education of the child
208 during his or her entire time in state custody.

209 5. For a child known to the department, the responsibility
210 to appoint a surrogate parent resides with both the district
211 superintendent and the court that has jurisdiction over the
212 child. If the court elects to appoint a surrogate parent, notice
213 shall be provided as soon as practicable to the child's school.
214 At any time that the court determines that it is in the best



561974

215 interests of a child to remove a surrogate parent, the court may
216 appoint a new surrogate parent for educational decisionmaking
217 purposes for that child.

218 6. The surrogate parent shall continue in the appointed
219 role until one of the following circumstances occurs:

220 a. The child is determined to no longer be eligible or in
221 need of special programs, except when termination of special
222 programs is being contested;

223 b. The child achieves permanency through adoption or legal
224 guardianship and is no longer in the custody of the department;

225 c. The parent who was previously unknown becomes known or
226 whose whereabouts were unknown is located or who was unavailable
227 and is determined by the court to be available;

228 d. The appointed surrogate no longer wishes to represent
229 the child or is unable to represent the child;

230 e. The superintendent of the school the child is attending
231 or the Department of Education contract designee or the court
232 that appointed the surrogate determines that the appointed
233 surrogate parent no longer adequately represents the child; or

234 f. The child moves to a geographic location that is not
235 reasonably accessible to the appointed surrogate.

236 7. The appointment and termination of a surrogate under
237 this section must be entered as an order of the court, with a
238 copy of the order provided to the child's school as soon as
239 practicable.

240 8. The person appointed as a surrogate parent under this
241 section must:

242 a. Be acquainted with the child and become knowledgeable
243 about his or her disability and educational needs;



561974

244 b. Represent the child in all matters relating to the
245 identification, evaluation, and educational placement of the
246 provision of a free and appropriate education to the child; and

247 c. Represent the interests and safeguard the rights of the
248 child in educational decisions that affect the child.

249 9. The responsibilities of the person appointed as a
250 surrogate parent do not extend to the care, maintenance,
251 custody, residential placement, or any other matter not
252 specifically related to the education of the child unless the
253 same person is appointed by the court for other purposes.

254 10. A person appointed as a surrogate parent enjoys all of
255 the procedural safeguards afforded a parent with respect to the
256 identification, evaluation, and educational placement of a
257 student with a disability or a student who is suspected of
258 having a disability.

259 11. A person appointed as a surrogate parent may not be
260 held liable for actions taken in good faith on behalf of the
261 student in protecting the special education rights of the child.

262 (4) (5) TRAINING.—The department shall incorporate an
263 education component into all training programs of the department
264 regarding children known to the department. Such training shall
265 be coordinated with the Department of Education and the local
266 school districts. The department shall offer opportunities for
267 education personnel to participate in such training. Such
268 coordination shall include, but not be limited to, notice of
269 training sessions, opportunities to purchase training materials,
270 proposals to avoid duplication of services by offering joint
271 training, and incorporation of materials available from the
272 Department of Education and local school districts into the



561974

273 department training when appropriate. The department training
274 components shall include:

275 (a) Training for surrogate parents to include how an
276 ability to learn of a child known to the department is affected
277 by abuse, abandonment, neglect, and removal from the home.

278 (b) Training for parents in cases in which reunification is
279 the goal, or for preadoptive parents when adoption is the goal,
280 so that such parents learn how to access the services the child
281 known to the department needs and the importance of their
282 involvement in the education of the child known to the
283 department.

284 (c) Training for caseworkers and foster parents to include
285 information on the right of the child known to the department to
286 an education, the role of an education in the development and
287 adjustment of a child known to the department, the proper ways
288 to access education and related services for the child known to
289 the department, and the importance and strategies for parental
290 involvement in education for the success of the child known to
291 the department.

292 (d) Training of caseworkers regarding the services and
293 information available through the Department of Education and
294 local school districts, including, but not limited to, the
295 current Sunshine State Standards, the Surrogate Parent Training
296 Manual, and other resources accessible through the Department of
297 Education or local school districts to facilitate educational
298 access for a child known to the department.

299 Section 2. Paragraph (p) of subsection (2) of section
300 39.202, Florida Statutes, is amended to read:

301 39.202 Confidentiality of reports and records in cases of



561974

302 child abuse or neglect.-

303 (2) Except as provided in subsection (4), access to such
304 records, excluding the name of the reporter which shall be
305 released only as provided in subsection (5), shall be granted
306 only to the following persons, officials, and agencies:

307 (p) An employee of the local school district who is
308 designated as a liaison between the school district and the
309 department pursuant to an interagency agreement required under
310 s. 39.0016 and the principal of a public school, private school,
311 or charter school where the child is a student. Information
312 contained in the records which the liaison or the principal
313 determines are necessary for a school employee to effectively
314 provide a student with educational services may be released to
315 that employee.

316 Section 3. Subsection (11) of section 39.402, Florida
317 Statutes, is amended to read:

318 39.402 Placement in a shelter.-

319 (11) (a) If a child is placed in a shelter pursuant to a
320 court order following a shelter hearing, the court shall require
321 in the shelter hearing order that the parents of the child, or
322 the guardian of the child's estate, if possessed of assets which
323 under law may be disbursed for the care, support, and
324 maintenance of the child, to pay, to the department or
325 institution having custody of the child, fees as established by
326 the department. When the order affects the guardianship estate,
327 a certified copy of the order shall be delivered to the judge
328 having jurisdiction of the guardianship estate. The shelter
329 order shall also require the parents to provide to the
330 department and any other state agency or party designated by the



561974

331 court, within 28 days after entry of the shelter order, the
332 financial information necessary to accurately calculate child
333 support pursuant to s. 61.30.

334 (b) The court shall request that the parents consent to
335 provide access to the child's medical records and provide
336 information to the court, the department or its contract
337 agencies, and any guardian ad litem or attorney for the child.
338 If a parent is unavailable or unable to consent or withholds
339 consent and the court determines that access to the records and
340 information is necessary in order to provide services to the
341 child, the court shall issue an order granting access. The court
342 may also order the parents to ~~The parent or legal guardian shall~~
343 provide all known medical information to the department and to
344 any others granted access under this subsection.

345 (c) The court shall request that the parents consent to
346 provide access to the child's education records and provide
347 information to the court, the department or its contract
348 agencies, and any guardian ad litem or attorney for the child.
349 If a parent is unavailable or unable to consent or withholds
350 consent and the court determines that access to the records and
351 information is necessary in order to provide services to the
352 child, the court shall issue an order granting access.

353 (d) The court may appoint a surrogate parent or may refer
354 the child to the district superintendent for the appointment of
355 a surrogate parent if the child has or is suspected of having a
356 disability and the parent is unavailable pursuant to s.
357 39.0016(3)(b).

358 Section 4. Subsection (8) of section 39.701, Florida
359 Statutes, is amended to read:



561974

360 39.701 Judicial review.—

361 (8) The court and any citizen review panel shall take into
362 consideration the information contained in the social services
363 study and investigation and all medical, psychological, and
364 educational records that support the terms of the case plan;
365 testimony by the social services agency, the parent, the foster
366 parent or legal custodian, the guardian ad litem or surrogate
367 parent for educational decisionmaking if one has been appointed
368 for the child, and any other person deemed appropriate; and any
369 relevant and material evidence submitted to the court, including
370 written and oral reports to the extent of their probative value.
371 These reports and evidence may be received by the court in its
372 effort to determine the action to be taken with regard to the
373 child and may be relied upon to the extent of their probative
374 value, even though not competent in an adjudicatory hearing. In
375 its deliberations, the court and any citizen review panel shall
376 seek to determine:

377 (a) If the parent was advised of the right to receive
378 assistance from any person or social service agency in the
379 preparation of the case plan.

380 (b) If the parent has been advised of the right to have
381 counsel present at the judicial review or citizen review
382 hearings. If not so advised, the court or citizen review panel
383 shall advise the parent of such right.

384 (c) If a guardian ad litem needs to be appointed for the
385 child in a case in which a guardian ad litem has not previously
386 been appointed or if there is a need to continue a guardian ad
387 litem in a case in which a guardian ad litem has been appointed.

388 (d) Who holds the rights to make educational decisions for



561974

389 the child. If appropriate, the court may refer the child to the
390 district superintendent for appointment of a surrogate parent or
391 may itself appoint a surrogate parent under the Individuals with
392 Disabilities Education Act and s. 39.0016.

393 (e)~~(d)~~ The compliance or lack of compliance of all parties
394 with applicable items of the case plan, including the parents'
395 compliance with child support orders.

396 (f)~~(e)~~ The compliance or lack of compliance with a
397 visitation contract between the parent and the social service
398 agency for contact with the child, including the frequency,
399 duration, and results of the parent-child visitation and the
400 reason for any noncompliance.

401 (g)~~(f)~~ The compliance or lack of compliance of the parent
402 in meeting specified financial obligations pertaining to the
403 care of the child, including the reason for failure to comply if
404 such is the case.

405 (h)~~(g)~~ Whether the child is receiving safe and proper care
406 according to s. 39.6012, including, but not limited to, the
407 appropriateness of the child's current placement, including
408 whether the child is in a setting that is as family-like and as
409 close to the parent's home as possible, consistent with the
410 child's best interests and special needs, and including
411 maintaining stability in the child's educational placement, as
412 documented by assurances from the community-based care provider
413 that:

414 1. The placement of the child takes into account the
415 appropriateness of the current educational setting and the
416 proximity to the school in which the child is enrolled at the
417 time of placement.



561974

418 2. The community-based care agency has coordinated with
419 appropriate school district to ensure that the child remains in
420 the school in which the child is enrolled at the time of
421 placement.

422 ~~(i)-(h)~~ A projected date likely for the child's return home
423 or other permanent placement.

424 ~~(j)-(i)~~ When appropriate, the basis for the unwillingness or
425 inability of the parent to become a party to a case plan. The
426 court and the citizen review panel shall determine if the
427 efforts of the social service agency to secure party
428 participation in a case plan were sufficient.

429 ~~(k)-(j)~~ For a child who has reached 13 years of age but is
430 not yet 18 years of age, the adequacy of the child's preparation
431 for adulthood and independent living.

432 ~~(l)-(k)~~ If amendments to the case plan are required.
433 Amendments to the case plan must be made under s. 39.6013.

434 Section 5. Paragraph (f) of subsection (1) and paragraph
435 (g) of subsection (4) of section 1003.21, Florida Statutes, are
436 amended to read:

437 1003.21 School attendance.—

438 (1)

439 (f) Homeless children, as defined in s. 1003.01, and
440 children who are known to the department, as defined in s.
441 39.0016, must have access to a free public education and must be
442 admitted to school in the school district in which they or their
443 families live. School districts shall assist homeless children
444 and children who are known to the department to meet the
445 requirements of subsection (4) and s. 1003.22, as well as local
446 requirements for documentation.



561974

447 (4) Before admitting a child to kindergarten, the principal
448 shall require evidence that the child has attained the age at
449 which he or she should be admitted in accordance with the
450 provisions of subparagraph (1)(a)2. The district school
451 superintendent may require evidence of the age of any child whom
452 he or she believes to be within the limits of compulsory
453 attendance as provided for by law. If the first prescribed
454 evidence is not available, the next evidence obtainable in the
455 order set forth below shall be accepted:

456 (g) If none of these evidences can be produced, an
457 affidavit of age sworn to by the parent, accompanied by a
458 certificate of age signed by a public health officer or by a
459 public school physician, or, if neither of these is available in
460 the county, by a licensed practicing physician designated by the
461 district school board, which certificate states that the health
462 officer or physician has examined the child and believes that
463 the age as stated in the affidavit is substantially correct. A
464 homeless child, as defined in s. 1003.01, and a child who is
465 known to the department, as defined in s. 39.0016, shall be
466 given temporary exemption from this section for 30 school days.

467 Section 6. Subsection (1) and paragraph (e) of subsection
468 (5) of section 1003.22, Florida Statutes, are amended to read:

469 1003.22 School-entry health examinations; immunization
470 against communicable diseases; exemptions; duties of Department
471 of Health.—

472 (1) Each district school board and the governing authority
473 of each private school shall require that each child who is
474 entitled to admittance to kindergarten, or is entitled to any
475 other initial entrance into a public or private school in this



561974

476 state, present a certification of a school-entry health
477 examination performed within 1 year prior to enrollment in
478 school. Each district school board, and the governing authority
479 of each private school, may establish a policy that permits a
480 student up to 30 school days to present a certification of a
481 school-entry health examination. A homeless child, as defined in
482 s. 1003.01, and a child who is known to the department, as
483 defined in s. 39.0016, shall be given a temporary exemption for
484 30 school days. Any district school board that establishes such
485 a policy shall include provisions in its local school health
486 services plan to assist students in obtaining the health
487 examinations. However, any child shall be exempt from the
488 requirement of a health examination upon written request of the
489 parent of the child stating objections to the examination on
490 religious grounds.

491 (5) The provisions of this section shall not apply if:

492 (e) An authorized school official issues a temporary
493 exemption, for a period not to exceed 30 school days, to permit
494 a student who transfers into a new county to attend class until
495 his or her records can be obtained. A homeless child, as defined
496 in s. 1003.01, and a child who is known to the department, as
497 defined in s. 39.0016, shall be given a temporary exemption for
498 30 school days. The public school health nurse or authorized
499 private school official is responsible for followup of each such
500 student until proper documentation or immunizations are
501 obtained. An exemption for 30 days may be issued for a student
502 who enters a juvenile justice program to permit the student to
503 attend class until his or her records can be obtained or until
504 the immunizations can be obtained. An authorized juvenile



561974

505 justice official is responsible for followup of each student who
506 enters a juvenile justice program until proper documentation or
507 immunizations are obtained.

508 Section 7. This act shall take effect July 1, 2009.

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510 ===== T I T L E A M E N D M E N T =====

511 And the title is amended as follows:

512 Delete everything before the enacting clause
513 and insert:

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A bill to be entitled

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An act relating to education for children in shelter

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care or foster care; amending s. 39.0016, F.S.;

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defining the term "surrogate parent"; providing

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legislative intent; providing conditions for the

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district superintendent or court to appoint a

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surrogate parent for purposes of educational

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decisionmaking for a child who has or is suspected of

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having a disability; amending s. 39.202, F.S.;

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providing for access to certain records to liaisons

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between school districts and the Department of

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Children and Family Services; amending s. 39.402,

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F.S.; requiring access to a child's medical records

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and educational records if a child is placed in a

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shelter; amending s. 39.701, F.S.; requiring the court

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and citizen review panel in judicial reviews to

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consider testimony by a surrogate parent for

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educational decisionmaking; providing for additional

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deliberations relating to appointment of an

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educational decisionmaker; requiring certain



561974

534 documentation relating to the educational setting;
535 amending s. 1003.21, F.S.; providing access to free
536 public education for children known to the department;
537 authorizing a temporary exemption relating to school
538 attendance; amending s. 1003.22, F.S.; authorizing a
539 temporary exemption from school-entry health
540 examinations for children known to the department;
541 providing an effective date.