

**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.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 2038

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Detert

SUBJECT: Exceptional Students

DATE: April 21, 2009 REVISED: \_\_\_\_\_

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

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill requires the State Board of Education (SBE) to comply with the Individuals with Disabilities Education Act (IDEA) and federal regulations after evaluating and determining that the act is consistent with specific principles. The bill also:

- Revises the appellate review options, in conformity with IDEA, of adversely affected parties to eliminate review in which the parties are prohibited from introducing additional evidence;
- Codifies federal law with respect to the removal and placement of a student with disabilities who violates the district school board code of conduct and the grounds for such removal or placement; and
- Defines the terms “weapon” and “controlled substance” in conformity with IDEA for purposes of disciplining students with disabilities.

This bill substantially amends ss. 1003.57 and 1003.58 of the Florida Statutes and creates s. 1003.571 of the Florida Statutes.

## II. Present Situation:

### **Individuals with Disabilities Education Act**<sup>1</sup>

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>2</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>3</sup>

The IDEA provides federal funds to help state and local education agencies meet their obligation to educate students with disabilities. To be eligible to receive these federal funds, states must comply with numerous requirements, including the state's obligation to enact a policy that ensures that every student with a disability will receive a free, appropriate public education.<sup>4</sup>

Under the IDEA, federal special education funds are distributed through three state grant programs and several discretionary grant programs. Part B of the law, the main program, authorizes grants to state and local education agencies to offset part of the costs of the education needs of children with disabilities, ages 3 through 21. It also authorizes pre-school state grants for children with disabilities, ages 3 through 5. Part C authorizes infant and toddler state grants for early intervention services.<sup>5</sup> Parts D and E authorize discretionary grants to state and local education agencies for a variety of national special education activities, including research, evaluation, and the training and recruitment of personnel. In fiscal year 2007, which covers the school year 2007-2008, total IDEA funding for Florida is \$610,411,968 for Parts B and D, of which \$608,811,968 is dedicated to IDEA Part B state grants.<sup>6</sup> The total Part C IDEA funds for Florida for fiscal year 2007 was \$48,711,864.<sup>7</sup>

### *Due Process Safeguards*

States receiving IDEA funds must comply with detailed procedural requirements, including identifying, evaluating, and making placements for students with disabilities and for developing an individualized education program for each student.<sup>8</sup> States must also provide students with disabilities and their parents with certain procedural safeguards, including: notice of any proposal or refusal to change the student's identification, evaluation, or educational placement; the opportunity to present a complaint and to have an impartial due process hearing; and the right to keep the student in his or her current educational placement pending administrative or judicial review proceedings.<sup>9</sup> A student with a disability and his or her parents also have the right to

---

<sup>1</sup> 20 U.S.C. §§ 1400 et seq., as amended by the Individuals with Disabilities Education Improvement Act of 2004, P.L.108-446.

<sup>2</sup> 20 U.S.C. §. 1412

<sup>3</sup> 34 C.F.R. s. 300.149

<sup>4</sup> 20 U.S.C. § 1412(a)

<sup>5</sup> Part C is administered by the Florida Department of Health (DOH), pursuant to s. 391.308, F.S.

<sup>6</sup> DOE, February 23, 2009.

<sup>7</sup> DOH, February 25, 2009.

<sup>8</sup> 20 U.S.C. § 1412

<sup>9</sup> 20 U.S.C. § 1415 (b), (c), (d), (e),(f), and (j). There is an exception to keeping a student in his or her current placement if it involves an alternative educational setting.

bring a civil action in state court, if they are aggrieved by the decision of the state administrative hearing officer relating to a due process hearing or alternative placement.<sup>10</sup>

#### *Discipline and Placement in Alternative Educational Settings*<sup>11</sup>

The IDEA specifies the procedures that states must follow when placing a student with a disability in alternative educational settings due to disciplinary problems or dangerous behavior. School personnel may consider any unique circumstances on a case-by-case basis when deciding whether to order a change in placement for the student who violates a code of student conduct.<sup>12</sup> The student's individual education plan (IEP) team selects an interim alternative education setting.<sup>13</sup>

School officials may remove a student with a disability to an interim alternative education setting for not more than 45 school days, whether or not the behavior is caused by or directly and substantially related to the student's disability, if while at school, on school premises, or at a school function: the student carries or possesses a weapon; the student knowingly possesses or uses illegal drugs or sells or solicits the sale of controlled substances; or the student has inflicted serious bodily injury upon another person.<sup>14</sup> These students must continue to receive educational services that will enable them to continue to participate in the general education curriculum, although in another setting, and to progress towards meeting their IEP goals, and must receive, as appropriate, a functional behavioral assessment and behavior intervention services or modifications.<sup>15</sup>

#### **Exceptional Students**

Under current state law, an exceptional student is any student who has been determined eligible for a special program in accordance with SBE rule and includes students who are gifted and students with disabilities.<sup>16</sup> The law further defines the term “exceptional students with disabilities.”<sup>17</sup> Current administrative rule provides due process safeguards for gifted students.<sup>18</sup>

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

The bill requires the SBE to comply with the IDEA and federal regulations after evaluating and determining that the act is consistent with principles that include: affording a free and

<sup>10</sup> 20 U.S.C. § 1415(i)(2)

<sup>11</sup> *Id.*

<sup>12</sup> 20 U.S.C. § 1415(k)(1)(A); 34 C.F.R. § 300.530(a)

<sup>13</sup> 20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.531

<sup>14</sup> 20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g) “Bodily injury” is defined in 18 U.S.C. § 1365(h)(3), “weapon” is defined in 18 U.S.C.A. § 930 and “controlled substance” is defined in 21 U.S.C.A. § 812(c).

<sup>15</sup> 20 U.S.C.A. § 1415(k)(1)(D); 34 C.F.R. § 300.350(d)(1)

<sup>16</sup> s. 1003.01(3)(a), F.S.

<sup>17</sup> Exceptional students with disabilities are those who have an intellectual disability; autism spectrum disorder; speech impairment; language impairment; orthopedic impairment; other health impairment; traumatic brain injury; visual impairment; emotional or behavioral disability; specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in State Board of Education rules.

<sup>18</sup> s. 1003.57, F.S. *See also* Rule 6A-6.03313, F.A.C. A gifted student who has a disability is eligible to receive special education under the IDEA.

appropriate public education to all children with disabilities; assessing their education; and ensuring the protection of children and their parents.

The Joint Administrative Procedure Committee raised concerns about the State Board of Education's ability to adopt rules to incorporate changes to the IDEA, without specific authority in state law.<sup>19</sup> The committee developed recommendations to provide state executive branch agencies with reasonable discretion to adapt Florida's programs to changing federal guidelines, provide adequate legislative oversight, and avoid unconstitutional delegation to either the federal government or the state executive branch. The recommendations include specific legislative authority to participate in a federal program and an agency evaluation of whether federal law and regulations are consistent with specific legislatively-determined policy objectives. The bill incorporates these recommendations.

The bill revises the appellate review options of adversely affected parties by eliminating appellate review in which the parties are not able to introduce additional evidence.<sup>20</sup> This provision conforms Florida law with IDEA. The bill preserves the ability to seek an appeal of the administrative law judge's order in state circuit court. Additionally, IDEA authorizes the use of federal district court to seek redress. The revision is necessary to protect the state's federal funds under IDEA.<sup>21</sup>

The bill also codifies federal law with respect to the removal and placement of a student with disabilities who violates the district school board code of conduct and the grounds for such removal or placement. In particular, school personnel may remove and place a student with disabilities, who possesses a weapon on school grounds or at school functions, or who possesses, sells, or solicits for sale a controlled substance on school grounds or at school functions, in an alternative educational setting for up to 45 school days. The bill defines "weapon" and "controlled substance" for purposes of the removal or placement. The definition comports with IDEA.

**Other Potential Implications:**

The bill ensures that the state complies with federal IDEA requirements, which protects the state's grant of federal funds.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

---

<sup>19</sup>Correspondence from the Joint Administrative Procedures Committee to DOE, June 12, 2008.

<sup>20</sup> The bill preserves this alternate appeal of an administrative law judge's order with respect to a gifted student as gifted students are not subject to IDEA.

<sup>21</sup> Correspondence from the United States Department of Education, Office of Special Education and Rehabilitative Services, October 23, 2008.

## C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The U.S. DOE requires states that receive IDEA funds to demonstrate compliance with changes to the IDEA. Historically, the U.S. DOE has reviewed Florida's statutes and rule and, for some issues, has determined that the state is out of compliance.<sup>22</sup> According to the DOE, Florida received \$616,607,451 in federal funds under Part B of IDEA, \$598,437,209 for school-age children and \$18,170,242 for preschool children.<sup>23</sup> The bill may provide a way to demonstrate compliance with federal requirements and ensure that federal funds are not jeopardized.

## VI. Technical Deficiencies:

None.

## 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.)

**CS by Governmental Oversight and Accountability on April 21, 2009:**

The committee substitute makes no substantive changes; it corrects a technical deficiency.

## B. Amendments:

None.

---

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

---

<sup>22</sup> Correspondence from the U.S. DOE to Florida DOE, October 23, 2008 and DOE Florida Part B Checklist, Outstanding Issues Chart, December 9, 2004, and September 19, 2005, provided by DOE on February 18, 2009.

<sup>23</sup> DOE, March 12, 2009.