

**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 Committee on Appropriations

BILL: CS/SB 1108

INTRODUCER: Education Committee and Senator Gardiner and others

SUBJECT: Exceptional Student Education

DATE: April 19, 2013                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	de-Marsh-Mathues	Klebacha	ED	<b>Fav/CS</b>
2.	Armstrong	Elwell	AED	<b>Favorable</b>
3.	Elwell	Hansen	AP	<b>Favorable</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

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

**I. Summary:**

CS/SB 1108 provides mechanisms for increased parental involvement, clarifies student eligibility for services, and specifies school and program accountability requirements.

The bill provides for the involvement of parents of students with disabilities in meetings, including those related to decisions regarding assessment and placement.

The bill requires school districts to provide exceptional student education-related services, as defined by State Board of Education rule, for a home education student with a disability who is eligible for the services and who enrolls in a public school for the purpose of receiving those services. This could increase the number of students provided education-related services in the school districts and require additional funding in the FEFP for these students. However, the fiscal impact should not be significant. Any student with a disability has a right to educational services appropriate for his or her individual needs.

The bill defines an Exceptional Student Education Center and specifies the accountability requirements that apply to them. The bill establishes requirements for the reimbursement of federal funds to charter schools. Finally, the bill requires applicants for renewal of a professional

educator certificate to earn a minimum of one college credit or the equivalent inservice points in the area of instruction for teaching students with disabilities.

This bill substantially amends the following sections of the Florida Statutes: 1002.20, 1002.33, 1002.41, 1003.57, 1003.58, and 1012.585

The bill creates sections 1003.5715, 1003.572, and 1008.3415, Florida Statutes.

## II. Present Situation:

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, including children with disabilities who have been suspended or expelled from school.<sup>1</sup> As the state educational agency, the Department of Education (DOE) 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>

For each eligible student or child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, an individual educational plan (IEP) or individual family support plan must be developed, reviewed, and revised.<sup>3</sup> In developing an IEP, the IEP team is required to consider a child's strengths, concerns of the parents for enhancing education, results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child, as well as special factors.<sup>4</sup>

States receiving Individuals with Disabilities Education (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>5</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>6</sup> A student with a disability and his or her parents also have the right to 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>7</sup>

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<sup>1</sup> 20 U.S.C. s.1400 et. seq., as amended by P.L. 108-446; 34 C.F.R. s. 300.17.

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

<sup>3</sup> Rule 6A-6.03028(3), F.A.C.

<sup>4</sup> 20 U.S.C. s. 1414(d)(3)(A) and (B).

<sup>5</sup> 20 U.S.C. § 1412. See <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalArea%2C12%2C>. (last visited March 15, 2013.)

<sup>6</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.

<sup>7</sup> 20 U.S.C. § 1415(i)(2)

According to the DOE, school districts are not required under current practice to provide education-related services for students with disabilities in home education programs unless the student enrolls as a full-time student in a public school.<sup>8</sup>

### Exceptional Student Education (ESE) Centers

There is no definition in state law or rules for an “exceptional education student (ESE) center.”<sup>9</sup> The Department of Education (DOE) uses federal reporting criteria to define ESE center schools.<sup>10</sup> The term “educational environment” is a classification that indicates the extent to which students and children with disabilities who are receiving services under federal law<sup>11</sup> attend educational programs with their peers without disabilities.<sup>12</sup> For children and students who do not attend educational programs with a majority of peers without disabilities, the educational environment reflects the setting in which they receive special education and related services. The data collected includes the percent of children with individual education plans (IEPs) who are ages 6 through 21 and served inside the regular class 80 percent or more of the day, inside the regular class less than 40 percent of the day, and in separate schools, residential facilities, or homebound or hospital placements.<sup>13</sup>

In May 2012, the State Board of Education adopted the Commissioner of Education’s recommendation for student performance and learning gains to be attributed to the home school if the ESE center chooses a school improvement rating.<sup>14</sup>

According to the DOE’s June 2012 workshop materials on differentiated accountability:<sup>15</sup>

- ESE centers will now be eligible to receive a school grade with full inclusion of students with disabilities in performance measures.
- ESE centers are treated similar to alternative schools for accountability purposes in that the centers are able to select a regular school grade or a school improvement rating.<sup>16</sup>

<sup>8</sup> *Home Education and Exceptional Student Education Services: Frequently Asked Questions*, DOE, readable at: [http://www.floridaschoolchoice.org/information/home\\_education/files/ESE\\_faqs.pdf](http://www.floridaschoolchoice.org/information/home_education/files/ESE_faqs.pdf).

<sup>9</sup> There is a reference to exceptional education student centers in s. 1011.62(1)(f), F.S.

<sup>10</sup> Florida DOE, May 8, 2012. See [http://www.fldoe.org/board/meetings/2012\\_05\\_09/doc3.pdf](http://www.fldoe.org/board/meetings/2012_05_09/doc3.pdf). Telephone conversation with DOE, October 26, 2012.

<sup>11</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>12</sup> *Individuals with Disabilities Education Act (IDEA) Part B Data Dictionary*, Data Accountability Center, under contract with the U.S. Department of Education, Office of Special Education Programs, February 2012. See <https://www.ideadata.org/618DataCollection.asp>.

<sup>13</sup> *Florida’s Part B State Performance Plan for 2005-2012*, Florida DOE. See <http://www.fldoe.org/ese/pdf/RevisedSPP.pdf>.

<sup>14</sup> Approval of minutes of February 28, March 27, May 9-10, and May 15, 2012, State Board of Education meetings. The State Board also recommended and adopted, as a priority of the legislative agenda, a change to the law to exempt the performance results of 3,000 students in emergent levels one through three on the Florida Alternate Assessment from applying to the home school grade. See [http://www.fldoe.org/board/meetings/2012\\_07\\_17/minutes.pdf](http://www.fldoe.org/board/meetings/2012_07_17/minutes.pdf). The meeting materials indicate that this recommendation required a statutory change.

<sup>15</sup> Florida’s School Grading System 2011-2012 Changes, Differentiated Accountability Academy/Workshop, DOE. June 21, 2012. See [http://www.flbsi.org/ppt/Leadership\\_VII-School\\_Grades.ppt](http://www.flbsi.org/ppt/Leadership_VII-School_Grades.ppt).

<sup>16</sup> Current law (s. 1008.341, F.S.,) defines an alternative school as a school that provides dropout prevention and academic intervention services pursuant to s. 1003.53, F.S.

- A separate process for identifying ESE centers as alternative schools has been processed through the DOE.
- If the ESE center elects to receive a school improvement rating instead of a school grade, the scores for ESE center students are not only used in the ESE center's school improvement rating but are also credited back to home schools for inclusion in performance measures and learning gains for the home schools' grades.
- For alternative schools that are charter schools, the scores for students are not credited back to home schools. This is new for 2011-2012.
- For ESE centers that are charter schools, scores for students are not credited back to home schools.

The DOE's July 2012 technical assistance paper for calculating school improvement ratings states that beginning in 2011-2012, ESE centers will have the option of receiving a school grade or a school improvement rating.<sup>17</sup>

### III. Effect of Proposed Changes:

#### Parental Involvement

The bill prohibits districts from interfering with meetings in which a parent invites another person to attend (IEP meetings, for example). Private instructional personnel (e.g., a physical therapist) who are employed by the parent or under contract may observe a student in a public school setting or provide services in the educational setting at a time agreed upon by the private instructional personnel and the school.

Parental consent on IEPs is required for ESE center placement, Florida Alternate Assessment<sup>18</sup> and instruction decisions, unless the district documents that reasonable efforts have been made to obtain consent, the parent failed to respond, or approval was obtained through due process. An IEP team meeting must be held to make these decisions.

At the initial IEP meeting, the bill requires each school district to provide a parent with information on the amount of funds that the district receives from the state appropriation for each of the five ESE support levels for a full-time student (i.e., Level 1, Level 2, Level 3, Level 4, and Level 5).

Under the bill, a student remains in his or her current educational assignment, pending the resolution of due process proceedings for a complaint, unless the parent and district otherwise agree. This provision substantively codifies current federal law.

<sup>17</sup> 2012 *Guide to Calculating Alternative School Improvement Ratings*, DOE, July 2012. See <http://schoolgrades.fldoe.org/pdf/1112/AltSchoolRatingGuide2012.pdf>.

<sup>18</sup> All Florida students participate in the state's assessment and accountability system. The Florida Alternate Assessment is designed for students whose participation in the general statewide assessment (FCAT, FCAT 2.0, and EOC) is not appropriate even with accommodations. This assessment measures student academic performance on the Next Generation Sunshine State Standards Access Points (NGSSS-AP) in Language Arts, Mathematics, and Science at three levels of complexity; participatory, supported, and independent. Access Points are academic expectations written specifically for students with significant cognitive disabilities. As part of the Next Generation Sunshine State Standards, access points reflect the essence or core intent of the standards that apply to all students in the same grade, but at reduced levels of complexity. See <http://www.fldoe.org/asp/altassessment.asp>.

### **Eligibility for Services**

The bill requires school districts to provide exceptional student education-related services, as defined by State Board of Education rule, for a home education student with a disability who is eligible for the services and who enrolls in a public school for the purpose of receiving those education-related services. The bill provides such education-related services are eligible to be funding through the Florida Education Finance Program (FEFP). According to the DOE, a school district is not obligated to provide services to children in home education programs. If the parent of a child currently enrolled in a home education program chooses to enroll the child full time in a public school, the school district must ensure that a free and appropriate public education (FAPE) is made available to the child.<sup>19</sup>

### **Accountability**

The bill defines an ESE center, as well as other settings (e.g., resource rooms) and provides for the choice of a school grade or school improvement rating, at the discretion of the center. The bill specifies that the student achievement scores and learning gains of students who have only been enrolled in or attended an ESE center for grades K -12 are not included in the home school's grade if the student receives a rating of "emergent," which is a performance category on the FAA. The accountability mechanism in the bill codifies the DOE's practice of authorizing a center to select a school grade or school improvement rating without defining the center within the statutory definition of an alternative school.

### **Program Assessment**

The bill requires best practices assessments related to inclusion once every 3 years. A district and school would be required to complete an assessment with a Florida Inclusion Network facilitator, which provides learning opportunities, consultation, information, and support for educators, parents, and community members.<sup>20</sup>

### **Federal Funding**

The bill establishes requirements for the reimbursement of federal funds to charter schools, including Title I, Title II, and IDEA funds. The sponsor must reimburse the charter school on a monthly basis for all invoices submitted by charter schools for federal funds available for the benefit of charter schools and students.

### **Renewal of Professional Educator Certificate**

The bill also requires applicants for renewal of a professional educator certificate to earn a minimum of one college credit or the equivalent inservice points in the area of instruction for

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<sup>19</sup> *Home Education and Exceptional Student Education Services: Frequently Asked Questions*, DOE, readable at: [http://www.floridaschoolchoice.org/information/home\\_education/files/ESE\\_faqs.pdf](http://www.floridaschoolchoice.org/information/home_education/files/ESE_faqs.pdf).

<sup>20</sup> See [http://www.floridainclusionnetwork.com/Research\\_Centers/CRSRL/Florida\\_Inclusion\\_Network/Home/FIN\\_Facilitator\\_Directory.aspx](http://www.floridainclusionnetwork.com/Research_Centers/CRSRL/Florida_Inclusion_Network/Home/FIN_Facilitator_Directory.aspx).

teaching students with disabilities. The requirement may not, however, add to the total hours required by the department for continuing education or inservice training.

**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 bill requires school districts to provide exceptional student education-related services, as defined by State Board of Education rule, for a home education student with a disability, who is eligible for the services and who enrolls in a public school for the purpose of receiving those services. Also, the bill provides that school districts providing these services may report the student for funding through the Florida Education Finance Program (FEFP).

This could increase the number of students provided education-related services in the school districts and require additional funding in the FEFP for these students. However, the impact should not be significant. Any student with a disability already has a right to educational services appropriate for his or her individual needs. This bill clarifies the procedure for home education students to receive education-related services through school districts to supplement their home education.

According to the DOE, approximately 13 percent of the total public K-12 students have a documented disability. In 2011-2012, approximately 72,000 students were in a home education program. If 13 percent of home education students have a disability, approximately 9,400 students would potentially be eligible to request education-related services. Education-related services for most students are supplemental specialized

services provided in addition to other educational activities and funding for these services is supplemental to the FTE funding for basic education.

**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 Committee on Education on March 18, 2013:**

The committee substitute:

- Requires each school district, at the initial IEP meeting, to provide a parent with information on the amount of funds that the district receives from the state appropriation for each of the five ESE support levels for a full-time student.
- B. **Amendments:**
- None.