

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/CS/HB 465	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Education Committee, Education Appropriations Subcommittee, Choice & Innovation Committee, Brodeur, Diaz, M. and others	118 Y's	0 N's
<b>COMPANION BILLS:</b>	(CS/SB 1108)	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/CS/CS/HB 465 passed the House on May 1, 2013 as CS/SB 1108. The bill includes several provisions that enable a parent to take a more informed and active role in making specific decisions about their student's placement, assessments, and career path by requiring:

- Districts to obtain parental consent or obtain consent through a due process hearing before administering the Florida Alternate Assessment to a student, instructing the student in the state standard access points, or placing the student in an Exceptional Student Education Center, and providing a definition and criteria for such centers.
- DOE to develop and adopt in state board rule separate parental notifications for specific actions related to the development of an Individual Educational Plan (IEP).
- Districts not to discourage parents from inviting a qualified individual to attend specific meetings.
- Additional notifications to be issued for specific actions and specific meetings, including meetings to determine eligibility for 504 Accommodations.
- Additional content to be included in the parental consent forms.
- Allowing superintendents to request, on behalf of a parent with a severe cognitive disability, an extraordinary exemption from participating in a statewide standardized assessment, a statewide end-of-course examination, or an alternate assessment.
- Providing definitions for "circumstance" and "condition" for which a student may be granted an extraordinary exemption and providing requirements and deadlines for submitting and granting or denying exemption requests.
- All schools in every school district to complete a Best Practices in Inclusive Education assessment every three years, in conjunction with a Florida Inclusion Network facilitator.
- Districts to allow private instructional personnel hired by parents to enter the classroom to observe the student, collaborate with public instructional personnel, and provide services to the student.
- Applicants for renewal of a professional certificate to earn at least one college credit or equivalent inservice points in instruction for teaching exceptional students.

The bill does not have a fiscal impact on state or local government.

The bill was approved by the Governor on June 28, 2013, ch. 2013-236, L.O.F. The effective date of this bill is July 1, 2013.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

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> 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>

An individual educational plan (IEP) or individual family support plan (IFSP) must be developed, reviewed, and revised 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.<sup>3</sup> In developing an IEP, the IEP team must consider a child's strengths, concerns of the parents for enhancing education, results of the initial evaluation or most recent evaluation of the child, the academic, developmental, functional needs of the child, as well as special factors.<sup>4</sup>

Parents are partners with schools and school district personnel in developing, reviewing, and revising the IEP for their student. The role of parents in developing IEPs includes, but is not limited to:

1. Providing critical information regarding the strengths of their student;
2. Expressing their concerns for enhancing the education of their student so that their student can receive FAPE;
3. Participating in discussions about the student's need for special education and related services;
4. Participating in the determination of how the student will be involved and progress in the general curriculum, including participation in the statewide assessment program and in district-wide assessments;
5. Participating in the determination of what services the school district will provide to the student and in what setting; and
6. Participating in the determination of whether the student is pursuing a course of study leading towards a standard diploma, consistent with Sections 1003.43 and 1004.428, F.S., or a special diploma, consistent with Section 1003.438, F.S.<sup>5</sup>

Each school district must establish procedures that provide the opportunity for one or both of the student's parents to participate in meetings and decisions concerning the IEP for the student. Parents must be members of any group that makes decisions on the educational placement of their student. The following procedures must be included:

- Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend.
- Scheduling the meeting at a mutually agreed on time and place.
- A written notice of the meeting must be provided to the parents and must indicate the purpose, time, and location of the meeting, and who, by title or position, will be attending. The notice must

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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> Rule 6A-6.03028(3)(a), F.A.C.

also include a statement informing the parents that they have the right to invite individuals with special knowledge or expertise about their student and that they may request that a Part C service coordinator or other representative of the Part C system<sup>6</sup> be invited to attend the initial IEP Team meeting for a child previously receiving early intervention services under Part C of the IDEA.

- No later than the first IEP to be in effect when the student turns fourteen (14), or younger if determined appropriate by the IEP Team, the notice must also indicate that a purpose of the meeting will be identifying transition services needs of the student and that the district will invite the student.
- Not later than the first IEP to be in effect when the student turns sixteen (16), or younger if determined appropriate by the IEP Team, the notice must also indicate that a purpose of the meeting will be consideration of the postsecondary goals and transition services for the student, that the district will invite the student, and identify any other agency that will be invited to send a representative to the meeting.
- If neither parent can attend, the school district shall use other methods to ensure parent participation, including individual or conference telephone calls or video conferencing.
- A meeting may be conducted without a parent in attendance if the school district is unable to obtain the attendance of the parents. In this case, the district must have a record of its attempts to arrange a mutually agreed on time and place, such as:
  - Detailed records of telephone calls made or attempted and the results of those calls;
  - Copies of correspondence sent to the parents and any responses received; and
  - Detailed records of visits made to the parents' home or place of employment and the results of those visits.
- The district shall take whatever action is necessary to ensure that the parents and the student, beginning at age fourteen (14), understand the proceedings at a meeting, which may include arranging for an interpreter for parents and students who are deaf or whose native language is a language other than English.
- A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- The district shall give the parents a copy of the IEP at no cost to the parents.<sup>7</sup>

The IEP Team participants must include:

- the parents of the student
- at least one regular education teacher of the student, where appropriate
- at least one special education teacher of the student
- a school district representative qualified to provide or supervise the provision of specially designed instruction for meeting the unique needs of students with disabilities, and
- an individual who can interpret the instructional implications of evaluation results.

The IEP Team may also include, at the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate. Additionally, other team members may include the student, when appropriate; agencies responsible for providing or paying for transition services, and the Part C service coordinator or other representative of the Part C system if the student previously received such services.<sup>8</sup>

An IEP must be in effect before special education services are provided to an eligible student and must be implemented as soon as possible following the IEP meeting. The parent retains the right to ask for revisions of the child's IEP or to invoke due process procedures.<sup>9</sup> Meetings shall be held to develop,

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<sup>6</sup> 34 C.F.R. s. 300.321(f)

<sup>7</sup> Rule 6A-6.03028(3)(b), F.A.C.

<sup>8</sup> Rule 6A-6.03028(3)(c), F.A.C.

<sup>9</sup> Rule 6A-6.03028(3)(m), F.A.C.

review and revise the IEP. A meeting shall be held at least annually to review each IEP and, as appropriate, revise its provisions in accordance with aspects outlined in rule.<sup>10</sup>

District school boards are also required to submit to the Department of Education (DOE) proposed procedures for the provision of special instruction and services for exceptional students once every three years.<sup>11</sup> DOE must approve this document as a prerequisite for the district's use of weighted cost factors under the Florida Education Finance Program (FEFP). This document also serves as the basis for the identification, evaluation, eligibility determination, and placement of students to receive exceptional education services, and is a component of the district's application for funds available under the Individuals with Disabilities Education Act (IDEA). Approved plans are available online and include, among other topics, procedural safeguards and assurances for the parents of students with disabilities.<sup>12</sup>

Changes to the IEP are generally made by the entire IEP Team at an IEP Team meeting and may be made by amending the IEP rather than by redrafting the entire IEP. If changes are recommended after the annual IEP meeting for a school year, the parent and school district may agree not to convene an IEP team meeting to make those changes, and may instead develop a written document to amend or modify the student's current IEP. The IEP Team must be informed of any changes, and the parent must receive a copy of the revised IEP, with the amendments incorporated.<sup>13</sup>

Additionally, parents of students with disabilities are informed of their rights through the "Notice of Procedural Safeguards for Parents with Disabilities," at least once per year, although the document is available at any time the parent requests it. The document outlines the federal requirements which includes that district notify parents, in writing, whenever it:

- Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; or
- Refuses to initiate or to change the identification, evaluation, or educational placement of your child or the provision of FAPE to your child.<sup>14</sup>

Parents who have issues with the district regarding their student's exceptional student education may be able to resolve those issues informally at the local level. However, administrative remedies, including mediation, state complaint, and due process hearing requests are also available. Procedures for such requests are outlined in the "Notice of Procedural Safeguards for Parents of Students with Disabilities" document as well as on the Department of Education's website.<sup>15</sup>

## **Parent Meetings with Districts**

### Present Situation

Parents and districts have the discretion to invite individuals to IEP and IFSP meetings.<sup>16</sup> Additionally, other team members may include the student, when appropriate; agencies responsible for providing or paying for transition services, and the Part C service coordinator or other representative of the Part C system if the student previously received such services.<sup>17</sup>

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<sup>10</sup> Rule 6A-6.03028(3)(f)3., F.A.C.

<sup>11</sup> Section 1003.57(1)(d), F.S.

<sup>12</sup> See FLDOE ESE Policies and Procedures available at <http://www.fl DOE.org/ese/ppd.asp>.

<sup>13</sup> Rule 6A-6.03028(3)(k), F.A.C.

<sup>14</sup> 34 C.F.R. s. 300.503

<sup>15</sup> See FLDOE Dispute Resolution Systems available at <http://www.fl DOE.org/ese/resolution.asp>

<sup>16</sup> 34 C.F.R. s. 300.321(a)(6).

<sup>17</sup> Rule 6A-6.03028(3)(c), F.A.C.

## Effect of Proposed Changes

The bill identifies specific meetings at which parents may invite another individual to attend, including those already authorized above. Additionally, the bill includes the following meetings: the development of a 504 accommodation plan; the transition of a student from early intervention services to other services, the development of postsecondary goals for a student and the transition services needed to reach those goals; and other issues that may affect a student's educational environment, discipline, or placement. Eligible children with disabilities ages birth to three years of age are served by the Department of Health (DOH), Children's Medical Services, Early Steps, and therefore are not the responsibility of the school district. This program is provided under the authority of Part C of IDEA. Section 504 of the Rehabilitation Act of 1973 does not require that a parent be on the Section 504 team responsible for eligibility and placement decisions. However, most school districts have incorporated into their procedures the requirement to invite parents to attend, and DOE provides sample notification forms for districts to use.<sup>18</sup>

The bill prohibits school districts from discouraging parents from bringing other adults to meetings by "attempted or actual coercion; harassment of parents or students; or threats of consequences to parents or students", and provides language to expressly prohibit such actions. Additionally, it requires the school district and parents to sign a document at the conclusion of a meeting that states whether any school district personnel have prohibited, discouraged, or attempted to discourage a parent from inviting a person of their choice to the meeting.

The bill also requires the district school board to provide each parent, at the initial meeting of a student's IEP team meeting, with the amount of state funds it receives for each of the five exceptional student education support levels for a full-time student.

## **Best Practices in Inclusive Education (BPIE) Assessment**

### Present Situation

Best Practices for Inclusive Education (BPIE) is an assessment instrument to facilitate the analysis, implementation, and improvement of inclusive educational practices at the district, school, and education team levels.<sup>19</sup> The Florida Inclusion Network (FIN) is a discretionary project funded by the Bureau of Exceptional Education and Students Services using IDEA Part B funding. The primary focus of FIN is the provision of technical assistance and professional development to support inclusive practices. Over the past three years, FIN staff have worked with schools in five districts to implement the BPIE assessment process.

### Effect of Proposed Changes

The bill expands the inclusion of the BPIE by requiring all 67 school districts, and specifically, every school in each district, to complete a BPIE assessment with a Florida Inclusion Network facilitator every three years. The bill requires the results of the BPIE assessment and all planned short-term and long-term improvement efforts be included in the school district's exceptional education policies and procedures. SEE FISCAL COMMENTS.

## **Parental Consent**

### Present Situation

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<sup>18</sup> See "District Guide for Implementation of Section 504" available at <http://www.fldoe.org/ese/pdf/sect504.pdf>

<sup>19</sup> See "An Administrator's Guide to Universal/Inclusive Education" available at

<http://www.fddc.org/sites/default/files/file/publications/Universal%20Education%20Administrator-final.pdf>

IDEA requires informed parental consent when: 1) the school district proposes to conduct an initial evaluation to determine if a child qualifies as a student with a disability; 2) before the initial provision of special education and related services; and 3) prior to conducting a reevaluation. Provisions are made to proceed with reevaluation if a parent fails to respond to reasonable efforts made to obtain consent for reevaluation.<sup>20</sup>

If the parent fails to respond or refuses to provide consent for initial services, the public agency may not use due process procedures to obtain agreement or a ruling that the services may be provided to the child.<sup>21</sup> If the parent refuses to consent to the initial provision of special education and related services or fails to respond to a request to provide consent for the initial provision of special education and related services, the school district will not be considered to be in violation of the requirements to make FAPE available to the child for the failure to provide the child with the special education and related services for which the public agency requests consent.<sup>22</sup>

Notice must be provided before the district proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child or when the district refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. The notice for consent must include the following specific content:

- A description of the action proposed or refused by the agency;
- An explanation of why the agency proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- Sources for parents to contact to obtain assistance in understanding the provisions of this part;
- A description of other options that the IEP Team considered and the reasons why those options were rejected; and
- A description of other factors that are relevant to the agency's proposal or refusal.<sup>23</sup>

If an IEP team determines that a student will take the Florida Alternate Assessment (FAA) instead of the state's general assessment of student achievement, the IEP must include a statement of why the student cannot participate. School districts must notify the student's parent and provide the parent with information regarding the implications of such nonparticipation.<sup>24</sup>

The IEP Team shall make placement determinations in accordance with the least restrictive environment provisions in accordance with IDEA and State Board of Education rules.<sup>25</sup>

### Effect of Proposed Changes

In addition to current requirements for parental consent, the bill requires the department to develop and adopt in rule separate parental consent forms for notifying parents when a district decides to administer the FAA, to instruct the student in the state standards access points, and to place the student in an exceptional student education center. Notification is already required for administration of the FAA and placement in an exceptional student education center; however, the use of specific notification forms is new. The bill also includes additional information to be included on the notification forms including a "does not consent" checkbox and signature line, a "does consent" box with a signature line, and an

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<sup>20</sup> 34 C.F.R. s. 300.300 and Rule 6A-6.0331, F.A.C.

<sup>21</sup> 34 C.F.R. s. 300.300(b)(3)

<sup>22</sup> 34 C.F.R. s. 300.300(b)(4)

<sup>23</sup> 34 C.F.R. s. 300.503

<sup>24</sup> Section 1008.22(3)(c)6., F.S.

<sup>25</sup> 34 C.F.R. s. 300.114(a)(2) and Rules 6A-6.03011 – 6A-6.0361, F.A.C.

informational statement about the benefits and consequences of giving parental consent for the actions described above.

The bill prohibits a district from proceeding with the administration of the FAA, instruction in the state standard access points, or placement in an exceptional student education center, unless the district documents reasonable efforts to obtain the parent's consent, or the parent has failed to respond and the district obtains approval through a due process hearing in accordance with 34 C.F.R. ss. 300.507 and 300.508 and resolution of appeals.

The bill reiterates current federal and state law that requires a student to remain in his or her current educational assignment during the pendency of a due process hearing or appellate proceeding regarding a due process complaint, unless the parent and school board agree otherwise.<sup>26</sup>

## **Collaboration of Public and Private Instructional Personnel**

### Present Situation

Schools may currently collaborate with private instructional personnel working with a student or family in a setting outside the school. This may include sharing of information to assist in the provision of therapies that occur outside the classroom. Decisions regarding whether private instructional personnel may enter a school setting to observe a student, collaborate with school district personnel, or provide services is a local decision and handled by the principal of the school. Instructional personnel who are hired by a district through a contract to fill a position that requires direct contact with students are currently required to undergo background screenings.<sup>27</sup>

### Effect of Proposed Changes

The bill creates a new section of statute defining "private instructional personnel" who will work with local school district personnel to promote educational progress and assist students in acquiring essential skills such as readiness for pursuit of higher education goals or employment. Private instructional personnel are defined as:

- behavior analysts certified under s. 393.17, F.S. or individuals licensed under chapter 490 (Psychological Services) or chapter 491 (Clinical, Counseling, and Psychotherapy Services) to provide applied behavior analysis services as defined in ss. 627.6686 and 641.31098, F.S.;
- speech-language pathologists licensed under s. 468.1185, F.S.;
- occupational therapists licensed under part III of chapter 468;
- physical therapists licensed under chapter 486;
- psychologists licensed under chapter 490; and
- clinical social workers licensed under chapter 491.

The bill proposes that public and private instructional personnel collaborate and coordinate services for ESE students, and the partnership is designed to enhance but not supplant the school district's responsibilities under IDEA. If parents hire or contract with private instructional personnel, the bill requires districts to allow that individual to observe the student in their educational setting; collaborate with instructional personnel in the educational setting; and provide services in that setting if:

- the student's public instructional personnel and principal consent to the time and place; and
- the private instructional person meets background screening requirements.

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<sup>26</sup> See 34 C.F.R. s. 300.518 and Section 1003.57(1)(c), F.S.

<sup>27</sup> Sections 1012.465 and 1012.56, F.S.

The bill provides that the provision of private instructional personnel by a parent does not constitute a waiver of the student's or parent's right to FAPE under IDEA.

## **Exemption from Assessment**

### Present Situation

The Commissioner of Education is required to design and implement a statewide program of educational assessment that provides information for the improvement of the operation and management of public schools, including schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs. The student achievement and assessment program includes the Florida Comprehensive Assessment Test (FCAT) and end-of-course assessments and shall measure student content knowledge and skills adopted by the State Board of Education and measure and report student performance levels of all students assessed in reading, writing, mathematics, and science.<sup>28</sup>

Participation in the assessment program is mandatory for all students attending public school, including students served in Department of Juvenile Justice programs, except as otherwise prescribed by the commissioner.<sup>29</sup> For students seeking a special diploma pursuant to s. 1003.438, the Department of Education must develop or select and implement an alternate assessment tool that accurately measures the core curricular content established in the Next Generation Sunshine State Standards for students with disabilities under s. 1003.438.<sup>30</sup> An Individual Education Plan (IEP) team may determine that a student with a significant cognitive disability meets the criteria for participating in the statewide alternate assessment, based on specified criteria.<sup>31</sup>

Furthermore, the rule provides for a consideration of a special exemption from the alternate assessment, under extraordinary circumstances. Extraordinary circumstances are defined as events or conditions that prevent the student from physically demonstrating the mastery of skills that have been acquired and are measured by statewide assessments. Extraordinary circumstances are physical conditions that affect a student's ability to communicate in modes deemed acceptable for statewide assessments, creating a situation where the results of administration of a statewide assessment would reflect a student's impaired sensory, manual, or speaking skills rather than the student's achievement.<sup>32</sup>

The rule requires that the consideration for a special exemption be submitted to the Commissioner in writing from the district school superintendent no later than 30 days prior to the assessment administration window, and the documentation shall include:

- a written description of the student's disabling condition, including a specific description of the student's impaired sensory, manual or speaking skills and the extraordinary circumstances for the exemption request
- written documentation of the most recent evaluation data
- written description of the disability's effect on the student's achievement;
- written evidence that the student has had the opportunity to learn the skills being tested; and,
- written evidence that the manifestation of the student's disability prohibits the student from responding to the statewide assessment, even when appropriate accommodations are provided so that the result of the testing reflects the student's impaired sensory, manual, or speaking skills rather than the student's achievement.

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<sup>28</sup> Section 1008.22(3), F.S.

<sup>29</sup> Section 1008.22(3)(c)8., F.S.

<sup>30</sup> Section 1008.22(3)(c)13, F.S.

<sup>31</sup> Rule 6A-1.0943(2)(b), F.A.C.

<sup>32</sup> Rule 6A-1.0943(5), F.A.C.



The Commissioner reviews the documentation determines whether the exemption will be granted. A request for determination of a special exemption must be submitted annually and approved by the Commissioner.<sup>33</sup>

### Effect of Proposed Changes

The bill allows a school district superintendent to request, on behalf of a student with a disability, an extraordinary exemption from the administration of a statewide standardized assessment, an end-of-course examination, or an alternate assessment. The student's IEP team must have determined that the student is prevented by a circumstance or condition from physically demonstrating the mastery of skills that have been acquired and are measured by such assessments.

"Circumstance" is defined as a situation in which accommodations allowable for use on the statewide standardized assessment, a statewide standardized end-of-course assessment, or an alternate assessment are not offered to a student during the current year's assessment administration due to technological limitations in the testing administration program which lead to results that reflect the student's impaired sensory, manual, or speaking skills rather than the student's achievement of the benchmarks.

"Condition" is defined as an impairment, whether recently acquired or longstanding, which affects a student's ability to communicate in modes deemed acceptable for statewide assessments, even with accommodations provided, and results in reflecting the student's impaired sensory, manual, or speaking skills rather than the student's achievement of the benchmarks.

The IEP team must submit a written request to the superintendent no later than 60 days before the current year's assessment administration for which the request is made. The written request must include current required documentation and this additional documentation:

- written documentation, if available, of the most recent administration of any of the above assessments;
- written description of the condition's effect on the students participation in assessments;
- written evidence that the student has been provided appropriate instructional accommodations;
- written evidence as to whether the student has had the opportunity to be assessed using the instructional accommodations on the student's IEP that are allowable; and
- written evidence of the circumstance or condition as defined above.

The superintendent shall review the request and documentation and recommend to the Commissioner of Education whether an extraordinary exemption should be granted or denied. The Commissioner must notify the parent of the granting or denial of the exemption within 30 days of receipt from the superintendent. The parent may request an expedited hearing, if he or she disagrees with the Commissioner's decision. The department must inform the parent of any free or low-cost legal services and arrange a hearing with the Division of Administrative Hearings within 20 school days of the parent's request for such hearing. The administrative law judge shall render a decision within 10 school days after the hearing. The standard of review is de novo, and the burden of proof lies with the department.

The bill requires the Commissioner of Education to, beginning June 30, 2014 and each June 30, thereafter, submit to the Governor, the President of the Senate and the Speaker of the House of Representatives, the number of extraordinary exemptions requested, the number granted, and the criteria by which the decisions were made. The Commissioner must also regularly inform district testing and special education administrators of this exemption request procedures.

The bill requires the State Board of Education to adopt rules to implement this provision.

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<sup>33</sup> Rule 6A-1.0943(5), F.A.C.

## Instructional Settings

### Present Situation

IDEA and corresponding State Board of Education rules require that school districts ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services, including: instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. Additionally, school districts must make provisions for supplementary services such as resource room or itinerant instruction to be provided in conjunction with regular class placement.<sup>34</sup> The DOE must report to USDOE each year the number of students with IEPs in the following categories:

- those served in a regular class for 80 percent or more of the day.
- those service in a regular class less than 40 percent of the day.
- those served in separate schools, residential placement, or homebound/hospital placements.<sup>35</sup>

### Effect of Proposed Changes

The bill requires school districts to use specific definitions for a student with a disability, ages 6 through 21 years, with regard to instructional setting, for the following terms:

- “Exceptional student education center” or “special day school” as a separate public school to which nondisabled peers do not have access.
- “Other separate environment” as a separate private school, residential facility, or hospital or homebound program.
- “Regular class” as a class in which a student spends 80% or more of the school week with nondisabled peers.
- “Resource room” as a classroom in which a student spends 40%-80% of the school week with nondisabled peers.
- “Separate class” as a class in which a student spends less than 40% of the school week with nondisabled peers.
- “Inclusion” means that a student is receiving education in a regular general education classroom, reflecting natural proportions and age-appropriate heterogeneous groups in core academic and elective or special areas within the school community.

The bill reiterates current federal regulations requiring, to the extent appropriate, that students with disabilities, in public, private or other institutions, be educated with students who are not disabled.<sup>36</sup>

## ESE Center Schools

### Current Situation

As part of Florida’s Elementary and Secondary Education Act Flexibility Waiver the department was required to include in Florida’s school accountability system, schools that provide specialized services to students with disabilities who cannot be served in the general school setting. The department identified these schools as Exceptional Student Education Center Schools. On February 28, 2012, the department issued a Notice of Intent to classify schools serving students with disabilities exclusively as

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<sup>34</sup> 34 C.F.R. s. 300.115 and Rule 6A-6.0311, F.A.C.

<sup>35</sup> See “2012 SEA Profile” at <http://www.fldoe.org/ease/datapage.asp>

<sup>36</sup> See 34 C.F.R. s. 300 & Rule 6A-6.03028(3)(i), F.A.C.

alternative centers .<sup>37</sup> This action by the department would allow ESE Center Schools to either receive a school grade or school improvement rating. However, by choosing a school improvement rating the learning gains of the students at the ESE Center are reported to the homeschool and included in that school's grade.

### Effect of Proposed Changes

The bill creates the School grade or school improvement rating for exceptional student education centers section and requires each Exceptional Student Education Center, to choose to receive a school grade or a school improvement rating.

The achievement scores and learning gains of students attending ESE Center Schools who were not enrolled in or in attendance at a public school, other than an exceptional student education center are not included in the grade of the students' home school, if the student is identified as an emergent student on the alternate assessment tool.

## **Renewal of Professional Certificate**

### Present Situation

The purpose of school personnel certification is to protect the educational interests of students, parents, and the public at large by assuring that teachers in the state are professionally qualified. The certificate renewal process was established to promote the continuing professional improvement of school personnel, thereby enhancing public education in all areas of the state.<sup>38</sup> Current law specifies the minimum semester hours and appropriate equivalencies required to grant renewal of a state-issued professional certificate for each successive five-year validity period; outlines acceptable categories of courses and inservice activities for retention of specialization areas on a professional certificate through the certificate renewal process; and codifies that courses and inservice activities in exceptional student education are acceptable categories for renewal of any area of specialization.<sup>39</sup>

### Effect of Proposed Changes

The bill requires every applicant who is applying for renewal of a professional certificate to earn at least one college credit or the equivalent inservice points in the area of instruction for teaching students with disabilities. The provision states that this requirement may not add to the total hours required for continuing education or inservice training. Educators who meet any of the following qualifications are exempt from this requirement:

- Certified in exceptional student education;<sup>40</sup>
- Passed the subject area test in exceptional student education; or
- Successful completion in an exceptional student education course in a teacher preparation program.

However, the bill does not account for any professional development activities or courses in instructing exceptional students that the educator may have completed over the course of the educator's career, particularly when such activities and individual courses are completed outside the educator's teacher preparation program, which is often the case for many experienced educators.

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<sup>37</sup> Notice of Intent – Classification of ESE Centers as Alternative Schools, *available at* <http://www.fldoe.org/esea/pdf/NoticeofIntent.pdf>.

<sup>38</sup> Section 1012.54, F.S.

<sup>39</sup> Section 1012.585(3), F.S.

<sup>40</sup> The bill does not grant a similar exemption for certificate holders with specific exceptionalities such as Gifted, Hearing Impaired, Prekindergarten Disabilities, Speech-Language Impaired, Visually Impaired, Emotionally Handicapped, Mentally Handicapped, Specific Learning Disabilities, Varying Exceptionalities, etc.

## Federal Funding Reimbursement

### Present Situation

Charter schools, like traditional public schools, receive federal education funding through such programs as the Individuals with Disabilities Education Act (IDEA),<sup>41</sup> Title I programs for disadvantaged students,<sup>42</sup> and Title II programs for improving teacher quality.<sup>43</sup> Typically, federal education programs are structured so that funding flows from the federal government to a state educational agency,<sup>44</sup> which then awards subgrants to local education agencies (LEA) within the state.<sup>45</sup> School districts are the LEA for district public schools, including charter schools. Federal education funds are received by the school district, which then distributes to the charter school its proportionate share of funding.<sup>46</sup>

Each federal education program has unique policy goals and expenditure, record keeping, and annual financial and performance accountability reporting requirements.<sup>47</sup> Federal regulations provide penalties for grantees and subgrantees<sup>48</sup> that fail to comply with grant requirements. These penalties include withholding, suspension, or termination of grant funds or designation as a “high risk” grantee.<sup>49</sup>

Federal law requires school districts to ensure that charter schools receiving federal funds comply with federal grant requirements.<sup>50</sup> School districts typically address issues related to a charter school’s compliance with federal grant requirements in the charter.<sup>51</sup> In addition, Florida law provides several mechanisms which enable school districts to provide financial oversight of charter schools. Charter schools must submit annual financial reports,<sup>52</sup> provide for an annual financial audit,<sup>53</sup> and submit to the district monthly financial statements.<sup>54</sup> Among other things, a charter school’s annual financial audit must include violations of law, contract provisions, or grant agreements.<sup>55</sup>

According to the DOE, school districts distribute federal funds directly to charter schools, provide in-kind services in lieu of funds, or use a combination of both methods. School districts use a variety of methods to distribute federal funds directly to charter schools, including directly advancing funds, reimbursing expenditures, or making purchases on behalf of charter schools.<sup>56</sup>

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<sup>41</sup> 20 U.S.C. s. 1411(e).

<sup>42</sup> 20 U.S.C. s. 6301 et. seq.

<sup>43</sup> 20 U.S.C. ss. 6601-6641; s. 1002.33(17)(c)-(d), F.S.

<sup>44</sup> The Florida Department of Education is Florida’s state educational agency for federal funding purposes. *See* 20 U.S.C. s. 1412(a).

<sup>45</sup> *See* 20 U.S.C. ss. 1412(a) and 1413(a).

<sup>46</sup> Section 1002.33(17)(c), F.S.

<sup>47</sup> 34 C.F.R. ss. 76.702, 80.36, 80.32, 80.33, and 80.42 (fiscal, procurement, and inventory management records); 34 C.F.R. s. 80.41 (financial reports include status, cash transaction, and capital outlay reports).

<sup>48</sup> 34 C.F.R. s. 80.3. Federal regulations governing administration of federal education grant programs define “grantee” to mean the government to which a grant is awarded and which is accountable for the use of the funds provided, i.e. DOE. Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided, i.e., school districts. *Id.*

<sup>49</sup> 34 C.F.R. s. 80.43 (noncompliance with grant terms); 34 C.F.R. s. 80.12 (high-risk grantees). Special conditions are placed upon “high risk” grantees, including payment of grant funds on a reimbursement basis; withholding of authority to proceed to subsequent grant phases until performance expectations are met; or requiring additional financial reports, project monitoring, and technical or management assistance. 34 C.F.R. s. 80.12. Grant recipients who commit fraud may be debarred or suspended from participation in all federally funded programs. 34 C.F.R. s. 80.43(d); Exec. Order No. 12549, 34 C.F.R. s. 80.35.

<sup>50</sup> 34 C.F.R. s. 80.3; 34 C.F.R. s. 300.209(b).

<sup>51</sup> Telephone interview with Florida Department of Education, Charter Schools Director (Feb. 1, 2012).

<sup>52</sup> Section 1002.33(9)(g), F.S.

<sup>53</sup> Sections 218.39(1)(e) and (f) and 1002.33(9)(j)1. and 2., F.S.

<sup>54</sup> Section 1002.33(9)(g), F.S. High-performing charter schools may submit quarterly, rather than monthly, financial statements. Section 1002.331(2)(c), F.S.

<sup>55</sup> Section 10.856(2)(b)2.c., Rules of the Auditor General.

<sup>56</sup> *Funding Report*, *supra* note 1, at 21-22.

## Effect of Proposes Changes

The bill requires a sponsor to monthly reimburse a charter school for expenditures of federal funds, unless another method of disbursing federal funds is mutually agreed to by the charter school and sponsor. The charter school must provide invoices evidencing expenditures to the sponsor at least 30 days before the monthly reimbursement date set by the sponsor. Charter schools that choose to receive federal funds on a reimbursement basis must comply with applicable state and federal requirements governing use of federal funds. In order to receive federal funds on a reimbursement basis, a charter school must submit to the sponsor for approval a plan outlining the charter school's use of federal funds. Allowing charter schools to receive federal funds on a reimbursement basis provides charter schools with greater autonomy regarding purchases made with federal funds, while enabling the sponsor to oversee the charter school's compliance with state and federal requirements governing use of such funds.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.