

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 655 Exceptional Student Instruction

**SPONSOR(S):** Porter and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Innovation Subcommittee	14 Y, 0 N	Dehmer	Healy
2) PreK-12 Appropriations Subcommittee	13 Y, 0 N	Seifert	Potvin
3) Education Committee			

### SUMMARY ANALYSIS

Exceptional Student Education (ESE) is specially designed instruction and services that are provided to students with disabilities and students identified as gifted. Student enrollment in ESE programs is one factor considered in determining the funding a school district receives. With regard to students with disabilities, the federal Individuals with Disabilities Education Act (IDEA) requires school districts to make free appropriate public education (FAPE) available to such students ages three through 21.

An exceptional student with a disability who resides in a residential facility and receives special instruction or services is considered a resident of the state in which the student's parent is a resident.

Within 10 business days after receiving the notification that an exceptional student is located in a residential facility, the receiving school district must review the student's individual educational plan (IEP) to determine if it can be implemented by the receiving school district or by a provider or facility under contract with the receiving school district. The receiving school district must:

- provide educational instruction to the student;
- contract with another provider or facility to provide the educational instruction;
- contract with the residential care facility in which the student resides to provide the educational instruction; or
- decline to provide or contract for educational instruction.

The bill removes the option for the school district receiving an exceptional student with a disability who resides in a residential facility to decline to provide or contract for educational instruction.

There is no fiscal impact to the state.

The bill takes effect July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Educational Student Education (ESE) is specially designed instruction and related services that are provided to students with disabilities and students who are identified as gifted.<sup>1</sup> Student enrollment in ESE programs is one factor considered in determining the funding a school district receives.<sup>2</sup>

With regard to students with disabilities, the Individuals with Disabilities Education Act (IDEA) requires school districts to make free appropriate public education (FAPE) available to such students ages three through 21.<sup>3</sup> A school district, at its discretion, may provide services to eligible infants and toddlers below three years of age with disabilities.<sup>4</sup> A FAPE must include special education and related services<sup>5</sup> that are provided by the public school district at no cost to the parent, which meet the standards of the state and which are in conformity with the student's IEP.<sup>6</sup>

Each district school board must provide an appropriate program of special instruction, facilities and services for exceptional students. Each district program must:

- provide the necessary professional services for diagnosis and evaluation of exceptional students;
- provide the special instruction, classes and services within the district school system, in cooperation with the other district school systems or through contractual arrangements with the approved private school or community facilities;
- annually provide information describing all programs and methods of instruction available to parents of a sensory impaired student; and
- provide instruction to homebound or hospitalized students.<sup>7</sup>

An exceptional student with a disability who resides in a residential facility and receives special instruction or services is considered a resident of the state in which the student's parent is a resident. The cost of such instruction, facilities and services for a nonresident student with a disability shall be provided by the placing authority in the student's state of residence, such as a public school entity, other placing authority or parent. A nonresident student with a disability may not be reported by any school district for full-time equivalent student funding in the Florida Education Finance Program.<sup>8</sup>

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<sup>1</sup> Section 1003.57(1)(b), F.S.; rule 6A-6.03411(1)(m) and (n), F.A.C. The Office of Program Policy Analysis and Government Accountability (OPPAGA) identified the advantages and disadvantages of classifying gifted students as exceptional students by reviewing available research and holding focus group discussions with parents, gifted students, teachers, and district administrators. See Office of Program Policy Analysis and Government Accountability, *Florida Gifted Grew Faster Than the Overall School Enrollment*, Report No. 08-01, at 11 (Jan. 2008), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0801rpt.pdf> [hereinafter *OPPAGA Report No. 08-01*].

<sup>2</sup> See s. 1011.62(1)(c), F.S.

<sup>3</sup> 20 U.S.C. s. 1400(d)(1)(A); 34 C.F.R. s. 300.101; rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.

<sup>4</sup> Rules 6A-6.0331 and 6A-6.03026, F.A.C.

<sup>5</sup> "Related services" means "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes." "Related services" also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34 (a).

<sup>6</sup> 34 C.F.R. s. 300.17; Rule 6A-6.03411(1)(p), F.A.C.

<sup>7</sup> Section 1003.57(1)(b), F.S.

<sup>8</sup> Section 1003.57(2)(a), F.S.

Within 10 business days after an exceptional student is placed in a residential care facility, the agency or private residential care facility licensed by the agency, as appropriate, shall provide written notification of the placement to the school district where the student is currently counted for funding and the receiving school district. The exceptional student shall be enrolled in school and receive a FAPE, special education and related services while the notice and procedures regarding payment are pending.<sup>9</sup>

Within 10 business days after receiving the notification, the receiving school district must review the student's IEP to determine if it can be implemented by the receiving school district or by a provider or facility under contract with the receiving school district. The receiving school district must:

- provide educational instruction to the student;
- contract with another provider or facility to provide the educational instruction;
- contract with the private residential care facility in which the student resides to provide the educational instruction; or
- decline to provide or contract for educational instruction.<sup>10</sup>

If the receiving school district declines to provide or contract for the educational instruction, the school district in which the legal residence of the student is located shall provide or contract for the educational instruction to the student. The school district that provides educational instruction or contracts to provide educational instruction shall report the student for funding purposes.

### **Effect of Proposed Changes**

The bill removes the option for the school district receiving an exceptional student with a disability, who resides in a residential facility, to decline to provide or contract for educational instruction.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 1003.57, F.S., relating to exceptional students.

**Section 2.** Provides an effective date of July 1, 2017.

## **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:

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<sup>9</sup> Section 1003.57(3)(b), F.S.

<sup>10</sup> Section 1003.57(3)(c), F.S.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.