

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Pre-K - 12 Education

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BILL: CS/SB 772

INTRODUCER: Education Committee and Senator Rouson

SUBJECT: Assistive Technology Devices

DATE: April 13, 2017                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Androff</u>	<u>Graf</u>	<u>ED</u>	<b>Fav/CS</b>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<b>Recommend: Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 772 revises provisions related to the use of assistive technology devices by students with disabilities. Specifically, the bill:

- Recognizes that access to and use of the assistive technology device is essential for a student moving from school to home and community;
- Allows an individualized plan for employment to be one of the plans that may serve as the basis for a student to retain an assistive technology device through a transition; and
- Adds the Office of Independent Education and Parental Choice within the Florida Department of Education to the group of educational entities required to enter into interagency agreements with specified agencies, as appropriate, for the transaction of assistive technology devices.

The bill has no impact on state funds. However, the bill may increase costs on the school districts to the extent school districts will be required to purchase additional assistive technology devices for utilization by students with disabilities at home and in the community.

The bill takes effect July 1, 2017.

## II. Present Situation:

Federal and state laws provide for accommodations to assist students with disabilities.

### **Assistive Technology Devices**

Federal law defines an assistive technology device as any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.<sup>1</sup> The term does not include a medical device that is surgically implanted or the replacement of such device.<sup>2</sup> Federal regulations require each federal public agency to ensure that assistive technology devices are made available to a child with a disability under certain circumstances.<sup>3</sup> Moreover, in order to receive federal assistance under the Assistive Technology Act, a state must assure the U.S. Secretary of Education that the state complies with the federal regulations.<sup>4</sup>

Florida law defines assistive technology devices as manual wheelchairs, motorized wheelchairs, motorized scooters, voice-synthesized computer modules, optical scanners, talking software, braille printers, environmental control devices for use by a person with quadriplegia, motor vehicle adaptive transportation aids, devices that enable persons with severe speech disabilities to in effect speak, personal transfer systems, and specialty beds, including a demonstrator, that a consumer purchases or accepts transfer of in this state for use by a person with a disability.<sup>5</sup>

### **Special Education Services**

Special education services (SES) means specially designed instruction and related services that are provided to exceptional students.<sup>6</sup> Florida law specifies the disabilities that qualify a student for SES.<sup>7</sup> The U.S. Individuals with Disabilities Education Act (IDEA) requires school districts to make a free appropriate public education (FAPE) available to such students ages 3 through 21.<sup>8</sup> A school district, at its discretion, may provide services to eligible children with disabilities below 3 years of age.<sup>9</sup> A FAPE must include special education and related services<sup>10</sup> that are

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<sup>1</sup> 20 U.S.C. s. 1401(1)(A).

<sup>2</sup> *Id.* at 1401(1)(B).

<sup>3</sup> 34 C.F.R. s. 300.105(a).

<sup>4</sup> *Id.* at 300.101.

<sup>5</sup> Section 427.802(1), F.S. A person with a disability means any person who has one or more permanent physical or mental limitations that restrict his or her ability to perform the normal activities of daily living and impede his or her capacity to live independently. Section 427.802(2), F.S.

<sup>6</sup> Section 1003.01(3)(b), F.S. Exceptional student means any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who are gifted and students with disabilities who have an intellectual disability; autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; another health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a 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 pursuant to law. Section 1003.01(3)(a), F.S.

<sup>7</sup> Section 1003.01(3)(a)-(b), F.S.

<sup>8</sup> 20 U.S.C. s. 1400(d)(1)(A); 24 C.F.R. s. 300.101; Rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.

<sup>9</sup> Rules 6A-6.0331 and 6A-6.03026, F.A.C.

<sup>10</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

provided by the public school system at no cost to the parent, that meet the standards of the state, and that are in conformity with the student's individual education plan (IEP).<sup>11</sup>

### **Individual Education Plans**

For each eligible child with a disability served by a school district, or other state agency that provides special education and related services directly, by contract, or through other arrangements, an individual education plan (IEP) or individual family support plan must be developed, reviewed, and revised.<sup>12</sup>

An IEP team must meet to develop a plan for the student's needs within 30 days of determining a student's eligibility for SES.<sup>13</sup> The multidisciplinary IEP team includes school and district staff and other experts, if necessary.<sup>14</sup> Parents also participate in the plan development, which may not be implemented without parental consent to a student's initial placement into the SES program.<sup>15</sup>

The IEP sets forth a child's academic achievement and functional performance, describes how the child will be included in the general education curriculum, establishes annual goals for the child and describes how those goals will be measured, directs what special education and related services are needed, describes how the child will be appropriately assessed, and determines what accommodations may be appropriate for the child's instruction and assessment.<sup>16</sup> All IEP teams must consider whether a student with disability requires assistive technology devices and services.<sup>17</sup>

### **Individualized Plan for Employment**

Under Florida law, a person with a disability<sup>18</sup> is eligible for vocational rehabilitation (VR) services if the person requires VR services to prepare for, engage in, or retain gainful employment.<sup>19</sup> The Division of Vocational Rehabilitation (Division) is responsible for determining the eligibility of an individual for VR services.<sup>20</sup> If the Division determines that an individual is eligible for VR services, the division must:

- Complete an assessment for determining the eligibility and vocational rehabilitation needs and
- Ensure that an individualized plan for employment (IPE) is prepared.

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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 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>11</sup> 34 C.F.R. s. 300.17; Rule 6A-6.03411(1)(p), F.A.C.

<sup>12</sup> Rule 6A-6.03028(3), F.A.C.

<sup>13</sup> Rules 6A-6.03028(3)(f) and 6A-6.030190(6)(b), F.A.C.

<sup>14</sup> Rules 6A.03028(3)(c), 6A-6.030191(3), and 6A-6.03029(6), F.A.C.

<sup>15</sup> Rule 6A-6.0331(9), F.A.C.

<sup>16</sup> Rules 6A-6.03028(3)(h), 6A-6.03029(3), and 6A-6.030191(4), F.A.C.

<sup>17</sup> 34 C.F.R. s. 300.324(a)(2)(v); Rule 6A-6.03028(3)(g)11., F.A.C.

<sup>18</sup> Disability means "a physical or mental impairment that constitutes or results in a substantial impediment to employment." Section 413.20(7), F.S.

<sup>19</sup> Section 413.30(1), F.S.

<sup>20</sup> *Id.* at (4).

An IPE includes a “comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature, and scope of vocational rehabilitation services.”<sup>21</sup> The IPE must be jointly developed and by a VR counselor or coordinator and the eligible individual, or in an appropriate case, a parent, family member, guardian, advocate, or authorized representative to the individual.<sup>22</sup> The division is responsible for ensuring that each IPE is customized to the employment outcome of eligible individuals, consistent with federal law and the unique strengths, recourses, priorities, concerns, abilities and capabilities such individuals.<sup>23</sup> Each IPE must be reviewed annually and revised, as needed.<sup>24</sup>

### **Use and Transfer of Devices**

Federal law requires the school a student attends to meet the student’s IEP requirements regarding assistive technology.<sup>25</sup> If the student moves from one school to another school within the district, the assistive technology device must be provided at the new school.<sup>26</sup> The same device does not necessarily need to follow the student, but the transfer of assistive devices from school to school is encouraged because students benefit from continued use of the same device.<sup>27</sup> If the student moves to another district, federal regulation provides that agencies or districts make the equipment available for use in other districts, until the new district adopts the student’s prior IEP or executes a new IEP.<sup>28</sup>

Whether or not a student may take his or her assistive technology device home is determined on an individual basis and should be specified in the IEP.<sup>29</sup> If the student requires assistive technology in order to complete homework assignments or practice skills that require the device, such as communication or socialization, it should be specified in the IEP.<sup>30</sup> Not all assistive technology may be required for home use.<sup>31</sup> Use of the assistive technology device over the summer is also determined on an individual basis and should be specified in the IEP.<sup>32</sup>

The federal IDEA and regulations specify that it is the school’s responsibility to provide transition services.<sup>33</sup> The transition planning must begin by age 14 or grade 8, whichever occurs first.<sup>34</sup> A student’s IEP should include a statement of assistive technology needed under

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<sup>21</sup> Section 413.20(3), F.S.

<sup>22</sup> Section 413.30(5)(a), F.S.; Rule 6A-25.007, F.A.C.

<sup>23</sup> Section 413.30(5)(b), F.S.

<sup>24</sup> *Id.* at (5)(c).

<sup>25</sup> 34 C.F.R. s. 300.323(e).

<sup>26</sup> *Id.*

<sup>27</sup> Florida Department of Education, Bureau of Exceptional Education and Student Services, *Assistive Technology for Students with Disabilities*, Technical Assistance Paper FY 2013-65 (Aug. 2013), at 13-14.

<sup>28</sup> 34 C.F.R. s. 300.323(e).

<sup>29</sup> Florida Department of Education, Bureau of Exceptional Education and Student Services, *Assistive Technology for Students with Disabilities*, Technical Assistance Paper FY 2013-65 (Aug. 2013), at 12.

<sup>30</sup> Florida Department of Education, Bureau of Exceptional Education and Student Services, *Assistive Technology for Students with Disabilities*, Technical Assistance Paper FY 2013-65 (Aug. 2013), at 12.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> 34 C.F.R. s. 300.320(b).

<sup>34</sup> Rule 6A-6.03028(3)(b)4., F.A.C.

transition services, including a statement indicating agency responsibilities and linkages, if appropriate.<sup>35</sup> It is the school district's responsibility to provide a plan for the transition of assistive technology as the student prepares for postsecondary education, vocational placement, independent living and community experiences.<sup>36</sup> If the student will benefit from continued use of the same device, the transition of technology from school to the postschool setting is encouraged.<sup>37</sup> The IEP team must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services, such as assistive technology services and devices.<sup>38</sup> However, if the participating agency fails to provide the transition services and assistive technology defined in the IEP, the school district must reconvene the IEP team to identify alternative strategies in order to meet the transition objective.<sup>39</sup>

Upon request by a student or his or her parent, the district may transfer assistive technology to the postsecondary setting.<sup>40</sup> The transfer must follow the proper interagency agreement procedures, with the receiving agency documenting support of the equipment.<sup>41</sup>

### **Interagency Agreements**

Certain agencies are required by law to enter into interagency agreements, as appropriate, to ensure the transaction of assistive technology devices in accordance with the student's individualized family support plan, individual support plan, or individual education plan.<sup>42</sup> The interagency agreements provide the framework for ensuring that students with disabilities, their families, educators, and employers are informed about the utilization and coordination of assistive technology devices and services to help such students transition from school to postschool.<sup>43</sup> The agreements also ensure that all agencies are informed about the needed assistive technology, the content of the transition plan, and the postschool support required to meet student needs.<sup>44</sup>

The Florida Interagency Agreement for the Transfer of Assistive Technology was entered in September of 2006, between the following agencies:<sup>45</sup>

- Florida Infants and Toddlers early Intervention Program (Early Steps) of the Division of Children's Medical Services of the Department of Health;
- The Division of Blind Services of the Department of Education;
- The Division of Vocational Rehabilitation of the Department of Education;

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<sup>35</sup> Florida Department of Education, Bureau of Exceptional Education and Student Services, *Assistive Technology for Students with Disabilities*, Technical Assistance Paper FY 2013-65 (Aug. 2013), at 14.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> 34 C.F.R. s. 300.321(b)(3); s. 1003.575, F.S.

<sup>39</sup> Florida Department of Education, Bureau of Exceptional Education and Student Services, *Assistive Technology for Students with Disabilities*, Technical Assistance Paper FY 2013-65 (Aug. 2013), at 14.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Section 1003.575, F.S.

<sup>43</sup> *Id.*

<sup>44</sup> Section 1003.575, F.S.

<sup>45</sup> Florida Department of Education, Bureau of Exceptional Education and Student Services, *Assistive Technology for Students with Disabilities*, Technical Assistance Paper FY 2013-65 (Aug. 2013).

- The Voluntary Prekindergarten Education Program of the Department of Education and the Agency for Workforce Innovation; and
- The Bureau of Exceptional Education and Student Services of the Department of Education.

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

CS/SB 772 revises provisions related to the use of assistive technology devices by students with disabilities. Specifically, the bill:

- Recognizes that access to and use of the assistive technology device is essential for a student moving from school to home and community;
- Allows an individualized plan for employment to be one of the plans that may serve as the basis for a student to retain an assistive technology device through a transition; and
- Adds the Office of Independent Education and Parental Choice within the Florida Department of Education to the group of educational entities required to enter into interagency agreements with specified agencies, as appropriate, for the transaction of assistive technology devices.

While an individual education plan (IEP) may provide for the use of assistive technology devices by students with disabilities at home after school hours, it is unclear if such authorized use is consistently reflected in the IEP for all students who are eligible to receive assistive technology devices and services. The bill codifies the use of such devices at home and in the community. As a result, students may be able to have access to and use such devices after school hours, including during the weekend and over the summer.

The bill also allows an IPE to serve as the basis for issuing an assistive technology device. Adding the IPE may facilitate coordination with the Division of Vocational Rehabilitation regarding the transaction of assistive technology devices. The addition of the IPE may also enable a student to retain his or her assistive technology device in the employment or postschool environment.

Additionally, the bill adds the Office of Independent Education and Parental Choice (Office) to the list of agencies that must enter interagency agreements, as appropriate, to ensure that an assistive technology device issued to a student remains with the student through the continuum from home to school to postschool. As a result, the Office may be able to coordinate with specified agencies to facilitate the transition of students with disabilities who participate in school choice from school to postschool.

The bill takes effect July 1, 2017.

### **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 has no impact on state revenues or expenditures. However, according to the Florida Department of Education, CS/SB 772 may have an indeterminate fiscal impact for the school districts to the extent school districts will be required to purchase additional assistive technology devices for utilization by students with disabilities at home and in the community.<sup>46</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1003.575 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Education on March 21, 2017:**

Replaces the reference to individual work plan with individualized plan for employment, as a plan that may serve as the basis for issuing an assistive technology device to a student.

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<sup>46</sup> Florida Department of Education, *SB 772 Analysis* (2017), at 4.

B. Amendments:

None.

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

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