

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 173 Individual Education Plan Requirements for Students with Disabilities
SPONSOR(S): Education & Employment Committee and Secondary Education & Career Development Subcommittee, Tant and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 726

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 173 passed the House on April 21, 2021, and subsequently passed the Senate on April 22, 2021.

To facilitate quality planning for a successful transition to postsecondary education and career opportunities for students with disabilities, the bill requires a student's individual education plan (IEP) team to begin the planning process and IEP development when the student is in grade 7 or when the student attains the age of 12, whichever occurs first. The bill requires the IEP team to identify the student's need for transition services before the student enters high school or attains the age of 14, whichever occurs first. The student's IEP must be operational and in place for implementation on the first day of the student's first year of high school.

The bill establishes that the planning process and IEP development must include providing the student and parent with information about specific services and programs for students with disabilities and referral forms, links, and technical support for accessing such services and programs.

The bill revises the statements that must be included in the student's first IEP, which is in effect when the student enters high school, attains the age of 14, or when determined appropriate by the parent and IEP team, whichever occurs first. The required statements must be updated annually. The bill provides that the statement of the student's intent to pursue a standard high school diploma must document discussion of the process of deferment of a standard high school diploma. The IEP in effect at the start of the student's graduation year must include a signed statement by the student's parent or guardian, or by the student if of majority age and rights have transferred, that documents understanding of the deferment process and identifies whether the student will defer the receipt of a standard high school diploma.

The bill requires the Florida Department of Education (DOE) to conduct a review of existing transition services and programs for students with disabilities in order to establish uniform best practices. The DOE must publish the uniform best practices on its website by July 1, 2022.

The bill may have minimal fiscal impact for the DOE that can be absorbed within existing resources. See Fiscal Comments.

The bill was approved by the Governor on June 21, 2021, ch. 2021-142, L.O.F., and will become effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Students with Disabilities

Present Situation

All students who are between the ages of 3 to 21 and have a disability¹ have the right to a free, appropriate public education (FAPE).² It is the responsibility of each state and school district to develop procedures consistent with the requirement that all students with disabilities have access to a FAPE in the least restrictive environment.³ During the 2020-2021 academic year, Florida public schools served 406,944 students with disabilities.⁴

Federal Law

Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA)⁵ governs how state and public agencies provide early intervention, education, and related services to eligible children with disabilities.⁶ States receiving IDEA funds must comply with detailed procedural requirements, including identifying, evaluating, and making placements for students with disabilities and for developing an individualized education program (IEP)⁷ for each student.⁸ In developing an IEP, the IEP team⁹ 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.¹⁰ Federal law requires that the student's first IEP, which must be in effect when the student turns 16, include measurable postsecondary goals related to training, education, employment, and where appropriate, independent living skills.¹¹ The IEP must also specify the

¹ Disabilities that qualify a student as an exceptional student include an intellectual disability; an autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; an other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; deafness, hard of hearing, or dual sensory impairment; or developmental delays from birth through 5 years old or if the student is hospitalized or homebound. Section 1003.01(3)(a), F.S.

² 20 U.S.C. s. 1412(a)(1); Section 1003.5716, F.S.

³ Florida Department of Education, *Developing Quality Individual Education Plans* (2015), at 9, available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

⁴ Florida Department of Education, Education Information and Accountability Services Data Report, *Membership in Programs for Exceptional Students, Final Survey 2, 2020-21*, <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.stml>.

⁵ 20 U.S.C. s. 1400 et seq.; 34 C.F.R. s. 300.17.

⁶ See 20 U.S.C. s. 1412(a)(1). See also U.S. Department of Education, *National Assessment of IDEA Overview* (July 2011), at 1-2, available at <https://ies.ed.gov/ncee/pubs/20114026/pdf/20114026.pdf>.

⁷ In Florida statute, IEP refers to an "individual education plan." Section 1003.5716, F.S.

⁸ 20 U.S.C. s. 1415.

⁹ The IEP team is comprised of the student's parent(s), at least 1 regular education teacher of the student (if the student is or may be participating in the regular education environment), at least 1 special education teacher of the student, a representative of the local education agency, an individual who can interpret instructional implications of evaluation results (may be the teacher or agency representative), other individuals who have knowledge or special expertise of the student at the discretion of the parent or agency, and the student when appropriate. 20 U.S.C. s. 1414(d)(1)(B).

¹⁰ 20 U.S.C. s. 1414(d)(3)(A) and (B).

¹¹ 20 U.S.C. s. 1414(d)(1)(A)(i)(VIII).

transition services¹² needed to assist the student in reaching those goals.¹³ Federal law requires the IEP team to review the student's IEP at least annually to determine whether the student's goals are being achieved and to revise the IEP as necessary.¹⁴

Workforce Innovation and Opportunity Act of 2014

The Workforce Innovation and Opportunity Act of 2014 (WIOA)¹⁵ aims to increase opportunities for individuals facing barriers to employment and focus on the connection between education and career preparation.¹⁶ The WIOA requires that state vocational rehabilitation agencies set aside at least 15 percent of their federal funds to provide preemployment transition services to eligible individuals with a disability¹⁷ who:

- Are between 14 and 21 years of age;¹⁸ and
- Have a current IEP;¹⁹ or
- Have or are eligible for an accommodation plan pursuant to s. 504 of the Rehabilitation Act of 1973.²⁰

Florida Law

As the state educational agency, the Florida Department of Education (DOE) exercises general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies.²¹ The DOE's Bureau of Exceptional Education and Student Services (BEESS) is responsible for ensuring that the requirements of the federal law and the educational requirements of the state are implemented.²² The bureau is required to examine and evaluate exceptional student education (ESE) procedures, records, and programs; provide information and assistance to school districts; and assist the districts in operating effectively and efficiently.²³

Individual Education Plan

¹² Under IDEA, transition services are defined as a coordinated set of activities that (1) is designed to be within a results-oriented process focused on improving the academic and functional achievement of a child with a disability to facilitate the child's movement from school to post-school activities; (2) is based on the individual child's needs, strengths, preferences, and interests; and (3) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation. 20 U.S.C. s. 1401(34). Transition services are also defined in Rule 6A-6.03411(1)(nn), F.A.C.

¹³ 20 U.S.C. s. 1414(d)(1)(A)(i)(VIII).

¹⁴ 20 U.S.C. s. 1414(d)(4)(a).

¹⁵ Pub. L. No. 113-128, 128 Stat. 1425 (July 22, 2014).

¹⁶ See U.S. Department of Labor, Employment & Training Administration, *WIOA Overview*, <https://www.doleta.gov/wioa/about/overview/> (last visited April 23, 2021).

¹⁷ States may elect a lower minimum age or higher maximum age for receipt of preemployment services under IDEA. Workforce Innovation Technical Assistance Center, *Preemployment Transition Services*, <http://www.wintac.org/topic-areas/pre-employment-transition-services> (last visited April 23, 2021).

¹⁸ Section 413.301(1), F.S.

¹⁹ *Id.*

²⁰ *Id.* Section 504 of the Rehabilitation Act of 1973 prohibits any program or activity that receives federal financial assistance from discriminating against an otherwise qualified individual solely by reason of his or her disability. Pub. L. No. 93-112, s. 504, 83 Stat. 355, 361 (1973), as amended and codified in 29 U.S.C. s. 794. State and local agencies that administer federally funded programs or activities may devise an accommodation plan for someone with a disability to allow the disabled person's participation in the program. Florida Department of Education, *Accommodations: Assisting Students with Disabilities* (2018), at 3, available at <http://www.fldoe.org/core/fileparse.php/7567/urlt/0070069-accomm-educator.pdf>.

²¹ 20 U.S.C. s. 1412(a)(11); 34 C.F.R. s. 300.149.

²² 34 C.F.R. s. 300.149(a)(1) and (2).

²³ Florida Department of Education, Bureau of Exceptional Student Education and Student Services, *Exceptional Student Education Compliance Protocols 2020-2021*, at 1, available at <http://www.fldoe.org/core/fileparse.php/7673/urlt/MonitoringIntroduction.pdf>.

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 IEP or individual family support plan must be developed, reviewed, and revised.²⁴ The IEP is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a Florida student with a disability.²⁵

Florida law requires the IEP team to begin the process of identifying the need for transition services before the student with a disability attains age 14.²⁶ An IEP must be identified and in place when the student attains age 16. The process of identifying the need for transition services and developing an IEP must include:²⁷

- Consideration of the student's need for instruction in the area of self-determination and self-advocacy to assist in the student's active and effective participation in IEP meetings; and
- Preparation for the student to graduate from high school with a standard high school diploma, pursuant to s. 1003.4282, F.S.,²⁸ with a Scholar designation²⁹ unless the student's parent chooses a Merit designation.³⁰

The IEP in effect when the student attains age 16, or younger if determined appropriate by the parent and IEP team, must include the following:³¹

- A statement of intent to pursue a standard high school diploma and a Scholar or Merit designation, pursuant to s. 1003.4285, F.S., as determined by the parent.
- A statement of intent to receive a standard high school diploma before the student attains age 22 and a description of how the student will meet the requirements in s. 1003.4282, F.S. The statement must also specify the outcomes and additional benefits expected by the parent and IEP team at the time of the student's graduation.
- A statement of appropriate measurable long-term postsecondary education and career goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills and the transition services needed to assist the student in meeting those goals.

The required statements in the IEP must be updated annually.³² Students with disabilities must be reevaluated at least once every 3 years to determine their continuing eligibility for special education and related services.³³ However, a student's parent or teacher may request an IEP team meeting or a reevaluation at any time.³⁴

IEP teams are required to invite representatives of relevant agencies, with the consent of the parent or student who has reached the age of majority that may provide services after the student exits high school.³⁵ Agency involvement in transition planning is based on the nature of the student's needs, the student's disability, whether the student is potentially eligible for services, and the student's

²⁴ Rule 6A-6.03028(3), F.A.C.

²⁵ Florida Department of Education, *Developing Quality Individual Education Plans* (2015), at 9, available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

²⁶ Section 1003.5716(1), F.S.

²⁷ Section 1003.5716(1)(a)-(b), F.S.

²⁸ See *infra* text accompanying note 42.

²⁹ A "Scholar" designation requires a student to meet the requirements of s. 1003.4282, F.S., for a standard high school diploma and satisfy additional specific course requirements in mathematics, science, social studies, foreign language, and electives. See Section 1003.4285(1)(a), F.S.

³⁰ A "Merit" designation requires a student to meet the requirements of s. 1003.4282, F.S., for a standard high school diploma and attain one or more industry certifications from the list established under s. 1003.492, F.S. Section 1003.4285(1)(b), F.S.

³¹ Section 1003.5716(2), F.S.

³² *Id.*

³³ Rule 6A-6.0331(7), F.A.C.

³⁴ See Rule 6A-6.03028, F.A.C.

³⁵ 34 C.F.R. s. 300.321(b)(3); Rule 6A-6.03028(1)(c)9., F.A.C.

postsecondary education and career goals.³⁶ Agencies frequently involved in the planning and delivery of transition services in Florida include: Agency for Persons with Disabilities; Center for Independent Living; Florida Department of Children and Families; Division of Blind Services; Division of Vocational Rehabilitation (VR); Social Security Administration; local career and technical schools; Florida colleges and universities; and other adult service providers.³⁷ IEP teams also consider preemployment transition services³⁸ through the Division of VR³⁹ in the development of post-secondary and career goals.⁴⁰

Standard High School Diploma

Florida law provides options for a student with a disability to satisfy the requirements for a standard high school diploma dependent upon whether the student's IEP team has identified that the Florida Alternate Assessment⁴¹ is the most appropriate measurement of the student's skills or that the mastery of academic and employment competencies is the most appropriate way for a student to demonstrate skills.⁴²

Florida law also provides that a student with a disability, who meets the standard high school requirements, may defer receipt of a standard high school diploma if the following conditions are met:⁴³

- The student's IEP prescribes special education, transition planning, transition services, or related services through the age of 21; and
- The student is enrolled in accelerated college credit instruction, pursuant to s. 1007.27, F.S., industry certification courses that lead to college credit, a collegiate high school program, courses necessary to satisfy the Scholar designation requirements, or a structured work-study, internship, or preapprenticeship program.

The decision to accept or defer a standard high school diploma must be made during the school year in which the student is expected to meet all of the requirements for a standard high school diploma.⁴⁴ The IEP team is required to review the benefits of deferring the standard high school diploma, including the continuation of educational and related services, and describe the services and options available to the student and parent.⁴⁵ School districts must inform the parent and student, in writing by January 30 of

³⁶ Florida Department of Education, *Developing Quality Individual Education Plans* (2015), at 47-48, available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

³⁷ Florida Department of Education, *Developing Quality Individual Education Plans* (2015), at 48, available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

³⁸ Preemployment services may include career exploration counseling, workplace readiness training, community-based work experiences, self-advocacy instruction, peer mentoring, and postsecondary educational counseling for students with a disability. *Id.*

³⁹ The Division of VR is housed in the DOE. VR and VR services mean any service, provided directly or through public or private entities, to enable an individual or group of individuals to achieve an employment outcome, including, but not limited to, medical and vocational diagnosis, an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel; counseling, guidance, and work-related placement services; vocational and other training services; physical and mental restoration services; maintenance for additional costs incurred while participating in rehabilitation; interpreter services for individuals who are deaf; recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate service employment; occupational licenses; tools, equipment, and initial stocks and supplies; transportation; telecommunications, sensory, and other technological aids and devices; rehabilitation technology services; referral services designed to secure needed services from other agencies; transition services; on-the-job or other related personal assistance services; and supported employment services. Section 413.20(8) and (28), F.S.

⁴⁰ Florida Department of Education, *Legislative Bill Analysis for HB 173* (2021), at 3.

⁴¹ Florida Standards Alternate Assessment (FSAA) is designed for students whose participation in the general statewide assessment program is not appropriate, even with accommodations. It is expected that only students with the most significant cognitive disabilities who are eligible under IDEA will participate in the FSAA program. See Florida Department of Education, *Florida Standards Alternate Assessment*, <http://www.fldoe.org/accountability/assessments/k-12-student-assessment/fl-alternate-assessment.stml> (last visited April 23, 2021). See also Section 1008.22(3)(c), F.S.

⁴² See s. 1003.4282(10)(b), F.S.

⁴³ Section 1003.4282(10)(c), F.S.

⁴⁴ Rule 6A-1.09963(6)(a), F.A.C.

⁴⁵ Rule 6A-1.09963(6)(a)1., F.A.C.

the student's expected graduation year, that failure to defer receipt of a standard high school diploma releases the district from its obligation to provide FAPE.⁴⁶ The communication must also state that the deadline for acceptance or deferral of the standard high school diploma is May 15 of the year the student is expected to graduate.⁴⁷ The deferral decision must be documented in the student's IEP and the student's parent⁴⁸ must sign a separate document stating the decision to accept or defer.⁴⁹

If a student with a disability does not satisfy the standard high school diploma requirements, the student is awarded a certificate of completion.⁵⁰ A student with a certificate of completion and an IEP that prescribes special education, transition planning, transition services, or related services through age 21 may continue to receive specified instruction and services.⁵¹

Project 10: Transition Education Network

The DOE and BEESS operate Project 10: Transition Education Network, which is a statewide discretionary project supporting the secondary transition of students with disabilities.⁵² The project's primary objective is to assist school districts in providing appropriate planning and timely transition services and programs to support students with disabilities in their transition to adulthood.⁵³ The project also serves as a collaborative resource for state agencies, nonprofit organizations, and families in the provision of transition services for students with disabilities.⁵⁴

Effect of the Bill

To facilitate quality planning for a successful transition to postsecondary education and career opportunities for students with disabilities, the bill requires a student's IEP team to begin the planning process and IEP development when the student is in grade 7 or when the student attains the age of 12, whichever occurs first. The bill requires the IEP team to identify the student's need for transition services before the student enters high school or attains that age of 14, whichever occurs first. The student's IEP must be operational and in place for implementation on the first day of the student's first year of high school.

The bill establishes that the planning process and IEP development must include providing the student and student's parent with the following:

- Information about the school district's high-school level transition services, career and technical education, and collegiate programs available to students with disabilities.
- Information about programs and services available through Florida's Center for Students with Unique Abilities, Florida's Centers for Independent Living, the Division of Vocational Rehabilitation, the Agency for Persons with Disabilities, and the Division of Blind Services.
- Referral forms, links, and technical support contacts for accessing services and programs.

The bill revises the statements that must be included in the student's first IEP, which is in effect when the student enters high school, attains the age of 14, or when determined appropriate by the parent and IEP team, whichever occurs first, and must be updated annually. The bill provides that the statement of the student's intent to pursue a standard high school diploma and a Scholar or Merit designation must document discussion of the process of deferment of a standard high school diploma for a student with a disability who meets the requirements for a standard high school diploma. The IEP in effect at the start

⁴⁶ Rule 6A-1.09963(6)(a)2., F.A.C.

⁴⁷ *Id.*

⁴⁸ If the student is age 18 and the right to informed consent has been transferred, the student must sign the document stating the decision to defer or accept the standard high school diploma. Rule 6A-1.09963(6)(a), F.A.C.

⁴⁹ *Id.*

⁵⁰ Section 1003.4282(10)(a), F.S.

⁵¹ Section 1003.4282(10)(d), F.S.

⁵² *About Project 10*, <http://project10.info/About.php> (last visited April 23, 2021).

⁵³ *Id.*

⁵⁴ *Id.*

of the student's graduation year must include a signed statement by the student's parent or guardian, or by the student if the student is of majority age and rights have transferred, that documents understanding of the deferment process and identifies whether the student will defer the receipt of a standard high school diploma.

The bill requires the DOE, in conjunction with the Project 10: Transition Education Network, to conduct a review of existing transition services and programs for students with disabilities in order to establish uniform best practices for these services to deliver appropriate employment, preemployment, and independent living skills education to students. The DOE must publish the uniform best practices on its website by July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The DOE may incur minimal costs associated with conducting a review of existing transition services and programs for students with disabilities and establishing uniform best practices for such programs.⁵⁵ However, the DOE indicates that these costs can be absorbed within existing resources.⁵⁶

⁵⁵ Florida Department of Education, *Legislative Bill Analysis for HB 173 (2021)*, at 5.

⁵⁶ *Id.*