

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Education

BILL: CS/SB 1294

INTRODUCER: Senator Gruters

SUBJECT: Individual Education Plan Meetings

DATE: January 25, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sagues	Bouck	ED	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1294 authorizes a parent of a public school student, in accordance with specified limitations, to audio or video record any meeting with his or her child's Individual Education Plan (IEP) team, provided that the parent notifies the school district in writing of his or her intent to record the meeting at least 24 hours in advance of the meeting.

In addition, the bill specifies that a parent or any other individual in possession of such an audio or video recording may not publicly share its contents without the consent of all recorded parties. However, a party is not prohibited from using the audio or video recording as evidence during a legal proceeding, a mediation, an administrative proceeding, or other grievance process authorized by the Individuals with Disabilities Education Act.

There is no fiscal impact to the state. The fiscal impact of the bill to individuals is indeterminate, but likely minimal. See Section V.

The bill takes effect on July 1, 2022.

II. Present Situation:

Students with Disabilities

All students who are between the ages of 3 to 21 and have a disability have the right to a free, appropriate public education (FAPE)¹ and related services designed to meet their unique needs. Infants and toddlers, birth through age 2, with disabilities and their families may receive early intervention services.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

Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA) is a federal law that makes available a FAPE to eligible children with disabilities throughout the nation and ensures special education and related services are provided to those children. For the 2018-19 school year, more than 7.5 million eligible infants, toddlers, children, and youth with disabilities were provided early intervention, special education, and related services.⁴ In Florida more than 500,000 students are considered exceptional education students and may qualify for special education and related services.⁵

The stated purpose of the IDEA is to:⁶

- Ensure that all children with disabilities have a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- Ensure that the rights of children with disabilities and parents of such children are protected;
- Assist states, localities, educational service agencies, and federal agencies to provide for the education of all children with disabilities;
- Assist states in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;
- Ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and
- Assess, and ensure the effectiveness of, efforts to educate children with disabilities.

¹ Section 1003.5716, F.S.

² U.S. Department of Education, *IDEA Purpose*, <https://sites.ed.gov/idea/about-idea> (last visited Jan. 11, 2022).

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

⁴ U.S. Department of Education, *IDEA Individuals with Disabilities Education Act*, <https://sites.ed.gov/idea/about-idea/#IDEA-Purpose> (last visited Jan. 11, 2022).

⁵ Florida Department of Education, *Pk-12 Public School Data Publications and Reports, Membership in Programs for Exceptional Students, Final Survey 2, 2019-20*, <https://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.stml> (last visited Jan. 13, 2022).

⁶ *Id.*

The Individual Education Plan

The Individual Education Plan (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.⁷ IDEA requires that:⁸

- Students with disabilities who meet the criteria of one or more categories of disability specified in law and who need special education services have an IEP;
- The IEP must be reviewed at least annually and revised as necessary;
- Due process rights are guaranteed;
- Student records are confidential;
- Parents are important partners in the IEP process and must be invited to all IEP meetings; and
- Student evaluation procedures are nondiscriminatory.

Individual Educational Plan Team

The required participants in the IEP team have different roles. The school district must provide prior written notice that describes the purpose of the meeting and the title or position of those who will be attending. The IEP team includes the following members:⁹

- The student's parent(s) or guardian;
- The student, as appropriate, and in all meetings that address transition services needs and consideration of postsecondary education and career goals;
- At least one general education teacher if the student may be participating in the regular education environment;
- At least one special education teacher or service provider;
- A school district representative who is qualified to provide or supervise the provision of specially designed instruction and is knowledgeable about the general education curriculum and the availability of school district resources;
- An individual who can interpret the instructional implications of the evaluation results; and
- Other individuals who have knowledge or special expertise regarding the student, including related services personnel.

Parent Involvement

Parents have a number of important roles in the IEP process. They bring firsthand knowledge about the strengths of their child and their concerns for enhancing their child's education. The parents can provide information about the day-to-day life, including their child's particular ways of accomplishing tasks in different settings, and their perspective on the needs of their child.¹⁰

Parents must be given an opportunity to participate in meetings concerning the IEP and educational placement for their child. Parents may also invite others who have special knowledge

⁷ Florida Department of Education, *Developing Quality Individual Education Plans* (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>, at 9.

⁸ *Id.*

⁹ Florida Department of Education, *Developing Quality Individual Education Plans* (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>, at 13. See also 34 CFR §300.321(a) and (b).

¹⁰ *Id.* at 14.

or expertise.¹¹ School district personnel may not object to the attendance of such a person or discourage parents from inviting another person to attend the meeting. The school district is prohibited from taking actions, making a statement, or using other means to coerce, harass, retaliate or threaten consequences related to bringing other adults to the meeting. The parents and school district personnel attending the meeting are provided an opportunity at the end of the meeting to sign a document that states whether any school district personnel have prohibited, discouraged or attempted to discourage the parents from inviting a person of their choice to the meeting.¹²

IEP Team Meetings

Parents must be notified early enough to ensure that one or both of the parents have the opportunity to attend. The IEP meeting should be scheduled at a mutually agreed upon time and place.¹³

The written notice must indicate the time, location and purpose of the meeting along with a list of who will be attending. The notice must also inform the parents about their right to invite individuals with special knowledge or expertise about their child to be a member of the IEP team.¹⁴

School districts must maintain a record of the attempts to setup a meeting and invite the parents. At least one attempt must be through a written notice and a second attempt must be made if there has been no response to the first notice. Documentation may include detailed records of telephone calls, copies of correspondence or detailed records of visits to the parents' home or place of employment.¹⁵

If neither parent can attend the meeting, the district must offer to use other methods of parent participation, such as a conference call, video conferencing or web conferencing. The use of any alternate form of participation requires that all members of the IEP team, including the parents, are comfortable with the alternate format. If parents are unable or unwilling to use alternate methods of participation, the district may obtain parent input by interviewing the parent or asking the parent to submit input in writing. If the parents are unable to attend the IEP team meeting and the meeting is conducted in their absence, the school district must keep a record of the attempts to involve the parents.¹⁶

The participants at the IEP team meeting may be asked to sign a form or otherwise document their attendance at the meeting. There is no requirement that a minimum number of individuals attend the meeting, only that the required roles are fulfilled and the appropriate excusal procedures are followed.¹⁷

¹¹ *Id.*

¹² Section 1002.20(21)(a), F.S.

¹³ Florida Department of Education, *Developing Quality Individual Education Plans* (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>, at 18.

¹⁴ Florida Department of Education, *Developing Quality Individual Education Plans* (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>, at 19.

¹⁵ *Id.* at 20.

¹⁶ *Id.*

¹⁷ *Id.* at 24. See also 34 CFR §300.321(a) and (b).

Recording IEP Meetings

The United States Department of Education (USDOE) has provided guidance on the use of audio or video recording devices at IEP meetings.¹⁸ IDEA does not address the use of audio or video recording devices at IEP meetings, and no other federal statute either authorizes or prohibits the recording of an IEP meeting by either a parent or a school official. Therefore, a public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings.¹⁹

If a public agency has a policy that prohibits or limits the use of recording devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure the parent understands the IEP or the IEP process or to implement other parental rights under IDEA.²⁰

Any recording of an IEP meeting that is maintained by the public agency is an “education record” within the meaning of the Family Educational Rights and Privacy Act (FERPA), and would be subject to the confidentiality requirements and regulations under FERPA and IDEA.²¹

Family Educational Rights and Privacy Act

With limited exceptions, school districts may not disclose personally identifiable information contained within student records to a third party without parental consent.²² FERPA applies to all schools that receive funds under an applicable program of the USDOE.

FERPA gives parents certain rights with respect to their children’s education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Such rights include parents or eligible students having the right to:²³

- Inspect and review the student’s education records maintained by the school.
- Request that a school correct records which they believe to be inaccurate or misleading.

Sections 1002.22 and 1002.225, F.S., incorporate the FERPA into Florida law as it applies to public K-12 students and public postsecondary educational institutions, respectively. The FERPA only applies to records created for an educational purpose and maintained by an educational agency.

¹⁸ United States Department of Education, *Office of Special Education and Rehabilitative Services* (2003), available at <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2003-2/redact060403iep2q2003.pdf>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ United States Department of Education, *Office of Special Education and Rehabilitative Services* (2003), available at <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2003-2/redact060403iep2q2003.pdf>.

²² Section 1002.22, F.S.; 20 U.S.C. s. 1232(g).

²³ 20 U.S.C. s. 1232(g). U.S. Department of Education, Family Educational Rights and Privacy Act (FERPA), <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html#:~:text=The%20Family%20Educational%20Rights%20and%20Privacy%20Act%20%28FERPA%29,applicable%20program%20of%20the%20U.S.%20Department%20of%20Education.> (last visited Jan. 12, 2022).

Parental Rights

Florida law provides that parental rights are reserved to the parent of a minor child without obstruction or interference from the state, any of its political subdivisions, any other governmental entity, or any other institution. Such rights include specified education-related rights, including the right to:²⁴

- Direct the education and care of his or her minor child.
- Direct the upbringing and the moral or religious training of his or her minor child.
- Apply to enroll his or her minor child in a public or other school authorized by law.
- Access and review all school records relating to his or her minor child.

Nonconsensual Interception of Communications

Federal law authorizes private individuals to record wire, oral, or electronic communications if one of the parties consents.²⁵ Thirty-seven states plus the District of Columbia have laws following the federal one-party consent regime.²⁶ Thirteen states, including Florida, require the consent of all recorded parties.²⁷

Chapter 934, F.S., governs the security of various types of communications in the state, limits the ability to intercept, monitor, and record such communications, and provides criminal penalties²⁸ and civil remedies.²⁹ Section 934.03, F.S., makes it a third degree felony³⁰ to intentionally “intercept” an “oral communication.”³¹ For example, the law prohibits an individual from using an electronic scanning device to monitor private telephone calls.³² However, it is lawful for a person to intercept a wire, oral, or electron communication when all of the parties to the communication have given prior consent to such an interception.³³

III. Effect of Proposed Changes:

CS/SB 1294 modifies sections 1002.20 and 1014.04, F.S., to authorize a parent of a public school student, notwithstanding section 934.03, F.S., which regulates the interception and disclosure of wire, oral and electronic communications, and in accordance with the federal

²⁴ Section 1014.04(1), F.S.

²⁵ 18 U.S.C. s. 2511; Rauvin Johl, *Reassessing Wiretap and Eavesdropping Statutes: Making One-Party Consent the Default*, 12 Harv. L. & Pol'y Rev. 177, 179 (2018).

²⁶ United States Recording Law, One-Party Consent States – Updated 2022, <https://recordinglaw.com/united-states-recording-laws/one-party-consent-states/> (last visited Jan. 11, 2022).

²⁷ United States Recording Law, All Party (Two Party) Consent States, <https://recordinglaw.com/party-two-party-consent-states/> (last visited Jan. 11, 2022).

²⁸ Sections 934.04, 934.21, 934.215, 934.31, and 934.43, F.S.

²⁹ Section 934.05, F.S.

³⁰ A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

³¹ Section 934.02(3), F.S., defines “intercept” as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device. Section 934.02(2), F.S., defines “oral communication” as any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

³² *State v. Mozo*, 655 So. 2d 1115, 1116 (Fla. 1995).

³³ Section 934.03(2)(d), F.S.

Family Educational rights and Privacy Act of 1974, to audio or video record any meeting with his or her child's Individual Education Plan (IEP) team, provided that the parent notifies the school district in writing of his or her intent to record the meeting at least 24 hours in advance of the meeting.

In addition, the bill specifies that a parent or any other individual in possession of such an audio or video recording may not publicly share its contents without the consent of all recorded parties. However, a party is not prohibited from using the audio or video recording as evidence during a legal proceeding, a mediation, an administrative proceeding, or other grievance process authorized by the Individuals with Disabilities Education Act.

Under the bill school districts would not be allowed to determine the circumstances by which a meeting may or may not be recorded, or allow only certain types of recording. Authorizing such a recording may enhance transparency and provide additional clarity at IEP team meetings for parents.

The bill takes effect on July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A parent of a public school student who chooses to audio or video record a meeting with his or her child's Individual Education Plan team may incur technology costs associated with such a recording.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 1002.20 and 1014.04 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 January 25, 2022:**

The committee substitute adds that a parent or any other individual in possession of such an audio or video recording may not publicly share its contents without the consent of all recorded parties. However, a party is not prohibited from using the audio or video recording as evidence during a legal proceeding, a mediation, an administrative proceeding, or other grievance process authorized by the Individuals with Disabilities Education Act.

B. Amendments:

None.