

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 15 Children with Developmental Delays

SPONSOR(S): Tant, Hawkins and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 236

FINAL HOUSE FLOOR ACTION: 117 Y's 0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 15 passed the House on March 8, 2022, as SB 236.

The bill extends the eligibility for services of exceptional student education (ESE) students identified as having a developmental delay. Currently, an exceptional student with a developmental delay may be eligible for ESE services until age 6. The bill amends the definition of "exceptional student" to include a student with a developmental delay through age 9 or the completion of grade 2, whichever occurs first. The change in eligibility will require the State Board of Education to amend the existing rule on the provision of services to ESE students with a developmental delay.

The bill has an indeterminate fiscal impact. See Fiscal Comments.

The bill was approved by the Governor on April 6, 2022, ch. 2022-24, L.O.F., and will become effective on July 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Background

A child with a developmental delay has a sensory, physical, mental, or emotional condition which significantly affects the attainment of normal developmental milestones.¹ Developmental delays are one of the most common concerns in early childhood, with 16.7 percent of children experiencing a delay in at least one domain of development.² A child may have a developmental delay if the child fails to attain developmental milestones as compared to peers from the same population.³ A child with a developmental delay may be eligible for early intervention or special education services under specified federal and state criteria.⁴

The Individuals with Disabilities Education Act

The Education for All Handicapped Children Act became law in 1975⁵ and was reauthorized as the Individuals with Disabilities Education Act (IDEA).⁶ The IDEA makes available a free appropriate public education to eligible children with disabilities through the provision of special education and related services to those children.⁷ The IDEA governs how states and public agencies provide early intervention, special education, and related services to more than 7.5 million (as of the 2018-2019 school year) eligible infants, toddlers, children, and youth with disabilities.⁸

Each state educational agency is responsible for administering the IDEA within the state and distributing the funds for special education programs. The IDEA authorizes formula grants⁹ to states and discretionary grants to state educational agencies, postsecondary institutions, and other nonprofit organizations subject to specific conditions on the receipt of federal IDEA funds.¹⁰

The IDEA authorizes each state to determine the definition of a developmental delay for children under age 3¹¹ and provides flexibility for states to provide special education and related services for children age 3 through age 9 with developmental delays, as defined by the state.¹² Under the IDEA, a child with a disability includes a child who is experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

¹ Florida Department of Education, *Early Education and Kindergarten: Ages Three Through Five*, <https://www.fldoe.org/academics/exceptional-student-edu/early-education/ages-three-through-five.stml> (last visited March 8, 2022).

² Pediatric Health Care Alliance, P.A., *Developmental Delays and Behavioral Difficulties in Children and the Role of a Developmental-Behavioral Pediatrician*, <https://www.pedialliance.com/developmental-delays-and-behavioral-difficulties-children-and-role-developmental-behavioral> (last visited March 8, 2022).

³ Khan I, Leventhal BL, *Developmental Delay*, Updated Aug. 4, 2021, StatPearls Publishing, <https://www.ncbi.nlm.nih.gov/books/NBK562231/> (last visited March 8, 2022).

⁴ 20 U.S.C. ss. 1432(3) and 1435(a)(1); 34 C.F.R. s. 303.111; ss. 1003.01 and 1003.21(1)(e), F.S.

⁵ Pub. L. No. 94-142 (Nov. 29, 1975).

⁶ U.S. Department of Education, *About IDEA*, <https://sites.ed.gov/idea/about-idea/#IDEA-History> (last visited March 8, 2022).

⁷ *Id.*

⁸ *Id.*

⁹ Formula grants are awarded to states annually to support early-intervention services for infants and toddlers with disabilities and their families, preschool children ages three through five, and special education for children and youth with disabilities. U.S. Department of Education, *Individuals with Disabilities Education Act: State Formula Grants*, <https://sites.ed.gov/idea/state-formula-grants/> (last visited March 8, 2022).

¹⁰ U.S. Department of Education, *Protecting Students with Disabilities*, <https://www2.ed.gov/about/offices/list/ocr/504faq.html> (last visited March 8, 2022).

¹¹ 20 U.S.C. ss. 1432(3) and 1435(a)(1); also 34 C.F.R. s. 303.10.

¹² 34 C.F.R. s. 300.8(b); see also U. S. Department of Education, *42nd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (2020), at 285-289, available at <https://sites.ed.gov/idea/files/42nd-arc-for-idea.pdf>.

physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services.¹³ In 2018, 48 states included reporting for children ages 3 through 5 with developmental delays, and 38 of these states additionally reported children with developmental delays over the age of 6 and up to the age of 9.¹⁴

Children and youth ages 3 through 21 receive special education and related services under IDEA Part B,¹⁵ which in Florida is administered by the Florida Department of Education and district school boards.¹⁶ Services provided under Part B may include 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 include:

- 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;
- medical services for diagnostic or evaluation purposes; and
- school health services and school nurse services, social work services in schools, and parent counseling and training.¹⁷

School districts may also use up to 15 percent of the grant awarded under Part B to provide early intervening services to students in kindergarten through grade 12 (emphasizing students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.¹⁸ These services may include professional development and educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.¹⁹

For the 2021 federal fiscal year, Florida received \$884.2 million through IDEA Part B.²⁰ Florida also received an estimated additional \$153.4 million in allocations to supplement IDEA through the American Rescue Plan.²¹

Exceptional Student Education in Florida

School District Responsibilities

¹³ 34 C.F.R. s. 300.08(b).

¹⁴ U. S. Department of Education, *42nd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (2020), at 285-289, available at <https://sites.ed.gov/idea/files/42nd-arc-for-idea.pdf>.

¹⁵ U.S. Department of Education, *About IDEA*, <https://sites.ed.gov/idea/about-idea/#IDEA-History> (last visited March 8, 2022).

¹⁶ U.S. Department of Education, *Part B Grant Award Letter to Education Commissioner Richard Corcoran*, (July 1, 2021), available at <https://www2.ed.gov/fund/data/award/idea/2021partb/fl-2021b-letter-enclosures.pdf>. See also Rule 6A-6.0331, F.A.C.

¹⁷ 34 C.F.R. s. 300.34.

¹⁸ 20 U.S.C. s. 1413(f).

¹⁹ 20 U.S.C. s. 1413(f)(2).

²⁰ U.S. Department of Education, *Fiscal Year 2021 Allocations for Grants to States, Individuals with Disabilities Education Act –and Part B, Section 619*, available at <https://www2.ed.gov/policy/speced/leg/arp/ffy-2021-part-b-grants-to-states-summary-table-arp.xlsx> (Part B, Section 611); and https://sites.ed.gov/idea/files/FY_2021_Preschool_Grants_to_States_Summary_Table_04-20-2021.xlsx (Part B, Section 619).

²¹ U.S. Department of Education, *Estimated American Rescue Plan IDEA Supplemental Grant Allocations*, <https://www2.ed.gov/policy/speced/leg/arp/arp-idea-allocations.html> (last visited March 8, 2022).

Florida law provides that all students who are between the ages of 3 to 21 and have a disability have the right to a free, appropriate public education.²² School districts have the responsibility to ensure that students suspected of having a disability are subject to general education intervention procedures.²³ Each district school board is required to provide for an appropriate program of special instruction, facilities, and services for exceptional students.²⁴ For example, each district program must provide:²⁵

- the necessary professional services for diagnosis and evaluation of exceptional students; and
- the special instruction, classes, and services, either within the district school system, in cooperation with other district school systems, or through contractual arrangements with approved private schools or community facilities.

The Individual Education Plan (IEP) is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a student with a disability.²⁶ A student may not be given special instruction or services as an exceptional student until after he or she has been properly evaluated and found eligible as an exceptional student.²⁷ A school district must evaluate a student within 60 days after receiving signed parental consent.²⁸ An IEP team, to include the parents of the affected student, must then review the evaluation and determine the educational needs of the student.²⁹

Student Eligibility

The State Board of Education (SBE) determines the procedures for qualifying a student as eligible to receive exceptional student education (ESE).³⁰ Exceptional students include 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 a diagnosed physical or mental condition known to have a high probability of resulting in developmental delay.³¹

Developmental Delays

The SBE has adopted rules for the identification of developmental delays for children birth through age 5,³² which evaluate children for delays in the areas of:³³

- Adaptive or self-help development.
- Cognitive development.
- Communication development.
- Social or emotional development.
- Physical development including fine, or gross, or perceptual motor.

²² Section 1003.5716, F.S.

²³ Rule 6A-6.0331, F.A.C.

²⁴ Section 1001.42(4)(1), F.S.

²⁵ Section 1003.57(1)(b), F.S.

²⁶ 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>.

²⁷ Section 1003.57(1)(c), F.S.

²⁸ Rule 6A-6.0331(2)(f), F.A.C.

²⁹ Rule 6A-6.0331(6)(a), F.A.C.

³⁰ Section 1003.57(1)(c), F.S.

³¹ Section 1003.01(3)(a), F.S. *See also* Rule 6A-6.03030, F.A.C.

³² Section 1003.21(1)(e), F.S.

³³ Rule 6A-6.03027(1), F.A.C.

A developmental delay is documented by a multidisciplinary team utilizing multiple measures of assessment, including:³⁴

- standardized instruments, judgement based assessments, criterion referenced instruments, systematic observation, functional skills assessments, or other procedures selected in consultation with the parent; or
- informed clinical opinion utilizing qualitative and quantitative information to determine the need for early intervention services; and,
- parent report which can confirm or modify information obtained and describe behavior in environments that the district may not be able to access.

As appropriate, the IEP or individualized family support plan³⁵ must be developed through interagency collaboration with the family and other providers of services to the child and family and in accordance with SBE rules.³⁶ A student must be evaluated for a qualifying disability and a family support plan or IEP developed before the child is 6 years old to continue eligibility for special programs.³⁷

In the fall of 2020, out of 406,944 students with a disability who qualified to receive ESE services, 22,593 students ages 3 through 5 qualified because of having a developmental delay.³⁸

State Funding

The Florida Education Finance Program (FEFP) is the primary funding source for public K-12 education in Florida. For purposes of calculating the FEFP, current statute establishes seven K-12 education programs ranging from basic education programs to ESE programs. Each education program has a program cost factor, or weight, based on the relative cost differences between a basic education program versus an ESE program.³⁹

The matrix of services for ESE students identifies five different levels of need ranging from Level I to Level V with Level V being the highest level of need. There is a program cost factor, or weight, established to support Level IV and Level V ESE students which are the two highest levels of need. These program cost factors are determined by using a matrix of services that documents the services that each exceptional student will receive.⁴⁰ The nature and intensity of the services indicated on the matrix must be consistent with the services described in each exceptional student's IEP.⁴¹

For the 2021 fiscal year, the program cost factor or weight for Level IV students is 3.648 and for Level V students is 5.340.⁴²

³⁴ Rule 6A-6.03027(4)(a), F.A.C. When a developmental delay cannot be verified by the use of standardized instruments, the delay may be established through observation of atypical functioning in any one or more of the developmental areas. Rule 6A-6.03027(4)(b), F.A.C.

³⁵ An individualized family support plan is a written plan identifying the specific concerns and priorities of a family related to enhancing their child's development and the resources to provide early intervention services to children with disabilities ages birth through two (2) years and may also be used for special education and related services to children with disabilities ages three through five. Rule 6A-6.03029, F.A.C. These eligible children and their families receive early intervention services under IDEA Part C and Florida received \$26.1 million through Part C of the IDEA in federal fiscal year 2020. U.S. Department of Education, *Differentiated Monitoring Letter to Surgeon General Rivkees*, (January 19, 2021), at 5, available at <https://www2.ed.gov/fund/data/report/idea/partcdmsrpts/dms-fl-c-2021-report.pdf>.

³⁶ Rule 6A-6.03027(5)(a), F.A.C.

³⁷ Rule 6A-6.03027(6), F.A.C.

³⁸ Florida Department of Education, PK-12 Public School Data Publications and Reports, *Membership in Programs for Exceptional Students, Final Survey 2, 2020-2021*, available at <https://www.fldoe.org/core/fileparse.php/7584/urlt/MPES2021.xlsx> (worksheets labeled "DD" and "All_SWD").

³⁹ Section 1011.62(1)(c), F.S.

⁴⁰ Section 1011.62(1)(e)1.a., F.S.

⁴¹ *Id.*

⁴² Specific Appropriations 7 and 90, s. 2, ch. 2021-36, L.O.F.

For Levels I, II and III ESE students the additional funding needed to support their level of need is provided through the ESE Guaranteed Allocation,⁴³ which is \$1,064,584,063 for Fiscal Year 2021-2022. Funds from the ESE Guaranteed Allocation are distributed to the school districts based on calculations within the FEFP.⁴⁴

Effect of the Bill

The bill extends the eligibility for services of ESE students identified as having a developmental delay. The bill modifies the definition of “exceptional student” by extending the upper age limit for the identification of a student as having a developmental delay from age 5 to age 9, the maximum age authorized by federal law, or through the completion of grade 2, whichever comes first. Accordingly, the bill requires the SBE to adopt rules for the identification of developmental delays in students through age 9 or the completion of grade 2, whichever comes first, who are eligible for admission to public special education programs and for related services.

In some young children experiencing developmental delays, it may be difficult to assign a specific disability. If a student’s disability that caused the developmental delay is not evaluated or evident prior to age 6, the student may experience a break in service. Extending the age limit for which a student with a developmental delay is eligible for special program services may provide additional time to evaluate the student for a specific disability and develop a new IEP.

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:

⁴³ Section 1011.62(1)(e)1.c., F.S.

⁴⁴ Florida Department of Education, *Florida Education Finance Program 2021-22 Second Calculation*, (July 16, 2021), pp. 23-24, available at <https://www.fldoe.org/core/fileparse.php/7507/urlt/2122FEFPSecondCalc.pdf>.

The extended eligibility of ESE students with a developmental delay could increase the number of students receiving ESE services in the state which could increase the amount required to fund the ESE Guaranteed Allocation within the FEFP. The number of additional eligible ESE students that could be served under this bill is unknown; therefore, the fiscal impact is indeterminate.