

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: SB 236

INTRODUCER: Senators Jones and Ausley

SUBJECT: Children with Developmental Delays

DATE: November 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brick</u>	<u>Bouck</u>	<u>ED</u>	Favorable
2.	_____	_____	<u>AED</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 236 modifies the definition of a developmental delay 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. Under the bill, a student with a developmental delay up to age 9 or grade 2 may be included in the definition of an “exceptional student” and eligible for admission to public special education programs. Accordingly, the bill requires the State Board of Education to adopt rules for the identification of developmental delays in students up to age 9 or grade 2, whichever comes first, who are eligible for admission to public special education programs and for related services.

The bill takes effect July 1, 2022.

II. Present Situation:

Developmental Delay

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

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.html> (last visited Nov. 1, 2021).

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 Oct. 29, 2021).

population.³ A child with a developmental delay may be eligible for early intervention or special education services under specified federal and state criteria, and may eventually demonstrate age-appropriate cognitive abilities.⁴

Federal Law

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 and ensures 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 school year 2018-19) 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: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services. In 2018, 48 states included

³ Khan I, Leventhal BL, *Developmental Delay*, Updated Aug. 4, 2021, StatPearls Publishing, <https://www.ncbi.nlm.nih.gov/books/NBK562231/> (last visited Oct. 29, 2021).

⁴ M. Shevell et al., *Practice parameter: Evaluation of the child with global developmental delay*, Report of the Quality Standards Subcommittee of the American Academy of Neurology and The Practice Committee of the Child Neurology Society, Feb. 2003, at 368, available at <https://n.neurology.org/content/neurology/60/3/367.full.pdf>.

⁵ Pub. L. 94-142 (Nov. 29, 1975).

⁶ U.S. Department of Education, *About IDEA*, <https://sites.ed.gov/idea/about-idea/#IDEA-History> (last visited Oct. 28, 2021).

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 Nov. 1, 2021).

¹⁰ U.S. Department of Education, *Protecting Students with Disabilities*, <https://www2.ed.gov/about/offices/list/ocr/504faq.html> (last visited Oct. 28, 2021).

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>.

reporting for children ages three through five with developmental delays, and 38 of these states additionally reported children with developmental delays ages 6 through 9.¹³

Infants and toddlers, birth through age two, with disabilities and their families receive early intervention services under IDEA Part C,¹⁴ usually as provided pursuant to an individualized family support plan.¹⁵ The Florida Department of Health, Children's Medical Services is responsible for administering formula grant funds awarded to Florida under Part C, which is known as the "Early Steps Program."¹⁶ Early intervention services include individual and group therapies and services needed to enhance both the infant's or toddler's growth and development and family functioning.¹⁷ Services include rehabilitative services and assistive technology devices, and parent support and training.¹⁸

Children and youth ages 3 through 21 receive special education and related services under IDEA Part B,¹⁹ which in Florida is administered by the Florida Department of Education and district school boards.²⁰ 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, 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.²¹

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 (with a particular emphasis on 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.²² These services may include professional development and educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.²³

¹³ 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>.

¹⁴ U.S. Department of Education, *About IDEA*, <https://sites.ed.gov/idea/about-idea/#IDEA-History> (last visited Oct. 28, 2021).

¹⁵ Pacer Center, *What is the difference between an IFSP and an IEP?* (2011), available at <https://www.pacer.org/parent/php/PHP-c59.pdf>.

¹⁶ Section 391.308, F.S.; see also U.S. Department of Education, *Differentiated Monitoring Letter to Surgeon General Rivkees*, (January 19, 2021), available at <https://www2.ed.gov/fund/data/report/idea/partcdmsrpts/dms-fl-c-2021-report.pdf>.

¹⁷ Section 391.302(3), F.S.

¹⁸ *Id.*

¹⁹ U.S. Department of Education, *About IDEA*, <https://sites.ed.gov/idea/about-idea/#IDEA-History> (last visited Oct. 28, 2021).

²⁰ 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.

²¹ 34 C.F.R. s. 300.34.

²² 20 U.S.C. s. 1413(f).

²³ 20 U.S.C. s. 1413(f)(2).

For the 2021 federal fiscal year, Florida received \$884.2 million through IDEA Part B.²⁴ Florida also received an estimated additional \$153.4 million in allocations to supplement IDEA through the American Rescue Plan.²⁵

Florida Law

School District Obligations

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.²⁶ School districts have the responsibility to ensure that students suspected of having a disability are subject to general education intervention procedures.²⁷ Each district school board is required to provide for an appropriate program of special instruction, facilities, and services for exceptional students.²⁸ For example, each district program must:²⁹

- Provide the necessary professional services for diagnosis and evaluation of exceptional students.
- Provide 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.³⁰ 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.³¹ A school district must evaluate a student within 60 days after receiving signed parental consent.³² An IEP team, to include the parents of the affected student, must then review the evaluation and determine the educational needs of the student.³³

²⁴U.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). 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>.

²⁵ 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 Oct. 28, 2021).

²⁶ Section 1003.5716, F.S.

²⁷ Rule 6A-6.0331, F.A.C.

²⁸ Section 1001.42(4)(l), F.S.

²⁹ Section 1003.57(1)(b), F.S.

³⁰ 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.

³¹ Section 1003.57(1)(c), F.S.

³² Rule 6A-6.0331(2)(f), F.A.C.

³³ Rule 6A-6.0331(6)(a), F.A.C.

Student Eligibility

The State Board of Education (SBE) determines the procedures for qualifying a student as eligible to receive exceptional student education.³⁴ 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 five years, or children, ages birth through two years, with a diagnosed physical or mental condition known to have a high probability of resulting in developmental delay.³⁵

Developmental Delays

The SBE has adopted rules for the identification of developmental delays for children birth through age five,³⁶ which evaluate children for delays in the areas of:³⁷

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

A developmental delay is documented by a multidisciplinary team utilizing multiple measures of assessment, including:³⁸

- 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 individualized family support plan³⁹ or IEP 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.⁴⁰ A student must be evaluated for a qualifying disability and a

³⁴ Section 1003.57(1)(c), F.S.

³⁵ Section 1003.01(3)(a), F.S. *See also* Rule 6A-6.03030, F.A.C.

³⁶ Section 1003.21(1)(e), F.S.

³⁷ Rule 6A-6.03027(1), F.A.C.

³⁸ 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.

³⁹ An individualized family support plan (IFSP) 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.

⁴⁰ Rule 6A-6.03027(5)(a), F.A.C.

family support plan or IEP developed before the child is six years old to continue eligibility for special programs.⁴¹

In the fall of 2020, out of 406,944 students with a disability who qualified to receive exceptional student education, 22,593 students ages 3 through 5 qualified because of having a developmental delay.⁴²

State Funding

Exceptional student education cost factors are determined by using a matrix of services that documents the services that each exceptional student will receive.⁴³ The nature and intensity of the services indicated on the matrix must be consistent with the services described in each exceptional student's individual educational plan.⁴⁴

The state applies a weighted cost factor⁴⁵ to fund students in support levels IV and V, which are the two highest levels of need.⁴⁶ For the 2021 fiscal year, the state funded students in support level IV at 3.648 times the base student allocation⁴⁷ of \$4,372.91 for students in basic programs, and students in support level V are funded at 5.34 times the base student allocation.⁴⁸ Exceptional student education for students who do not require a support level IV or V is funded through a guaranteed exceptional student education allocation,⁴⁹ which is \$1,064,584,063 for the 2021 fiscal year.⁵⁰

III. Effect of Proposed Changes:

The bill modifies the definition of a developmental delay 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. Under the bill, a student with a developmental delay up to age 9 or grade 2 may be included in the definition of an “exceptional student” and eligible for admission to public special education programs. Accordingly, the bill requires the State Board of Education to adopt rules for the identification of developmental delays in students up to age 9 or grade 2, whichever comes first, who are eligible for admission to public special education programs and for related services.

⁴¹ Rule 6A-6.03027(6), F.A.C.

⁴² 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”).

⁴³ Section 1011.62(1)(e)1.a., F.S.

⁴⁴ *Id.*

⁴⁵ Cost factors in the Florida Education Finance Program are based on desired relative cost differences between educational programs. Section 1011.62(1)(c), F.S.

⁴⁶ Section 1011.62(1)(c), F.S.

⁴⁷ The base student allocation is the amount for each student in grades kindergarten through grade 12 that is determined annually by the Legislature. Section 1011.62(1)(b). The base student allocation does not include different cost factors among programs, or categorical or incentive funding available. *See generally*, s. 1011.62, F.S.

⁴⁸ Specific Appropriation 90, s. 2, ch. 2021-36, L.O.F.

⁴⁹ Section 1011.62(1)(e)1.c., F.S.

⁵⁰ Specific Appropriation 90, s. 2, ch. 2021-36, L.O.F.

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 six, 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 re-evaluate the student for a specific disability and develop a new individual education plan.

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:

None.

C. Government Sector Impact:

The bill does not require the additional expenditure of state funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1003.01 and 1003.21.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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