

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1035 Teacher Training and Conduct  
**SPONSOR(S):** Civil Justice Subcommittee, Gonzalez Pittman  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 244

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Education Quality Subcommittee	16 Y, 0 N	Wolff	Sanchez
2) Civil Justice Subcommittee	16 Y, 2 N, As CS	Loyed	Jones
3) Education & Employment Committee			

### SUMMARY ANALYSIS

The Florida Constitution provides that the education of Florida's children is a fundamental value of the people of Florida and a paramount duty of the state. In turn, high-quality teachers are supremely important in a child's education and are essential to fulfilling Florida's constitutional responsibility to its citizens.

Florida's public schools must comply with requirements relating to training employees and third-party vendors. While certain training requirements are redundant, overly burdensome, or no longer necessary, others are necessary and cannot be eliminated.

CS/HB 1035 supports Florida's teachers by requiring the Commissioner of Education to conduct a comprehensive review of all federal, state, and local teacher training requirements by December 31, 2023. In addition to conducting a comprehensive review of all training requirements, the Commissioner must identify any duplicate training requirements and eliminate such requirements by the December 31, 2023, deadline.

The bill also amends s. 1003.32, F.S., to create a mechanism by which a teacher may seek clarification or redress for being directed to take an action that would violate state or federal law. The bill establishes the process by which a teacher or staff member may request the appointment of a special magistrate to determine the facts relating to the dispute and render a recommendation to the State Board of Education. The bill also allows a court to award attorney fees to prevailing teachers and staff members and against the school district or school in certain situations.

Under the bill, when a student is sent by a teacher to the principal's office for behavioral issues, a principal must determine whether the student violated the code of conduct. If a principal finds that no violation occurred, he or she is prohibited from imposing any disciplinary action on the student. However, if a principal determines that a student's disruptive behavior, coupled with his or her overall disciplinary behavioral record, warrants more serious disciplinary action than the teacher recommended, he or she may impose a more serious disciplinary action.

The bill grants rulemaking authority to the State Board of Education to adopt rules and forms to implement the bill. The bill also amends s. 1003.32, F.S., to require a principal to notify a teacher of the discipline and interventions to address the problematic behavior of a student who was sent to the principal.

The bill amends s. 1012.75, F.S., to create a rebuttable presumption that an action by a teacher or other staff member was necessary to restore or maintain safety and the educational atmosphere. Under the bill, a teacher or applicable staff member who is involved in such an action may receive legal services or reimbursement.

The bill may have an indeterminate fiscal impact on state government and local school districts.

The bill has an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Teacher Training Requirements

Public schools in the state must comply with requirements relating to training employees and third-party vendors in areas such as policy and procedure,<sup>1</sup> curriculum,<sup>2</sup> professional development,<sup>3</sup> health and wellness,<sup>4</sup> human resources,<sup>5</sup> and school safety and security.<sup>6</sup> Certain training requirements are redundant, overly burdensome, or no longer necessary while other training requirements are necessary and cannot be eliminated.

While only one area of statutorily required training, teacher certification renewal represents a significant amount of required training for teachers. In Florida, an educator must submit an application,<sup>7</sup> pay a fee,<sup>8</sup> and earn at least six college credits or 120 inservice points, or a combination of both, during each 5-year validity cycle to renew his or her professional certification.<sup>9</sup> At least three college credits or 60 inservice points must be earned in each subject area for which renewal is sought.<sup>10</sup>

For each area of specialization to be retained on a certificate, the teacher must earn at least three of the required credit hours or equivalent inservice points in the specialization area.<sup>11</sup> Training in other topics such as drug abuse, dropout prevention, or child abuse and neglect may also be applied to certain specialization requirements.<sup>12</sup>

In addition to specialization requirements, to renew a professional certificate, each teacher must also earn a minimum of one college credit or the equivalent inservice points in the area of instruction for teaching students with disabilities.<sup>13</sup> This requirement may not add to the total 120 hours required by the DOE for continuing education or inservice training.

Considered separately, many training requirements can be viewed as sincere efforts to enhance the quality of education, student achievement, health and wellness, safety and security, accountability, transparency, and the efficient expenditure of taxpayer money, but their combined effect can result in an unwieldy and burdensome task of complying with deadlines and reporting, recordkeeping, and paperwork requirements.

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<sup>1</sup> See, e.g., ss. 1001.42 and 1001.43, F.S.

<sup>2</sup> See, e.g., s. 1006.28, F.S.

<sup>3</sup> See, e.g., s. 1012.98, F.S.

<sup>4</sup> See, e.g., ss. 381.0056, 381.0057, and 402.3026, F.S.

<sup>5</sup> See, e.g., s. 1012.34, F.S.

<sup>6</sup> See, e.g., s. 1006.07, F.S.

<sup>7</sup> Rule 6A-4.0051(3)(b), F.A.C. The DOE processes certification renewals for individuals who are not employed by district school boards. Section 1012.585(1)(b), F.S. District school boards are responsible for processing certificate renewals for school district employees. Section 1012.585(1)(a), F.S.

<sup>8</sup> Rules 6A-4.0051(3)(b) and 6A-4.0012(1)(a)1., F.A.C. The fee for a certification renewal is \$56.

<sup>9</sup> Section 1012.585(3)(a), F.S. Applicants may combine college credits and inservice points to meet this requirement. One semester hour of college credit is equivalent to 20 inservice points. Rule 6A-4.0051(1)(a)2., F.A.C. College credits must be earned at an accredited or state board-approved institution. Inservice points must be earned through participation in state board-approved school district inservice activities. Rule 6A-4.0051(1)(a)1., F.A.C.; see rule 6A-4.003(1) and (2), F.A.C. (list of approved accrediting agencies and guidelines for nonaccredited approved institutions).

<sup>10</sup> Section 1012.585(3)(a), F.S.

<sup>11</sup> Section 1012.585(3)(a), F.S. Credits or points earned through approved summer institutes may be applied toward the fulfillment of these requirements. Inservice points may also be earned by participation in professional growth components approved by the State Board of Education (SBE) in the district's approved master plan for inservice educational training; however, such points may not be used to satisfy specialization requirements.

<sup>12</sup> See s. 1012.585(3)(a), F.S.

<sup>13</sup> Section 1012.585(3)(e), F.S.

## Authority of Florida's Teachers

Each teacher has the authority to control and discipline students so that they can keep good order in the classroom.<sup>14</sup> Teachers are granted authority to take the following actions to manage student behavior and ensure safety of all students in their classes:

- Establish classroom rules of conduct.
- Establish and implement consequences, designed to change behavior, for infractions of classroom rules.
- Have disobedient, disrespectful, violent, abusive, uncontrollable, or disruptive students removed from the classroom for behavior management intervention.
- Have violent, abusive, uncontrollable, or disruptive students directed for information or assistance from appropriate school or district school board personnel.
- Assist in enforcing school rules on school property, during school-sponsored transportation, and during school-sponsored activities.
- Request and receive information as to the disposition of any referrals to the administration for violation of classroom or school rules.
- Request and receive immediate assistance in classroom management if a student becomes uncontrollable or in case of emergency.
- Request and receive training and other assistance to improve skills in classroom management, violence prevention, conflict resolution, and related areas.
- Press charges if there is a reason to believe that a crime has been committed on school property, during school-sponsored transportation, or during school-sponsored activities.
- Use reasonable force, according to standards adopted by the State Board of Education, to protect himself or herself or others from injury.
- Use corporal punishment according to school board policy.<sup>15</sup>

In exercising his or her statutory authority, each teacher must:

- Set and enforce reasonable classroom rules that treat all students equitably.
- Seek professional development to improve classroom management skills when data show that they are not effective in handling minor classroom disruptions.
- Maintain an orderly and disciplined classroom with a positive and effective learning environment that maximizes learning and minimizes disruption.
- Work with parents and other school personnel to solve discipline problems in their classrooms.<sup>16</sup>

A teacher is authorized to send a student to the principal's office to maintain effective discipline in the classroom and may recommend an appropriate consequence that is consistent with the school district student code of conduct. The principal must employ the teacher's recommended consequence or a more serious disciplinary action, if warranted. If the principal determines that a lesser disciplinary action is appropriate, the principal should consult with the teacher prior to taking disciplinary action.<sup>17</sup>

Furthermore, a teacher may remove from class a student whose behavior interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn. Each district school board, each district school superintendent, and each school principal are required to support the authority of teachers to remove disobedient, violent, abusive, uncontrollable, or disruptive students from the classroom.<sup>18</sup>

## Liability of Teachers and Principals

Current law, provides that a teacher or other member of the instructional staff, a principal or the principal's designated representative, or a bus driver shall not be civilly or criminally liable for any action

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<sup>14</sup> Section 1003.32(1), F.S.

<sup>15</sup> Section 1003.32(1)(a)-(k), F.S.

<sup>16</sup> Section 1003.32(2), F.S.

<sup>17</sup> Section 1003.32(3), F.S.

<sup>18</sup> Section 1003.32(4), F.S.

carried out in conformity with State Board of Education (SBE) and district school board rules regarding the control, discipline, suspension, and expulsion of students.<sup>19</sup> The law expressly excludes from these protections the use of excessive force or cruel and unusual punishment.<sup>20</sup> The SBE must adopt rules for the use of reasonable force by school personnel to maintain a safe and orderly learning environment.<sup>21</sup>

The Department of Education (DOE) administers a liability insurance program to protect public school educators from liability for claims arising from incidents occurring while performing job responsibilities.<sup>22</sup> The program must provide coverage amounting to \$2 million to all full-time instructional personnel.<sup>23</sup> Part-time instructional personnel, administrative personnel, and student teachers participating in clinical field experience through a state-approved teacher preparation program may opt to receive liability coverage, at cost.<sup>24</sup>

Each district school board may provide legal services for officers and employees of the school board who are charged with civil or criminal actions arising out of and in the course of the performance of assigned duties and responsibilities. The district school board shall provide for reimbursement of reasonable expenses for legal services for officers and employees of school boards who are charged with civil or criminal actions arising out of and in the course of the performance of assigned duties and responsibilities upon successful defense by the employee or officer.<sup>25</sup>

### Declaratory Judgments

Chapter 86, F.S., provides a mechanism for parties to resolve disputes regarding the clarification of rights rather than money damages. The purpose of a declaratory judgment is to “settle and afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations and is to be liberally administered and construed.”<sup>26</sup> Essentially, a declaratory judgment clarifies what rights a party has with respect to the terms of a contract with another party.

A complaint seeking declaratory relief must allege “ultimate facts showing that there is a bona fide adverse interest between the parties concerning a power, privilege, immunity, or right of the plaintiff....”<sup>27</sup> As such, a plaintiff may seek a declaratory judgment to settle a dispute over the district’s ability to order a teacher to take certain action.

### Injunctive Relief

Injunctive relief is considered an extraordinary remedy in both state and federal court. While most lawsuits seek monetary damages, injunctive relief is an equitable remedy that is only available when there is no adequate remedy at law. Injunctive relief is available in a broad range of state and federal disputes, including intellectual property, labor and employment, civil rights, contract, and commercial cases.

Injunctive relief is usually categorized as temporary or permanent in duration and mandatory or prohibitory in effect. Prohibitory injunctive relief restrains or enjoins the commission or continuance of an act and prevents a threatened injury to the applicant or moving party. Mandatory injunctive relief goes beyond mere restraint and requires the enjoined party to perform specific affirmative acts.

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<sup>19</sup> Section 1012.75(1), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 1012.75(2), F.S. Legislative staff could find no evidence that the SBE ever adopted rules as required by this section. A proposed rule was considered by the SBE in 2008 and 2009 but was never finalized. Florida Department of State, Florida Administrative Code & Florida Administrative Register, *Rule: 6A-6.05271*, <https://flrules.org/gateway/ruleNo.asp?id=6A-6.05271> (last visited Feb. 23, 2023).

<sup>22</sup> *See* s. 1012.75(3), F.S.

<sup>23</sup> Section 1012.75(3)(a), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 1012.26, F.S.

<sup>26</sup> S. 86.101, F.S.

<sup>27</sup> *State of Florida Dept. of Education v. Garcia*, 99 So. 3d 539 (Fla. 3d DCA 2011).

The three types of injunctive relief are granted in the form of either:

- Temporary or preliminary injunctions;
- Temporary restraining orders (TROs); or,
- Permanent injunctions.<sup>28</sup>

Preliminary injunctions are entered during the pendency of an action to preserve the status quo until final disposition of the case or until a hearing can be held. Temporary restraining orders (TROs) are similar in effect to preliminary injunctions. However, TROs usually differ from preliminary injunctions in duration, procedure and application. Generally, preliminary injunctions do not have a predetermined duration and are in effect until further order from the court. Permanent injunctions are entered following trial or after final disposition of the case on the merits and do not have specified durations.

### Historical Treatment of Attorney Fees

The traditional “English rule” entitled a prevailing party in civil litigation to attorney fees as a matter of right. However, Florida and a majority of other United States jurisdictions have adopted the “American rule,” where each party bears its own attorney fees unless a “fee-shifting statute” provides an entitlement to fees. In Florida, several such fee-shifting statutes entitle the prevailing party or, more specifically, a particular prevailing claimant or plaintiff, to have his or her fees paid by the other party.<sup>29</sup>

### **Effect of Proposed Changes**

#### Teacher Training Requirements

CS/HB 1035 requires the DOE to conduct a review of all required teacher training under federal and state law or rule and district policy. As part of this review the DOE must:

- assess all classroom teacher training requirements and identify any duplicate federal and state training requirements;
- evaluate any potential negative impacts of eliminating certain classroom teacher training requirements in state law or rule or district policy; and
- review all available literature related to comprehensive reviews of classroom teacher training requirements in other states.

After it completes its review, the DOE must eliminate any classroom teacher training requirements not required by federal or state law and provide recommendations to the Legislature for eliminating training requirements in state law or rule or district policy.

#### Authority of Florida’s Teachers

The bill reaffirms a teacher’s right to direct classroom instruction in accordance with law and rule. The bill authorizes a teacher who is directed by his or her school district or school to take some action contrary to law or rule to either request that the Commissioner of Education appoint a special magistrate to review the dispute or bring an action against the school district to obtain declaratory of injunctive relief.

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<sup>28</sup> The American Bar Association, *Injunctive Relief 101: Immediate Remedies When Money Does Not Cut It* (December 22, 2020), <https://www.americanbar.org/groups/litigation/committees/solo-small-firm/practice/2020/immediate-remedies-when-money-does-not-cut-it/> (last visited Mar. 10, 2023).

<sup>29</sup> See, e.g., s. 400.023, F.S. (nursing home resident); s. 440.34, F.S. (claimant in a workers’ compensation case in certain situations); s. 501.2105, F.S. (plaintiff in specified FDUTPA actions); ss. 626.9373 and 627.428, F.S. (prevailing insured party in a case brought against an insurer); s. 790.33, F.S. (plaintiff in a suit to enforce his or her firearm rights); see also 42 U.S.C. s. 1988(b) (federal fee-shifting statute for prevailing parties in actions to enforce certain civil rights statutes).

If the teacher requests a special magistrate, the special magistrate must be appointed, conduct fact finding, and make a recommendation for the resolution of the dispute to the SBE within 30 days. The SBE must accept or reject the recommendation of the special magistrate at its next regularly scheduled meeting, but no sooner than 7 days and no later than 30 days from when the recommended decision is received by the SBE.

The special magistrate must be a lawyer in good standing with The Florida Bar and must have at least 5 years of administrative law experience. Additionally, the bill requires that the school district bear any costs associated with the work of the special magistrate. The bill requires the SBE must adopt rules and forms to implement this process.

The bill creates a new attorney fee shifting provision which allows a court to award attorney fees to prevailing teachers and staff members in certain actions against the school district or school.

Under the bill, when a student is sent by a teacher to the principal's office for behavioral issues, the principal must determine whether the student violated the code of conduct. If a principal finds that no violation occurred, he or she is prohibited from imposing any disciplinary action on the student. However, a principal who determines that a student's disruptive behavior, coupled with his or her overall disciplinary behavioral record, warrants more serious disciplinary action than the teacher recommended, may impose a more serious disciplinary action.

Under the bill, a principal must inform the referring teacher of any disciplinary action taken, or lack thereof, if the situation so warrants. Additionally, if a principal deviates from the teacher's recommended course of action, he or she must inform the teacher in writing of the basis for such a deviation from the recommendation.

#### Liability of Teachers and Principals

The bill creates a rebuttable presumption in any administrative civil or criminal proceeding that the actions of a teacher or other applicable staff member were necessary to restore or maintain safety or the educational atmosphere, except in the case of excessive force or cruel and unusual punishment. Additionally, the bill authorizes teachers, and other staff members, to receive legal services, if the district school board provides such services as authorized in statute.

#### B. SECTION DIRECTORY:

- Section 1:** Requires the Commissioner of Education to take specified actions relating to classroom teacher training requirements by a specified date.
- Section 2:** Amends s. 1003.32, F.S.; authorizing classroom teachers and other members of staff to request a special magistrate or bring a specified action against a school district if directed by his or her school district or school to violate general law or rule; providing requirements for the appointment of such magistrate; providing for the award of attorney fees and court costs under certain circumstances; requiring principals to notify teachers of the discipline and interventions provided to certain students and to consult with teachers before taking disciplinary action for certain students; conforming cross-references.
- Section 3:** Amends s. 1012.75, F.S.; creating a rebuttable presumption in certain proceedings for teachers and staff members who take specified actions to maintain safety or the educational atmosphere; authorizing such individuals to receive specified legal services.
- Section 4:** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on state expenditures by requiring the Commissioner of Education to conduct a comprehensive review of all federal, state, and local classroom teacher training requirements, including district-specific requirements, and to take action to eliminate redundant or duplicative requirements by December 31, 2023.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on local governments by requiring local school districts to be responsible for the costs associated with the special magistrate procedure created in the bill.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill requires the SBE to adopt rules, including forms, implementing the special magistrate process.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 14, 2023, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably. The amendment specifically provides a principal with fact finding ability to determine whether a student sent to his or her office for violating the code of conduct actually committed such violations.

The amendment authorizes a principal to respond to a student who he or she believes violated the code of conduct by either imposing the suggested penalty as recommended by the teacher or by imposing a more serious penalty than was recommended by the teacher if the principal believes the student's overall

behavioral history warrants such increased disciplinary action. Alternatively, if a principal determines the student did not violate the code of conduct as was alleged, he or she is not permitted to impose any disciplinary action. Regardless of the decision on whether to impose discipline and the severity of such discipline, a principal must inform the reporting teacher of the chosen course of disciplinary action. If the principal deviates in any way from the teacher's recommended course of disciplinary action, he or she must provide the rationale for such deviation in writing to the teacher.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.