

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 636

INTRODUCER: Education Pre-K - 12 Committee and Senators Simon and Perry

SUBJECT: Individual Education Plans

DATE: April 10, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sagues</u>	<u>Bouck</u>	<u>ED</u>	<b>Fav/CS</b>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	<u>Sagues</u>	<u>Twogood</u>	<u>RC</u>	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 636 requires school districts to provide certain information to a student with a disability and his or her parent at least 1 year before the student turns 18. The information concerns issues of self-determination and the legal rights and responsibilities regarding educational decisions that transfer to the student upon attaining the age of 18.

The information provided must include ways in which the student may provide informed consent to allow his or her parents to continue to participate in educational decisions including the permission for parents to access confidential records protected under the Family Educational Rights and Privacy Act, powers of attorney, guardian advocacy, and guardianship.

The bill authorizes the State Board of Education to adopt rules relating to individual education plans for students having a disability.

The bill has no fiscal impact.

The bill takes effect July 1, 2023.

## 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)<sup>1</sup> and related services designed to meet their unique needs.

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.<sup>2</sup> During the 2021-2022 academic year, Florida public schools reported 578,317 students with disabilities.<sup>3</sup>

### ***Individuals with Disabilities Education Act (IDEA)***

The federal Individuals with Disabilities Education Act (IDEA) makes available a FAPE to eligible children with disabilities and ensures special education and related services are provided to those children.

The stated purpose of the IDEA is to:<sup>4</sup>

- 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.

### ***Florida Law Governing Exceptional Student Education***

As the state educational agency, the Florida Department of Education (FDOE) exercises general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies.<sup>5</sup> FDOE's Bureau of Exceptional

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<sup>1</sup> Section 1003.5716, F.S.

<sup>2</sup> Florida Department of Education (FDOE), *Developing Quality Individual Education Plans* 9 (2015), <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

<sup>3</sup> FDOE, Education Information and Accountability Services Data Report, *Membership in Programs for Exceptional Students, Final Survey 2, 2021-22*, <https://www.fldoe.org/core/fileparse.php/7584/urlt/MPES2122.xlsx> (last visited March 23, 2023).

<sup>4</sup> United States Department of Education, *IDEA, About IDEA*, <https://sites.ed.gov/idea/about-idea/#IDEA-Purpose> (last visited March 23, 2023).

<sup>5</sup> 20 U.S.C. s. 1412(a)(11); 34 C.F.R. s. 300.149.

Education and Student Services (BEESS) is responsible for ensuring that the requirements of federal law and the educational requirements of the state are implemented.<sup>6</sup> 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.<sup>7</sup>

### ***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.<sup>8</sup> IDEA requires that:<sup>9</sup>

- 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 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.

To ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities, an IEP team begins the process of identifying the need for transition services when the student is in grade 7, or when the student attains the age of 12, whichever occurs first.<sup>10</sup> The student's IEP must be operational and in place for implementation before the student enters high school or attains the age of 14, whichever occurs first.<sup>11</sup> The process of identifying the need for transition services and developing an IEP must include:<sup>12</sup>

- 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;
- Preparation for the student to graduate from high school with a standard high school diploma<sup>13</sup> with a Scholar designation<sup>14</sup> unless the student's parent chooses a Merit designation;<sup>15</sup>

<sup>6</sup> 34 C.F.R. s. 300.149(a)(1) and (2).

<sup>7</sup> Florida Department of Education, Bureau of Exceptional Student Education and Student Services, *Exceptional Student Education Compliance Protocols 2020-2021* 1, <http://www.fldoe.org/core/fileparse.php/7673/urlt/MonitoringIntroduction.pdf>.

<sup>8</sup> FDOE, *Developing Quality Individual Education Plans* 9 (2015), <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> Section 1003.5716(1), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 1003.5716(1)(a)-(c), F.S.

<sup>13</sup> Section 1003.4282, F.S.

<sup>14</sup> 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.

<sup>15</sup> 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.

- Information about the school district’s high-school level transition services, career and technical education, and collegiate programs available to students with a disability and how to access such programs;
- 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; and
- Referral forms, links, and technical support contacts for accessing services and programs.

Students with disabilities must be reevaluated at least once every three years to determine their continuing eligibility for special education and related services.<sup>16</sup> However, a student’s parent or teacher may request an IEP team meeting or a reevaluation at any time.<sup>17</sup> The IEP in effect when the student enters high school or attains the age of 14, or when determined appropriate by the parent and IEP team, must be updated annually to include a statement:<sup>18</sup>

- Addressing the intent to pursue a standard high school diploma and a Scholar or Merit designation as determined by the parent;
- Describing the intent to receive a standard high school diploma before the student attains the age of 22 and how the student will fully meet graduation requirements. The IEP must also specify the outcomes and additional benefits expected by the parent and the IEP team at the time of the student’s graduation; and
- Identifying 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, including preemployment transition services and courses of study needed to assist the student in reaching such goals.

In addition, SBE rule requires school districts to inform students and parents at least one year before the student reaches the age of 18 about the transfer of rights which occurs upon the age of majority.<sup>19</sup>

IEP teams are required to invite agencies,<sup>20</sup> with parental consent if the student has not reached the age of majority<sup>21</sup> consent, that may provide services after the student exits high school and

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<sup>16</sup> Rule 6A-6.0331(7), F.A.C.

<sup>17</sup> See Rule 6A-6.03028, F.A.C.

<sup>18</sup> Section 1003.5716(2), F.S.

<sup>19</sup> Rule 6A-6.03028(3), F.A.C.; Florida Department of Education, *2023 Agency Legislative Bill Analysis of HB 19* (Jan. 13, 2023) (on file with the Senate Committee on Judiciary).

<sup>20</sup> Agency involvement in transition planning is based on the nature of the student’s needs and the student’s disability, whether the student is potentially eligible for services and the student’s postsecondary education and career goals, such as further education, training, employment and independent living. Agencies frequently involved in the planning and delivery of transition services in Florida include: Agency for Persons with Disabilities; Center for Independent Living; 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. FDOE, *Developing Quality Individual Education Plans* 47 (2015),

<http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

<sup>21</sup> “Age of majority” means any natural person 18 years of age or older, or an emancipated minor. Section 487.021(6), F.S.

include consideration of pre-employment transition services<sup>22</sup> through the Division of Vocational Rehabilitation (VR)<sup>23</sup> in the development of post-secondary and career goals.<sup>24</sup>

### **Impact of Students Attaining the Age of Majority**

#### ***Individuals with Disabilities Education Act***

The IDEA specifically authorizes states to transfer rights reserved for parents of a student with disabilities to the student once the student attains the age of majority.<sup>25</sup> The IDEA requires that such transfer of rights be provided for in state law that applies to all children (except for those determined incompetent under state law) and provide for the following:<sup>26</sup>

- The transfer of all rights accorded to parents under the IDEA; and
- Notification to the student and parents of the transfer of rights.

To protect students who have not been determined incompetent, but may be unable to provide informed consent with respect to his or her educational program, the IDEA requires that states establish procedures for appointing an individual to represent the interests of the student for the duration of his or her eligibility for special education services.<sup>27</sup>

#### ***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.<sup>28</sup> The Family Educational Rights and Privacy Act (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:<sup>29</sup>

- 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.

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<sup>22</sup> VR provides pre-employment services, which 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. FDOE, *Developing Quality Individual Education Plans* 48 (2015), <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

<sup>23</sup> The Division of VR is housed in the FDOE. 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. Section 413.20(8) and (28), F.S.

<sup>24</sup> FDOE, *Developing Quality Individual Education Plans* 17 (2015), <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>.

<sup>25</sup> 34 C.F.R. s. 300.520(a)

<sup>26</sup> *Id.*

<sup>27</sup> 34 C.F.R. s. 300.520(b)

<sup>28</sup> Section 1002.22, F.S.; 20 U.S.C. s. 1232(g).

<sup>29</sup> 20 U.S.C. s. 1232(g). U.S. Department of Education, *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 March 23, 2023).

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.

### **Powers of Attorney**

A power of attorney is a legal document in which an individual (a principal) authorizes a person or entity (an agent) to act on his or her behalf. The authority granted depends on the specific language of the power of attorney. A principal may grant very broad authority or may limit the authority to certain specific acts.<sup>30</sup> An agent must be age 18 or older, or a financial institution that meets specified criteria.<sup>31</sup>

A power of attorney must be signed by the principal and two witnesses in a notary's presence. If the principal is physically unable to sign the power of attorney, the notary public may sign the principal's name on the power of attorney.<sup>32</sup>

### **Guardian Advocate**

Guardian advocacy is a process for family members, caregivers, or friends of individuals with a developmental disability to obtain the legal authority to act on their behalf if the person lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property.<sup>33</sup> This is accomplished without having to declare the person with a developmental disability incapacitated.

A petition to appoint a guardian advocate for a person with a developmental disability may be executed by an adult person who is a resident of this state.<sup>34</sup> The petition must be verified by the petitioner and must include specified information about the person, the petitioner, and the proposed guardian advocate.<sup>35</sup> Notice of the filing of the petition must be given to the person with a developmental disability, both verbally and in writing, in the language of the person and in English and must include information about a hearing and person's right to counsel.<sup>36</sup> If the court finds the person with a developmental disability requires the appointment of a guardian advocate, the order appointing the guardian advocate must contain findings of facts and conclusions of law supporting that determination.<sup>37</sup>

Upon compliance with all of the statutory requirements, letters of guardian advocacy must be issued to the guardian advocate.<sup>38</sup>

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<sup>30</sup> Section 709.2102(1), (9), and (11), F.S.

<sup>31</sup> Section 709.2105, F.S.

<sup>32</sup> Section 709.2105, F.S.

<sup>33</sup> Section 393.12(2)(a), F.S.

<sup>34</sup> Section 393.12(3), F.S.

<sup>35</sup> Section 393.12(3)(a)-(f), F.S.

<sup>36</sup> Section 393.12(4)(a)-(c), F.S.

<sup>37</sup> Section 393.12(8), F.S.

<sup>38</sup> See Section 393.12, F.S.

## **Guardianship**

Guardian means a person who has been appointed by the court to act on behalf of a ward's person or property, or both.<sup>39</sup> Adjudicating a person totally incapacitated and in need of a guardian deprives a person of his or her civil and legal rights.<sup>40</sup> The Legislature has recognized that the least restrictive form of guardianship should be used to ensure the most appropriate level of care and the protection of that person's rights.<sup>41</sup>

In Florida, the process to determine an individual's incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person is incapable of exercising.<sup>42</sup> Once a person has been adjudicated incapacitated, the court appoints a guardian, and the letters of guardianship are issued.<sup>43</sup> The order appointing a guardian must be consistent with the ward's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.<sup>44</sup>

### **III. Effect of Proposed Changes:**

CS/SB 636 amends s. 1003.5716, F.S., to require school districts to provide, within a student's individual education plan, information and instruction to a student with a disability and his or her parent on self-determination and the legal rights and responsibilities relating to educational decisions that transfer to the student upon attaining the age of 18.

The information provided must include mechanisms for maintaining parental involvement in educational decision-making, including permission to release information to the parent under the Family Educational Rights and Privacy Act, powers of attorney, guardian advocacy and guardianship.

The bill requires that this information be shared with students and their parents at least one year prior to the student reaching the age of majority.

The bill requires the State Board of Education to adopt rules to administer s. 1003.5716, F.S.

The bill takes effect on July 1, 2023.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>39</sup> Section 744.102(9), F.S.

<sup>40</sup> Section 744.1012(1), F.S.

<sup>41</sup> Section 744.1012(2), F.S.

<sup>42</sup> Section 744.3201, F.S.

<sup>43</sup> See sections 744.3371 through 744.345, F.S.

<sup>44</sup> Section 744.2005(3), F.S.

**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:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Florida Department of Education requests consideration of removing the requirement to provide “instruction” on the “legal rights and responsibilities.” The options available to parents are legal options that typically require the advice of an attorney or the involvement of a court, and the department believes it is unclear whether school districts can provide such instruction to parents on these options without unintentionally providing legal advice.<sup>45</sup>

**VIII. Statutes Affected:**

This bill substantially amends section 1003.5716 of the Florida Statutes.

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<sup>45</sup> Florida Department of Education, *2023 Agency Legislative Bill Analysis of HB 19* (Jan. 13, 2023) at 5 (on file with the Senate Committee on Judiciary).



**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 PreK-12 on March 6, 2023:**

The committee substitute requires the State Board of Education to adopt rules to administer s. 1003.5716, F.S.

- B. **Amendments:**

None.