

## House Bill No. 7089

An act relating to exceptional students; amending s. 1003.57, F.S.; revising provisions relating to due process hearings for exceptional students; requiring that such hearings be conducted by an administrative law judge from the Division of Administrative Hearings pursuant to a contract with the Department of Education; providing that any party to a hearing related to gifted students may request that the findings or decision be reviewed by the district court of appeal; authorizing a district school board to consider a change in placement for a student who has a disability if the student engages in behavior that violates the district school board's code of student conduct; providing for the removal and placement of such student in an alternative educational setting for a limited period; specifying the grounds for removal; providing definitions for the terms "controlled substance" and "weapon"; creating s. 1003.571, F.S.; requiring that the State Board of Education comply with the Individuals with Disabilities Education Act after evaluating and determining that such act is consistent with certain principles; requiring that the State Board of Education adopt rules; amending s. 1003.58, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 1003.57, Florida Statutes, is amended to read:

1003.57 Exceptional students instruction.—

(1)(a) Each district school board shall provide for an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education as acceptable, including provisions that:

1.(a) The district school board provide the necessary professional services for diagnosis and evaluation of exceptional students.

2.(b) The district school board 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 that meet standards established by the commissioner.

3.(c) The district school board annually provide information describing the Florida School for the Deaf and the Blind and all other programs and methods of instruction available to the parent of a sensory-impaired student.

4.(d) The district school board, once every 3 years, submit to the department its proposed procedures for the provision of special instruction and services for exceptional students.

(b)(e) A student may not be given special instruction or services as an exceptional student until after he or she has been properly evaluated, classified, and placed in the manner prescribed by rules of the State Board of Education. The parent of an exceptional student evaluated and placed or denied placement in a program of special education shall be notified of each such evaluation and placement or denial. Such notice shall contain a statement informing the parent that he or she is entitled to a due process hearing on the identification, evaluation, and placement, or lack thereof. Such hearings ~~are shall be exempt from the provisions of ss. 120.569, 120.57, and 286.011, except to the extent that the State Board of Education adopts rules establishing other procedures.~~ and Any records created as a result of such hearings are shall be confidential and exempt from the provisions of s. 119.07(1). The hearing must be conducted by an administrative law judge from the Division of Administrative Hearings pursuant to a contract between the Department of Education and the Division of Administrative Hearings of the Department of Management Services. The decision of the administrative law judge ~~is shall be final,~~ except that any party aggrieved by the finding and decision rendered by the administrative law judge ~~has shall have~~ the right to bring a civil action in the state circuit court. In such an action, the court shall receive the records of the administrative hearing and shall hear additional evidence at the request of either party. In the alternative, in hearings conducted on behalf of a student who is identified as gifted, any party aggrieved by the finding and decision rendered by the administrative law judge ~~has shall have~~ the right to request an impartial review of the administrative law judge's order by the district court of appeal as provided in ~~by~~ s. 120.68.

(c) Notwithstanding any law to the contrary, during the pendency of any proceeding conducted pursuant to this section, unless the district school board and the parents otherwise agree, the student shall remain in his or her then-current educational assignment or, if applying for initial admission to a public school, shall be assigned, with the consent of the parents, in the public school program until all such proceedings have been completed.

(d)(f) In providing for the education of exceptional students, the district school superintendent, principals, and teachers shall utilize the regular school facilities and adapt them to the needs of exceptional students to the maximum extent appropriate. Segregation of exceptional students shall occur only if the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(e)(g) In addition to the services agreed to in a student's individual educational ~~education~~ plan, the district school superintendent shall fully inform the parent of a student having a physical or developmental disability of all available services that are appropriate for the student's disability. The superintendent shall provide the student's parent with a summary of the student's rights.

(f) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a student who has a disability and violates a district school board's

code of student conduct. School personnel may remove and place such student in an interim alternative educational setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

1. Carries a weapon to or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of the school district;

2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the school district; or

3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district.

(g) For purposes of paragraph (f), the term:

1. "Controlled substance" means a drug or other substance identified under Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of the Controlled Substances Act, 21 U.S.C. s. 812(c) and s. 893.02(4).

2. "Weapon" means a device, instrument, material, or substance, animate or inanimate, which is used for, or is readily capable of, causing death or serious bodily injury; however, this definition does not include a pocket-knife having a blade that is less than 2 ½ inches in length.

Section 2. Section 1003.571, Florida Statutes, is created to read:

1003.571 Instruction for exceptional students who have a disability.—

(1) The State Board of Education shall comply with the Individuals with Disabilities Education Act (IDEA), as amended, and its implementing regulations after evaluating and determining that the IDEA, as amended, and its implementing regulations are consistent with the following principles:

(a) Ensuring that all children who have disabilities are afforded a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(b) Ensuring that the rights of children who have disabilities and their parents are protected; and

(c) Assessing and ensuring the effectiveness of efforts to educate children who have disabilities.

(2) The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 3. Subsection (3) of section 1003.58, Florida Statutes, is amended to read:

1003.58 Students in residential care facilities.—Each district school board shall provide educational programs according to rules of the State

Board of Education to students who reside in residential care facilities operated by the Department of Children and Family Services or the Agency for Persons with Disabilities.

(3) The district school board shall have full and complete authority in the matter of the assignment and placement of such students in educational programs. The parent of an exceptional student shall have the same due process rights as are provided under s. 1003.57(1)(b) ~~s. 1003.57(1)(e)~~.

Notwithstanding the provisions herein, the educational program at the Marianna Sunland Center in Jackson County shall be operated by the Department of Education, either directly or through grants or contractual agreements with other public or duly accredited educational agencies approved by the Department of Education.

Section 4. This act shall take effect July 1, 2009.

Approved by the Governor June 24, 2009.

Filed in Office Secretary of State June 24, 2009.