

## CHAPTER 2013-236

### Committee Substitute for Senate Bill No. 1108

An act relating to exceptional student education; amending s. 1002.20, F.S.; prohibiting certain actions with respect to parent meetings with school district personnel; providing requirements for meetings relating to exceptional student education and related services; amending s. 1002.33, F.S.; providing requirements for the reimbursement of federal funds to charter schools; amending s. 1003.57, F.S.; requiring a school district to use specified terms to describe the instructional setting for certain exceptional students; defining the term “inclusion” for purposes of exceptional student instruction; providing for determination of eligibility as an exceptional student; requiring certain assessments to facilitate inclusive educational practices for exceptional students; requiring a district school board to provide parents with information regarding the funding the school district receives for exceptional student education; requiring the school district to provide the information at the initial meeting of a student’s individual education plan team; creating s. 1003.5715, F.S.; requiring the use of parental consent forms for specified actions in a student’s individual education plan; providing requirements for the consent forms; providing requirements for changes in a student’s individual education plan; requiring the State Board of Education to adopt rules; creating s. 1003.572, F.S.; defining the term “private instructional personnel”; encouraging the collaboration of public and private instructional personnel and providing requirements therefor; amending s. 1003.58, F.S.; conforming a cross-reference; creating s. 1008.212, F.S.; providing definitions; providing that a student with a disability be granted an extraordinary exemption from the administration of certain assessments under certain circumstances; providing that certain disabilities or the receipt of services through a homebound or hospitalized program is not an adequate criterion for the granting of an extraordinary exemption; authorizing a written request for an extraordinary exemption; providing requirements for the request; providing a procedure for granting or denying an extraordinary exemption; providing a procedure for appealing a denial of an extraordinary exemption; requiring the Commissioner of Education to annually submit by a specified date to the Governor and the Legislature a report and regularly inform district testing and special education administrators of the procedures regarding extraordinary exemptions; requiring the State Board of Education to adopt rules; creating s. 1008.3415, F.S.; requiring an exceptional student education center to choose to receive a school grade or school improvement rating; excluding student assessment data from the calculation of a home school’s grade under certain circumstances; requiring the State Board of Education to adopt rules; amending s. 1012.585, F.S.; providing requirements for renewal of a professional certificate relating to teaching students with disabilities; authorizing the State Board of Education to adopt rules; providing an effective date.

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

Section 1. Paragraph (a) of subsection (21) of section 1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child’s academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(21) PARENTAL INPUT AND MEETINGS.—

(a) *Meetings with school district personnel.*—Parents of public school students may be accompanied by another adult of their choice at any meeting with school district personnel. School district personnel may not object to the attendance of such adult or discourage or attempt to discourage, through any action, statement, or other means, parents from inviting another person of their choice to attend any meeting. Such prohibited actions include, but are not limited to, attempted or actual coercion or harassment of parents or students or retaliation or threats of consequences to parents or students.

1. Such meetings include, but are not limited to, meetings related to: the eligibility for exceptional student education or related services; the development of an individual family support plan (IFSP); the development of an individual education plan (IEP); the development of a 504 accommodation plan issued under s. 504 of the Rehabilitation Act of 1973; the transition of a student from early intervention services to other services; the development of postsecondary goals for a student and the transition services needed to reach those goals; and other issues that may affect a student’s educational environment, discipline, or placement.

2. The parents and school district personnel attending the meeting shall sign a document at the meeting’s conclusion which states whether any school district personnel have prohibited, discouraged, or attempted to discourage the parents from inviting a person of their choice to the meeting.

Section 2. Paragraph (c) of subsection (17) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(17) FUNDING.—Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(c) If the district school board is providing programs or services to students funded by federal funds, any eligible students enrolled in charter schools in the school district shall be provided federal funds for the same level of service provided students in the schools operated by the district school

board. Pursuant to provisions of 20 U.S.C. 8061 s. 10306, all charter schools shall receive all federal funding for which the school is otherwise eligible, including Title I funding, not later than 5 months after the charter school first opens and within 5 months after any subsequent expansion of enrollment. Unless otherwise mutually agreed to by the charter school and its sponsor, and consistent with state and federal rules and regulations governing the use and disbursement of federal funds, the sponsor shall reimburse the charter school on a monthly basis for all invoices submitted by the charter school for federal funds available to the sponsor for the benefit of the charter school, the charter school's students, and the charter school's students as public school students in the school district. Such federal funds include, but are not limited to, Title I, Title II, and Individuals with Disabilities Education Act (IDEA) funds. To receive timely reimbursement for an invoice, the charter school must submit the invoice to the sponsor at least 30 days before the monthly date of reimbursement set by the sponsor. In order to be reimbursed, any expenditures made by the charter school must comply with all applicable state rules and federal regulations, including, but not limited to, the applicable federal Office of Management and Budget Circulars, the federal Education Department General Administrative Regulations, and program-specific statutes, rules, and regulations. Such funds may not be made available to the charter school until a plan is submitted to the sponsor for approval of the use of the funds in accordance with applicable federal requirements. The sponsor has 30 days to review and approve any plan submitted pursuant to this paragraph.

Section 3. Subsection (1) of section 1003.57, Florida Statutes, is amended to read:

1003.57 Exceptional students instruction.—

(1)(a) For purposes of providing exceptional student instruction under this section:

1. A school district shall use the following terms to describe the instructional setting for a student with a disability, 6 through 21 years of age, who is not educated in a setting accessible to all children who are together at all times:

a. “Exceptional student education center” or “special day school” means a separate public school to which nondisabled peers do not have access.

b. “Other separate environment” means a separate private school, residential facility, or hospital or homebound program.

c. “Regular class” means a class in which a student spends 80 percent or more of the school week with nondisabled peers.

d. “Resource room” means a classroom in which a student spends between 40 percent to 80 percent of the school week with nondisabled peers.

e. “Separate class” means a class in which a student spends less than 40 percent of the school week with nondisabled peers.

2. A school district shall use the term “inclusion” to mean that a student is receiving education in a general education regular class setting, reflecting natural proportions and age-appropriate heterogeneous groups in core academic and elective or special areas within the school community; a student with a disability is a valued member of the classroom and school community; the teachers and administrators support universal education and have knowledge and support available to enable them to effectively teach all children; and a student is provided access to technical assistance in best practices, instructional methods, and supports tailored to the student’s needs based on current research.

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

2. 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. 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. 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.

~~(c)~~(b) 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, ~~classified, and placed in the manner prescribed by rules of the State Board of Education. The parent of an exceptional student evaluated and found eligible or ineligible placed or denied placement in a program of special education shall be notified of each such evaluation and determination 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 eligibility determination placement, or lack thereof. Such hearings are exempt from ss. 120.569, 120.57, and 286.011, except to the extent that the State Board of Education adopts rules establishing other procedures. Any records created as a result of such hearings are confidential and exempt from 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. The decision of the administrative law judge is final, except that any party aggrieved by the finding and decision rendered by the administrative law judge has 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 the right to request a review of the administrative law judge's order by the district court of appeal as provided in s. 120.68.

(d)(e) 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.

(e)(d) 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. To the extent appropriate, students with disabilities, including those students in public or private institutions or other facilities, shall be educated with students who are not disabled. 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.

(f) Once every 3 years, each school district and school shall complete a Best Practices in Inclusive Education (BPIE) assessment with a Florida Inclusion Network facilitator and include the results of the BPIE assessment and all planned short-term and long-term improvement efforts in the school district's exceptional student education policies and procedures. BPIE is an internal assessment process designed to facilitate the analysis, implementation, and improvement of inclusive educational practices at the district and school team levels.

(g)(e) In addition to the services agreed to in a student's individual educational 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.

(h)(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.

(i)(g) For purposes of paragraph (h)(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 pocketknife having a blade that is less than 2½ inches in length.

(j) The district school board shall provide each parent with information regarding the amount that the school district receives from the state appropriation for each of the five exceptional student education support levels for a full-time student. The school district shall provide this information at the initial meeting of a student's individual education plan team.

Section 4. Section 1003.5715, Florida Statutes, is created to read:

1003.5715 Parental consent; individual education plan.—

(1) The Department of Education shall adopt separate parental consent forms that school districts must use for each of the following actions in a student's individual education plan (IEP):

(a) Administer to the student an alternate assessment pursuant to s. 1008.22 and provide instruction in the state standards access points curriculum.

(b) Place the student in an exceptional student education center.

(2) In accordance with 34 C.F.R. s. 300.503, each form shall be provided to the parent in the parent's native language, as defined in 34 C.F.R. s. 300.29, and include the following:

(a) A statement that the parent is a participant of the individual education plan team (IEP Team) and has the right to consent or refuse

consent to the actions described in subsection (1). The statement shall include information that the refusal of parental consent means that the school district may not proceed with the actions described in subsection (1) without a school district due process hearing in accordance with 34 C.F.R. ss. 300.507 and 300.508.

(b) A “does consent” box and a signature line.

(c) A “does not consent” box and a signature line.

(d) An informational statement of the benefits and consequences of giving parental consent to the actions described in subsection (1).

(3) A school district may not proceed with the actions described in subsection (1) without parental consent unless the school district documents reasonable efforts to obtain the parent’s consent and the child’s parent has failed to respond or the school district obtains approval through a due process hearing in accordance with 34 C.F.R. ss. 300.507 and 300.508 and resolution of appeals.

(4) Except for a change in placement described in s. 1003.57(1)(h), if a school district determines that there is a need to change an exceptional student’s IEP as it relates to actions described in subsection (1), the school must hold an IEP Team meeting that includes the parent to discuss the reason for the change. The school shall provide written notice of the meeting to the parent at least 10 days before the meeting, indicating the purpose, time, and location of the meeting and who, by title or position, will attend the meeting. The IEP Team meeting requirement may be waived by informed consent of the parent after the parent receives the written notice.

(5) For a change in actions described in subsection (1) in a student’s IEP, the school district may not implement the change without parental consent unless the school district documents reasonable efforts to obtain the parent’s consent and the child’s parent has failed to respond or the school district obtains approval through a due process hearing in accordance with 34 C.F.R. ss. 300.507 and 300.508 and resolution of appeals.

(6) Pursuant to 34 C.F.R. s. 300.518, during the pendency of a due process hearing or appellate proceeding regarding a due process complaint, the student shall remain in his or her current educational assignment while awaiting the decision of any impartial due process hearing or court proceeding, unless the parent and the district school board otherwise agree.

(7) This section does not abrogate any parental right identified in the Individuals with Disabilities Education Act (IDEA) and its implementing regulations.

(8) The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section, including, but not limited to, developing parental consent forms.

Section 5. Section 1003.572, Florida Statutes, is created to read:

1003.572 Collaboration of public and private instructional personnel.—

(1) As used in this section, the term “private instructional personnel” means:

(a) Individuals certified under s. 393.17 or licensed under chapter 490 or chapter 491 for applied behavior analysis services as defined in ss. 627.6686 and 641.31098.

(b) Speech-language pathologists licensed under s. 468.1185.

(c) Occupational therapists licensed under part III of chapter 468.

(d) Physical therapists licensed under chapter 486.

(e) Psychologists licensed under chapter 490.

(f) Clinical social workers licensed under chapter 491.

(2) The collaboration of public and private instructional personnel shall be designed to enhance but not supplant the school district’s responsibilities under the Individuals with Disabilities Education Act (IDEA). The school as the local education agency shall provide therapy services to meet the expectations provided in federal law and regulations and state statutes and rules. Collaboration of public and private instructional personnel will work to promote educational progress and assist students in acquiring essential skills, including, but not limited to, readiness for pursuit of higher education goals or employment. Where applicable, public and private instructional personnel shall undertake collaborative programming. Coordination of services and plans between a public school and private instructional personnel is encouraged to avoid duplication or conflicting services or plans.

(3) Private instructional personnel who are hired or contracted by parents to collaborate with public instructional personnel must be permitted to observe the student in the educational setting, collaborate with instructional personnel in the educational setting, and provide services in the educational setting according to the following requirements:

(a) The student’s public instructional personnel and principal consent to the time and place.

(b) The private instructional personnel satisfy the requirements of s. 1012.32 or s. 1012.321.

(4) The provision of private instructional personnel by a parent does not constitute a waiver of the student’s or parent’s right to a free and appropriate public education under IDEA.

Section 6. 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)(c)~~ 1003.57(1)(b).

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 7. Section 1008.212, Florida Statutes, is created to read:

1008.212 Students with disabilities; extraordinary exemption.—

(1) As used in this section, the term:

(a) “Circumstance” means a situation in which accommodations allowable for use on the statewide standardized assessment, a statewide standardized end-of-course assessment, or an alternate assessment pursuant to s. 1008.22(3)(c) are not offered to a student during the current year’s assessment administration due to technological limitations in the testing administration program which lead to results that reflect the student’s impaired sensory, manual, or speaking skills rather than the student’s achievement of the benchmarks assessed by the statewide standardized assessment, a statewide standardized end-of-course assessment, or an alternate assessment.

(b) “Condition” means an impairment, whether recently acquired or longstanding, which affects a student’s ability to communicate in modes deemed acceptable for statewide assessments, even if appropriate accommodations are provided, and creates a situation in which the results of administration of the statewide standardized assessment, an end-of-course assessment, or an alternate assessment would reflect the student’s impaired sensory, manual, or speaking skills rather than the student’s achievement of the benchmarks assessed by the statewide standardized assessment, a statewide standardized end-of-course assessment, or an alternate assessment.

(2) A student with a disability for whom the individual education plan (IEP) team determines is prevented by a circumstance or condition from physically demonstrating the mastery of skills that have been acquired and are measured by the statewide standardized assessment, a statewide standardized end-of-course assessment, or an alternate assessment

pursuant to s. 1008.22(3)(c) shall be granted an extraordinary exemption from the administration of the assessment. A learning, emotional, behavioral, or significant cognitive disability, or the receipt of services through the homebound or hospitalized program in accordance with rule 6A-6.03020, Florida Administrative Code, is not, in and of itself, an adequate criterion for the granting of an extraordinary exemption.

(3) The IEP team, which must include the parent, may submit to the district school superintendent a written request for an extraordinary exemption at any time during the school year, but not later than 60 days before the current year's assessment administration for which the request is made. A request must include all of the following:

(a) A written description of the student's disabilities, including a specific description of the student's impaired sensory, manual, or speaking skills.

(b) Written documentation of the most recent evaluation data.

(c) Written documentation, if available, of the most recent administration of the statewide standardized assessment, an end-of-course assessment, or an alternate assessment.

(d) A written description of the condition's effect on the student's participation in the statewide standardized assessment, an end-of-course assessment, or an alternate assessment.

(e) Written evidence that the student has had the opportunity to learn the skills being tested.

(f) Written evidence that the student has been provided appropriate instructional accommodations.

(g) Written evidence as to whether the student has had the opportunity to be assessed using the instructional accommodations on the student's IEP which are allowable in the administration of the statewide standardized assessment, an end-of-course assessment, or an alternate assessment in prior assessments.

(h) Written evidence of the circumstance or condition as defined in subsection (1).

(4) Based upon the documentation provided by the IEP team, the school district superintendent shall recommend to the Commissioner of Education whether an extraordinary exemption for a given assessment administration window should be granted or denied. A copy of the school district's procedural safeguards as required in rule 6A-6.03311, Florida Administrative Code, shall be provided to the parent. If the parent disagrees with the IEP team's recommendation, the dispute resolution methods described in the procedural safeguards shall be made available to the parent. Upon receipt of the request, documentation, and recommendation, the commissioner shall verify the information documented, make a determination, and notify the parent and

the district school superintendent in writing within 30 days after the receipt of the request whether the exemption has been granted or denied. If the commissioner grants the exemption, the student's progress must be assessed in accordance with the goals established in the student's individual education plan. If the commissioner denies the exemption, the notification must state the reasons for the denial.

(5) The parent of a student with a disability who disagrees with the commissioner's denial of an extraordinary exemption may request an expedited hearing. If the parent requests the expedited hearing, the Department of Education shall inform the parent of any free or low-cost legal services and other relevant services available in the area. The Department of Education shall arrange a hearing with the Division of Administrative Hearings, which must be commenced within 20 school days after the parent's request for the expedited hearing. The administrative law judge at the division shall make a determination within 10 school days after the expedited hearing. The standard of review for the expedited hearing is de novo, and the department has the burden of proof.

(6) Beginning June 30, 2014, and each June 30 thereafter, the commissioner shall annually submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives the number of extraordinary exemptions requested under this section, the number of extraordinary exemptions granted under this section, and the criteria by which all decisions were made. The commissioner shall regularly inform district testing and special education administrators of the procedures established in this section.

(7) The State Board of Education shall adopt rules to administer this section.

Section 8. Section 1008.3415, Florida Statutes, is created to read:

1008.3415 School grade or school improvement rating for exceptional student education centers.—

(1) Each exceptional student education center shall choose to receive a school grade pursuant to s. 1008.34 or a school improvement rating pursuant to s. 1008.341.

(2) Notwithstanding s. 1008.34(3)(c)3., the achievement scores and learning gains of a student with a disability who attends an exceptional student education center and has not been enrolled in or attended a public school other than an exceptional student education center for grades K-12 within the school district shall not be included in the calculation of the home school's grade if the student is identified as an emergent student on the alternate assessment tool described in s. 1008.22(3)(c)13.

(3) The State Board of Education shall adopt rules under ss. 120.536(1) and 120.54 to implement this section, including, but not limited to, defining exceptional student education centers.

Section 9. Paragraph (e) is added to subsection (3) of section 1012.585, Florida Statutes, and subsection (6) is added to that section, to read:

1012.585 Process for renewal of professional certificates.—

(3) For the renewal of a professional certificate, the following requirements must be met:

(e) Beginning July 1, 2014, an applicant for renewal of a professional certificate must earn a minimum of 1 college credit or the equivalent inservice points in the area of instruction for teaching students with disabilities. The requirement in this paragraph may not add to the total hours required by the department for continuing education or inservice training.

(6) The State Board of Education may adopt rules under ss. 120.536(1) and 120.54 to implement this section, including, but not limited to, applicant renewal requirements.

Section 10. This act shall take effect July 1, 2013.

Approved by the Governor June 28, 2013.

Filed in Office Secretary of State June 28, 2013.