

**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 Appropriations

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**BILL:** CS/SB 726

**INTRODUCER:** Education Committee and Senator Taddeo

**SUBJECT:** Individual Education Plan Requirements for Students with Disabilities

**DATE:** April 16, 2021      **REVISED:** \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Sagues</u>	<u>Bouck</u>	<u>ED</u>	<b>Fav/CS</b>
2. <u>Underhill</u>	<u>Elwell</u>	<u>AED</u>	<b>Recommend: Fav/CS</b>
3. <u>Underhill</u>	<u>Sadberry</u>	<u>AP</u>	<b>Pre-meeting</b>

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 726 modifies communication and timeline provisions for developing an Individual Education Plan (IEP) in order to ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities. Specifically, the bill requires:

- An IEP team to start the transition process during the student’s seventh grade year, rather than at age 14, and have an operational plan in place that is implemented on the first day of the student’s first year in high school or when he or she attains the age of 16, whichever occurs first.
- School districts to provide:
  - Information to parents and students on the school district’s high school-level transition courses and vocational, career, and collegiate programs available to such students and how to access such programs.
  - Applications for Division of Vocational Rehabilitation services and Agency Persons with Disabilities services to students and parents at IEP meetings.
- Parents to attest in writing that they understand the process for deferment of a high school diploma and whether the student will defer the receipt of such diploma to no later than May 15 of the year the student will graduate.
- The Florida Department of Education (FDOE) to conduct a review of existing transition services and programs to establish uniform best practices for such programs to deliver appropriate employment, pre-employment, and independent living skills education to enrolled students. The FDOE must publish best practices by July 1, 2022.

The bill has no impact on state revenues or expenditures. See Section V.

The bill takes effect on July 1, 2021.

## II. Present Situation:

### Students with Disabilities

All students who are between the ages of three to 21 and have a disability have the right to a free, appropriate public education (FAPE).<sup>1</sup> 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>

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

The Individuals with Disabilities Education Act (IDEA) is a federal law that makes available a FAPE to eligible children with disabilities throughout the nation and ensures special education and related services are provided to those children. For the 2018-19 school year, more than 7.5 million eligible infants, toddlers, children, and youth with disabilities were provided early intervention, special education, and related services.

The stated purpose of the IDEA is to:

- 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.<sup>3</sup>

The Individuals with Disabilities Education Act (IDEA) requires that:

- 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 Individual Education Plan (IEP);
- The IEP must be reviewed at least annually and revised as necessary;

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

<sup>2</sup> 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.

<sup>3</sup> U.S. Department of Education, *IDEA Individuals with Disabilities Education Act*, <https://sites.ed.gov/idea/about-idea/#IDEA-Purpose> (last visited March 4, 2021).

- 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.<sup>4</sup>

### ***Workforce Innovation and Opportunity Act of 2014 (WIOA)***

The WIOA<sup>5</sup> aims to increase opportunities for individuals facing barriers to employment and focus on the connection between education and career preparation.<sup>6</sup> The WIOA requires that state vocational rehabilitation agencies set aside at least 15 percent of their federal funds to provide preemployment transition services<sup>7</sup> to eligible individuals with a disability who:<sup>8</sup>

- Are between 14 and 21 years of age; and
- Have a current IEP; or
- Have or are eligible for an accommodation plan pursuant to s. 504 of the Rehabilitation Act of 1973.<sup>9</sup>

### ***Section 504 of the Rehabilitation Act of 1973***

Section 504 of the Rehabilitation Act of 1973<sup>10</sup> prohibits any program or activity that receives federal financial assistance from discriminating against an otherwise qualified individual solely by reason of his or her disability. State and local agencies that administer federally funded programs or activities may devise an accommodation plan<sup>11</sup> for someone with a disability to allow the disabled person's participation in the program.<sup>12</sup>

### ***The Individual Education Plan***

The 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>13</sup> 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

<sup>4</sup> 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.

<sup>5</sup> Pub. L. No. 113-128, 128 Stat. 1425 (July 22, 2014).

<sup>6</sup> See U.S. Department of Labor, Employment & Training Administration, *WIOA Overview*, <https://www.doleta.gov/wioa/about/overview/> (last visited March 5, 2020).

<sup>7</sup> "Transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promote movement from school to post-school activities, including postsecondary education; vocational training; integrated employment; supported employment; continuing and adult education; adult services; independent living, or community participation. Section 413.20(26), F.S.

<sup>8</sup> States may elect a lower minimum age or higher maximum age for receipt of pre-employment services under IDEA. Workforce Innovation Technical Assistance Center, *Preemployment Transition Services*, <http://www.wintac.org/topic-areas/pre-employment-transition-services> (last visited March 5, 2021).

<sup>9</sup> Section 413.310(1), F.S.

<sup>10</sup> Pub. L. No. 93-112, s. 504, 83 Stat. 355, 361 (1973), as amended and codified in 29 U.S.C. s. 794.

<sup>11</sup> The Section 504 plan identifies the services and accommodations necessary for a student to access instruction and may include accommodations in the classroom and for local and state assessments. Florida Department of Education, *Accommodations, Assisting Students with Disabilities* (2018), available at <http://www.fldoe.org/core/fileparse.php/7567/urlt/0070069-accomm-educator.pdf>, at 3.

<sup>12</sup> See *Alexander v. Choate*, 469 U.S. 287 (1985).

<sup>13</sup> 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.

transition services before the student with a disability attains the age of 14 years. When the student attains the age of 16, the IEP must be updated annually to include a statement:<sup>14</sup>

- Addressing the intent for the student to pursue a standard high school diploma and other appropriate measurable long-term postsecondary education and career goals;
- Of intent to receive a standard high school diploma and a Scholar or Merit designation as determined by the parent; and<sup>15</sup>
- Of 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.

IEP teams are required to invite agencies,<sup>16</sup> with parental consent if the student has not reached the age of majority consent, that may provide services after the student exits high school and include consideration of pre-employment transition services<sup>17</sup> through the Division of Vocational Rehabilitation (VR)<sup>18</sup> in the development of post-secondary and career goals.<sup>19</sup>

### ***Deferral of Receipt of a Standard Diploma***

A student with a disability who's IEP requires special education, transition planning, transition services or related services through age 21 may defer the receipt of their standard diploma. After deferral, the student must also be enrolled in accelerated college credit instruction, industry certification courses that lead to college credit, a collegiate high school program, courses necessary to satisfy the requirements for scholar designation, or a structured workstudy, internship or pre-apprenticeship program to continue to receive FAPE.<sup>20</sup>

<sup>14</sup> Section 1003.5716(2), F.S.

<sup>15</sup> See Section 1003.4285, F.S.

<sup>16</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. 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 47.

<sup>17</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. *Id.* at 48.

<sup>18</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, including, but not limited to, medical and vocational diagnosis, an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel; counseling, guidance, and work-related placement services; vocational and other training services; physical and mental restoration services; maintenance for additional costs incurred while participating in rehabilitation; interpreter services for individuals who are deaf; recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate service employment; occupational licenses; tools, equipment, and initial stocks and supplies; transportation; telecommunications, sensory, and other technological aids and devices; rehabilitation technology services; referral services designed to secure needed services from other agencies; transition services; on-the-job or other related personal assistance services; and supported employment services. Section 413.20(8) and (28), F.S.

<sup>19</sup> Florida Department of Education, *Senate Bill 726 Fiscal Analysis* (January 25, 2020) (on file with the Senate Committee on Education).

<sup>20</sup> Section 1003.4282(11)(c)-(d), F.S. Fla. Admin. Code R. 6A-1.09963(6).

The district must work with the student and his or her parent to review the benefits of deferring and describe in writing the services and programs available to the student who wishes to defer. The decision to defer is made by the parent, or the student if 18 or over, along with the rest of the IEP team, during the year the student is expected to meet all of the requirements for a standard diploma. This decision must be noted on the student's IEP and the approval of the parent or student, if appropriate, may be documented on a separate form from the IEP.<sup>21</sup>

The parent and student must be informed in writing by January 30 of the year in which the student is expected to meet graduation requirements, that:

- Failure to defer releases the school district of the obligation to provide FAPE;
- The deadline for acceptance or deferral is May 15 of that year; and
- Failure to attend the graduation ceremony does not constitute deferral.<sup>22</sup>

Students do not need to defer every year after this decision is made. The deferral will last until the student is no longer eligible for FAPE or chooses to receive their diploma.<sup>23</sup>

### III. Effect of Proposed Changes:

The bill amends s. 1003.5716, to modify communication and timeline provisions for developing an Individual Education Plan (IEP) in order to ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities. Such modifications may provide parents and students with additional information and time to make informed decisions to meet the student's post-secondary needs for success. Specifically, the bill requires:

- An IEP team to start the transition process during the student's seventh grade year rather than before age 14, and have an operational plan in place that is implemented on the first day of the student's first year in high school or when he or she attains the age of 16, whichever occurs first.
- School districts to provide information to parents and students on the school district's high school-level transition courses and vocational, career, and collegiate programs available to students with disabilities, and how to access such programs, including:
  - School-based transition programs;
  - The Florida Center for Students with Unique Abilities (FSCUA);<sup>24</sup> and

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<sup>21</sup> 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 64.

<sup>22</sup> *Id.*

<sup>23</sup> Students with disabilities are no longer eligible for FAPE if awarded a standard high school diploma or attained age 22. *Id.* Fla. Admin. Code R. 6A-1.09963(6).

<sup>24</sup> In 2016, the Florida Legislature established FCSUA located at the University of Central Florida. The purpose of FSCUA is to increase independent living, inclusive and experiential postsecondary education, and employment opportunities for students with intellectual disabilities through degree, certificate, or nondegree programs and to establish statewide coordination of the dissemination of information regarding programs and services for students with disabilities. Section 1004.6495, F.S.

- Programs and services provided by the Division of Vocational Rehabilitation (VR), the Agency for Persons with Disabilities (APD)<sup>25</sup>, and the Division of Blind Services.<sup>26</sup>
- School districts to provide applications<sup>27</sup> for VR services and APD services to students and parents at IEP meetings.
- School district IEP teams to discuss with parents restrictions on information sharing that come into effect without the appointment of guardianship upon a student with a disability turning 18 years of age.
- Parents to attest in writing that they understand the process for deferment of a high school diploma and whether the student will defer the receipt of such diploma to no later than May 15 of the year the student will graduate.
- The Florida Department of Education (FDOE) to conduct a review of existing transition services and programs to establish uniform best practices for such programs to deliver appropriate employment, pre-employment, and independent living skills education to enrolled students.
- The FDOE to establish and publish on its website uniform best practices by July 1, 2022.

The bill takes effect on July 1, 2021.

#### **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.

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<sup>25</sup> The APD is responsible for providing all services provided to persons with developmental disabilities pursuant to current law, including the operation of all state institutional programs and the programmatic management of Medicaid waivers established to provide services to person with developmental disabilities. Section 20.197, F.S.

<sup>26</sup> The Division of Blind Services is responsible developing and implement a state plan for vocational rehabilitation services for individual who are blind. Section 413.011, F.S.

<sup>27</sup> When an application is signed and dated by a customer or his/her representative, a 60-day clock begins to determine eligibility under federal law. Since students with disabilities who are 14-21 years of age are potentially eligible for Pre-Employment Transition Services, an application for traditional VR services is not required to receive these services. Providing students an “application” may create the unintended consequence of starting the clock for the Division to determine eligibility for “vocational rehabilitation services,” as opposed to “pre-employment transition services,” when such eligibility determination would be premature and unnecessary. Florida Department of Education, *Senate Bill 726 Fiscal Analysis* (January 25, 2020) (on file with the Senate Committee on Education).

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 726 has no impact on state revenues or expenditures.

However, the Florida Department of Education (FDOE) may incur costs associated with conducting a review of existing transition services and programs for students with disabilities and establishing uniform best practices for such programs. The FDOE may also incur costs establishing and publishing uniform best practices on its website.<sup>28</sup>

**VI. Technical Deficiencies:**

None

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the section 1003.5716 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

**CS by Education on March 9, 2021:**

The committee substitute conforms language in the bill to denote that the deadlines for implementation of the individual education plan by the first day of high school or by age 16 are subject to whichever occurs first.

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<sup>28</sup> Florida Department of Education, *Senate Bill 726 Fiscal Analysis* (January 25, 2020) (on file with the Senate Committee on Education).

B. Amendments:

None.

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

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