

2 An act relating to assuring the civil rights of K-12 students with disabilities to a high quality
3 education as required by Florida’s constitution, and as will assure that such students become as
4 independent and involved in society as their disabilities will allow, amending s.1003.57, Fla. Stat.;
5 providing for special education and related services in the least restrictive environment; providing a
6 hearing process that promotes and increases early resolution and makes parents full participants
7 without financial burdens; amending s. 943.03(2)(d) to allow citizens to record public officials in
8 the course of their duties without their consent; and providing an effective date.

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

10 Section 1. Effective upon this act becoming a law, section 1003.57, Florida Statutes, is
11 amended to read:

12 (1) Legislative findings. The legislature finds that:

13 (a) Florida benefits economically and socially when students with disabilities receive special
14 education and related services based upon peer reviewed research where such research exists, and
15 evidence based best practices where peer reviewed research does not exist, sufficient to prevent
16 and/or close achievement gaps with their typically developing peers and successfully transition to the
17 post secondary outcomes of their choice with their original cohort, to the extent their disabilities
18 allow with effective and appropriate interventions and related services.

19 (b) Florida benefits economically and socially when the Florida Department of Education
20 (hereafter “Department”) discharges its general supervision obligation under federal law to ensure
21 that every district school board provides each student with a disability a free appropriate public
22 education in the least restrictive environment as soon and as long as a child needs additional
23 assistance to close the achievement gap with their non-disabled peers, and keep it closed.

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24 (c) The state benefits when the Department ensures that each student with a disability in
25 Florida who has not yet completed the requirements for a standard high school diploma and who has
26 not finished the semester during which they turn 22 receives free appropriate elementary or
27 secondary education (including, but not limited to, vocational education and dual community
28 college enrollment if the student desires) that prepares them for further education, employment and
29 independent living.

30 (d) Florida benefits economically and socially when the Department holds the district school
31 boards accountable for providing effective services to students with disabilities at the earliest
32 possible opportunity and continuing thereafter until such students can be as independent and
33 involved in community life as their disabilities allow with effective and appropriate interventions
34 and related services.

35 (e) More than eighty percent of Florida's students with disabilities are capable of mastering
36 Florida's State Sunshine Standards and the general curriculum when provided appropriate and
37 effective accommodations and supplemental services, special education and related services in the
38 least restrictive environment.

39 (f) Florida benefits economically and socially when complaint resolution mechanisms under
40 this section are as quick, informal, non-adversarial, inexpensive as possible, and result in an
41 enforceable decisions made by the Department or an impartial hearing officer on all issues at the
42 earliest possible time consistent with parent and student constitutional rights and federal and state
43 law.

44 (g) With the exception of federal regulations that are inconsistent with (1) this section and
45 (2) legislative findings and intent to provide effective interventions and services at the earliest
46 possible opportunity to students with disabilities in the least restrictive environment, such that they

47 ~~draft 11232008~~ have an equal opportunity to master the same K-12 standards that apply to all Florida students and
48 acquire the academic, behavioral, social, and communication skills required to live as independently
49 as the nature and severity of their disabilities allow after high school; federal regulations under 20
50 U.S.C. 1400 et seq. are hereby adopted, as they may be from time to time amended.

51 (h) It is the legislative intent that students with disabilities not be required to repeat the same
52 courses in which the same interventions are used, when they did not close the achievement gap the
53 first time. Notwithstanding any other statute, students with disabilities may be exempted from
54 repeating remedial and intensive courses that did not close the achievement gap as determined by the
55 parents, or the individual education program team or other school team.

56 (i) It is legislative intent that students with disabilities receive appropriate special education
57 and related services in addition to and in support of, rather than instead of, the general curriculum,
58 unless parents give informed consent that the nature and severity and manifestations of the disability
59 prevent it.

60 (j) Effective services are more likely when parents and the public have access to the data
61 regarding effectiveness of instruction and related services. Therefore, district school boards and the
62 Department shall publish for alternative schools and for students with disabilities the same aggregate
63 data that is published under Title 1, for each individual class and school where there are at least two
64 students in any reporting group.

65
66 (2) When this section uses “district school board”, it includes all other government agencies
67 providing educational services to students who have not yet completed the requirements for a
68 standard high school diploma who have not finished the semester in which they turn 22; and any
69 government agency required by state or federal law to provide K-12 instruction; and any

70 ~~government agency receiving federal or state matching Title 1 or IDEA funds or any other K-12~~
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72 funds.

73 ~~(1)(3)~~ Each district school board shall provide for appropriate ~~program of special instruction,~~
74 ~~facilities, and services for exceptional students as prescribed by the State Board of Education as~~
75 ~~acceptable, including provisions that~~ accommodations and facilities for students with disabilities;
76 and appropriate special instruction and related services for students with disabilities who need them,
77 which is consistent with current peer reviewed research where that exists, and evidence based best
78 practices and high quality educational opportunity designed to give the students equal opportunity to
79 master Florida State Sunshine Standards and meet their unique needs, and prepare them for further
80 education, employment and independent living, transitioning with their original cohort, to the extent
81 that the nature, severity and manifestation of their disabilities allow, including provisions that:

82 _____ (1)(a) The district school board provide the necessary professional services for diagnosis
83 and evaluation and eligibility determinations for students with disabilities within 45 calendar days of
84 receipt of parent's written request for or consent to evaluation, unless parents agree to waive that
85 time frame in the interest of the child, whether or not the student is presently enrolled in public
86 school.

87 _____ (1)(b) The district school board provide the accommodations, special instruction, classes,
88 and services, either within the district school system, in cooperation with other district school
89 systems, or through contractual arrangements with approved private schools or community facilities
90 that meet standards established by the commissioner.

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~~(1)(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.~~

~~(1)(d)(c) The district school board, once every 3 years, submit to the Department (1) its proposed procedures for the provision of special instruction and services for exceptional students; (2) data that shows its proposed procedures result in effective instruction and related services allowing students with disabilities to fully access the high quality instruction it provides to all students and acquire the skills to successfully transition to the post secondary outcome of the student's choice, (3) data that shows at least eighty percent (80%) of the district's students with disabilities are being served in non-ESE classrooms ; (4) if the data does not show that the proposed procedures are effective and/or enough students with disabilities are being served in non-ESE classrooms, an action plan describing the nature of the difficulty with proposed timeline for correction; and (5) a sworn statement that the data accurately represents the quality and content and effectiveness of the instruction and related services provided. The district school board and the Department shall maintain these plans in public areas of their websites. When at least eighty percent of a district school board's students with disabilities have graduated with a standard diploma with their original cohorts for two consecutive years, that district school board is exempt thereafter from this requirement so long as those results continue.~~

~~(1)(e) (d) 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~~

114 ~~he, or she is entitled to a due process hearing on the identification, evaluation, and placement, or lack~~
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115 thereof. Such hearings shall be exempt from the provisions of ss. 120.569, 120.57, and 286.011,

116 ~~except to the extent that the State Board of Education adopts rules establishing other procedures and~~

117 ~~any records created as a result of such hearings shall be confidential and exempt from the provisions~~

118 ~~of s. 119.07(1). The hearing must be conducted by an administrative law judge from the Division of~~

119 ~~Administrative Hearings of the Department of Management Services. The decision of the~~

120 ~~administrative law judge shall be final, except that any party aggrieved by the finding and decision~~

121 ~~rendered by the administrative law judge shall have the right to bring a civil action in the circuit~~

122 ~~court. In such an action, the court shall receive the records of the administrative hearing and shall~~

123 ~~hear additional evidence at the request of either party. In the alternative, any party aggrieved by the~~

124 ~~finding and decision rendered by the administrative law judge shall have the right to request an~~

125 ~~impartial review of the administrative law judge's order by the district court of appeal as provided by~~

126 ~~s. 120.68. Notwithstanding any law to the contrary, during the pendency of any proceeding~~

127 ~~conducted pursuant to this section, unless the district school board and the parents otherwise agree,~~

128 ~~the student shall remain in his or her then-current educational assignment or, if applying for initial~~

129 ~~admission to a public school, shall be assigned, with the consent of the parents, in the public school~~

130 ~~program until all such proceedings have been completed.~~ A student with a disability shall be

131 provided appropriate accommodations and free appropriate public education when the district school

132 board becomes aware that the student has or may have a disability that impacts the student's

133 communication, ability to learn, mobility, social skills, emotional stability, and/or ability to acquire

134 the skills necessary to successfully transition to independence and the post secondary outcome of the

135 student's choice, unless both parents opt out with informed consent. A district school board may

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not report a student with a disability for funding as an exceptional student until he or she has been properly evaluated, classified, and placed in the manner consistent with federal and state law.

(1)(f)(e) In providing for the education of ~~exceptional~~ students with a disability, 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 with a disability shall occur only if the parent gives informed consent, or an administrative law judge, or a court finds that the nature or severity of the disability ~~exceptionality~~ is such that education in regular classes with the use of research based and effective supplementary aids and services cannot be achieved satisfactorily, as required herein.

(1)(g)(f) In addition to the services agreed to in a student's individual education ~~plan~~ program, 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.

(4) Notices.

(a) The parent of a student with disabilities shall be notified when a district school board proposes to deny eligibility or deny any parental request concerning accommodations, supplementary services, eligibility, special education or related services or related matter affecting the student's education.

(b) The district school board shall notify the parent ten business days before district school board begins initial services or seeks to change any previously agreed to accommodations,

159 ~~supplementary aids or services, special education, or related services; and may not make the~~
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160 proposed changes without informed parental consent unless an administrative law judge determines
161 that doing so is required to provide the child free appropriate public education, and that finding is no
162 longer under appellate review. The district school board shall implement each element of the
163 proposal to which parents do consent, even if the parents do not consent to all elements of it.

164 (c) Notices shall be consistent with federal law, and fully describe (1) the objective data and
165 research upon which the decision is being made; (2) the full range of options that were considered in
166 sufficient detail that parents can fully determine the complete nature of the proposal, the likelihood
167 that the proposed actions will prevent or close an achievement gap with their student's non-disabled
168 peers; meet the student's goals, access the general curriculum and successfully transition to the post
169 secondary outcome of their choice; and (3) full and complete reasons why the district school board
170 does not agree that the parental requests are appropriate for the student. The purpose for this
171 provision is to prompt district school boards to make decisions based on data after fully considering
172 expert and parent recommendations, and current research; and after considering every reasonable
173 way to resolve the dispute at the lowest possible level, providing complete information so that
174 parents, the Department and anyone who reviews the notice and the decision knows the full basis on
175 which it was made.

176 (d) The notice shall also inform the parent that they may challenge the district school board's
177 decisions by asking the Department to arrange mediation, filing a state complaint or filing a request
178 for an impartial due process hearing.

179 (e) The notice shall inform the parents that they may challenge the Department's exercise of
180 its general supervision obligation to ensure provision of free appropriate public education under
181 federal law and this section by filing a complaint with the Department's Inspector General.

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183 (5) Stay put. Once a parent files a request for mediation, a state complaint or a request for impartial
184 due process hearing, during the pendency of any proceedings conducted pursuant to this section and
185 federal law, unless the district school board and the parents otherwise agree, the child shall remain in
186 the student’s then-current educational placement, or if applying for initial admission to a Florida
187 public school, shall with the consent of the parents, be enrolled in public school with services to
188 which parent agrees, including if applicable the services and accommodations the child has already
189 been receiving under individualized family service plan (IFSP), or individual support plan (ISP) or
190 Section 504 or transfer individual education program (IEP), until all such proceedings have been
191 completed.

192 (a) Nothing in this clause shall be construed to allow district school boards to suspend or
193 delay compliance with any substantive or procedural obligation under federal and state law during
194 the pendency of any mediation, state complaint, hearing, or appeal process, except to the extent that
195 the parents explicitly object to district school boards’ efforts to comply.

196 (b) Nothing in this clause permits a district school board to withhold implementation of
197 every element of an IEP, Section 504 plan, IFSP, or ISP that parents have not challenged, when
198 parents object to one or more elements but not the whole; or to fail to make all changes that are
199 required for free appropriate public education as the student’s needs and circumstances change
200 unless the parents explicitly object.

201 _____
202 (6) District School Boards may change the student with a disability’s placement to an alternative
203 placement for 45 days for disciplinary purposes only when, after considering all information
204 provided by the parents and the professionals who have previously evaluated or treated the student,

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205 and school personnel who have provided the student services that have been effective at closing the
206 achievement gap with non-disabled peers or keeping it closed, the IEP team determines based on that
207 evidence, that:

208 (a) The behavior for which the change in placement is sought is not a manifestation
209 of the child's disability;

210 (b) The behavior is not the result of bullying or harassment for which the student had
211 not received appropriate support or services;

212 (c) The removal is necessary to preserve school safety and there is no other
213 reasonable alternative;

214 (d) The proposed alternative placement (1) meets the student's academic needs; (2)
215 provides research based and effective intensive diagnosis, instruction and related services to address
216 the student's behavior that prompted or may have prompted the removal; and (3) will allow the
217 student to progress in the general curriculum and with all of the student's IEP goals at the same or
218 better rate that the student was progressing before the transfer, which progress shall close or keep
219 closed any achievement gap with non-disabled peers. The data the district school board uses to
220 prove this must be publicly available, and provided to the parent at the time of placement;

221 (e) The proposed alternative placement will not expose a vulnerable student to other
222 students who are or may be inappropriate role models; and

223 (f) The student's individual education program and/or Section 504 plan already
224 included all the special education and supplementary aids and services that the student required to
225 have equal access to mastering the State Sunshine Standards and successfully transition to further
226 education, employment and independent living; and was fully implemented by qualified personnel.

228 ~~(7) Mediation. The Department shall identify certified circuit, supreme court and federal court~~
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229 mediators who are willing to mediate disputes under this section, and shall provide the parents and
230 the district school boards with biographical and professional information about such mediators. If
231 the parties cannot agree on a mediator, the Department shall select the one who is able to meet the
232 parent's schedule who is first in a rotational list established objectively. The Department shall pay
233 for mediation and annually publish data about mediation/mediator effectiveness; the nature of the
234 issues that parents or district school boards bring to and/or resolve at mediation; and the rate of
235 successful mediation by district school board. District school boards, and the Department when it is
236 a party to the dispute, shall be represented at mediation by person(s) to whom the district school
237 board or Department has given authority to fully resolve all issues, who is not directly involved in
238 developing or implementing special education policy; or in providing accommodations, special
239 education, supplementary aids, or related services to the specific student involved in the mediation;
240 and who has not been involved prior to the mediation in resolving the specific dispute.

241 _____
242 (8) State complaints. The legislature finds that when the Department conducts a full and fair
243 investigation of parental allegations that district school boards are not following federal or state
244 laws, the complaints can be resolved more quickly and at least expense to all parties, and district
245 school board's corrective actions that may also improve outcomes for other students will occur more
246 expeditiously.

247 (a) The Department shall (1) review any documents provided by a claimant under this
248 section; (2) shall obtain and review district school board documents related to the child and the
249 allegations, and (3) shall interview under oath, by phone, video, in person and/or by written
250 questions, such witnesses as the parties identify as essential; unless the Department makes a finding

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251 that the evidence it might obtain by doing so is irrelevant or cumulative to other evidence, and it can
252 make a full and fair determination of every issue without so doing.

253 (b) A written or electronic verbatim record will be made of all interviews and document
254 reviews and will be public record, after redaction of the full name, address of the student or parents
255 and any teacher names that make it possible to identify the specific student. Findings of fact and
256 conclusions of law shall be published on the Department's website in each case within sixty (60)
257 calendar days of the receipt of the complaint, or on the date they are issued if the parties have
258 agreed to a time extension. Required disclosure under this section does not include the students'
259 educational records themselves, but it does require disclosure of which documents were reviewed.

260 (c) When the evidence in individual state complaint cases, mediation data, or the Division of
261 Administrative Hearing orders or transcripts suggests systemic (1) failure to provide students with
262 disabilities equal opportunity to master the general curriculum in the least restrictive environment
263 and/or (2) failure to comply with federal or state procedures, and/or (3) failure to provide high
264 quality special education and related services based on research and data that permit students with
265 disabilities to master state standards and develop skills and abilities they need to successfully
266 transition to the post secondary outcome of their choice, the Department shall broaden the inquiry as
267 needed to fully and swiftly correct a district school board and/or to directly provide free appropriate
268 public education to all of the affected students in compliance with state and federal law.

269 (d) When parents or district school boards file complaints that the Department has not
270 complied with federal or state law, the Department's Inspector General shall conduct a thorough
271 investigation consistent with subparagraph (a) - (c), (e), and (f) herein.

272 (e) The Department shall make findings in each case unless the parent has previously raised
273 the specific issue using substantially similar language and covering the same time period in an

274 ~~earlier due process hearing request under this section, which issue has been decided after a hearing~~
275 ~~that complies with federal law and this section, and for which there is no appeal still pending.~~

276 (f) If a party makes a request for due process on the same issues, covering the same time
277 frame after making a state complaint but before findings have been issued, the state complaint
278 resolution process will continue unless the administrative law judge issues its order resolving the
279 identical issues before the Department's investigation is finished, unless the parties agree to
280 withdraw the state complaint or stay its resolution.

281
282 (9) Hearings. The Department shall contract with the Division of Administrative Hearings of the
283 Department of Management Services, to provide impartial due process hearings as required by
284 federal law. The Division of Administrative Hearings shall hear any complaints against district
285 school boards and the Department and individuals employed by or agent for either, under this
286 section. Division of Administrative Hearings shall also have jurisdiction to hear any Americans
287 with Disabilities Act, Section 504, and FERPA claims that are related to failure to provide free
288 appropriate public education to students with disabilities or discrimination on the basis of handicap,
289 or retaliation against parents or school staff who are advocating on behalf of students with
290 disabilities, or failure to appropriately maintain records, if the district school board or public agency
291 does not have an established impartial hearing procedure for such claims, or if the district school
292 board or public agency waives hearing the claims in separate impartial hearing process, or if the
293 administrative law judge determines that interests of judicial economy favor hearing all the claims
294 together. When Division of Administrative Hearings hears all claims, all will be subject to this
295 section.

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296 (a) Such hearings shall be exempt from the provisions of ss. 120.569, 120.57, and 286.011,
297 and any records created as a result of such hearings shall be confidential and exempt from the
298 provisions of s. 119.07(1), except as outlined below. The Department and Division of
299 Administrative Hearings shall publish on their respective websites, all hearing final orders under this
300 section within ten (10) days of their entry.

301 (b) The administrative law judge shall permit the parties to fully present evidence and
302 confront and cross-examine witnesses before making a decision on any issue; except that (1) the
303 administrative law judge may exclude cumulative testimony; and testimony on issues that the
304 complaining party agrees to be irrelevant; and (2) the administrative law judge shall grant a
305 parent's motion for default if a district school board does not comply with its obligations under
306 federal law to respond to the due process hearing request with sufficient particularity to determine
307 the full and complete nature of the district school board's proposal, the research and data that
308 supports it and each of the facts and allegations that the district school board denies. The
309 administrative law judge shall not deny a hearing on res judicata grounds or mootness over a
310 party's objection unless (1) the issue was specifically raised by the complaining party, using
311 substantially similar language in a previous due process request; (2) the new complaint involves the
312 identical time frame of the earlier due process; (3) the issue was decided after the complaining party
313 had a full hearing under this section; and (4) the issue is no longer on appeal in any court. This does
314 not prevent an administrative law judge in an appropriate case from ruling that an issue is res
315 judicata and/or moot AFTER fully hearing and preserving the record on the matter.

316 (c) The administrative law judge may authorize discovery in addition to the hearing only in
317 extraordinary circumstances, including but not limited to when a district school board or the
318 Department has failed to make the timely disclosures required herein. The district school board or

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319 the Department shall furnish an electronic and a written transcript, to the parent for any discovery
320 approved under this section at no charge at least seven calendar days before the hearing, and shall
321 enter the entire transcript into the record of the proceeding. The district school board or the
322 Department shall pay all costs of any such extraordinary discovery including expert fees and travel
323 costs, unless parents agree otherwise.

324 _____ (d) Within twenty five (25) days after a request for due process has been filed, the district
325 school board will provide to the parent without charge legible copies in electronic format or on
326 paper, whichever parents choose, of the following, unless the parent waives the disclosure in whole
327 or in part:

328 _____ (1) All the educational records involving the student whose education is in dispute,
329 including but not limited to test protocols; records of service delivery; any expert or staff reports or
330 notes about the student; attendance records; correspondence, including but not limited to, electronic
331 messages concerning the student, the student's parents or family, and/or the specific programs or
332 services involved in the dispute between the district school board and the Department; video or
333 audio recordings; student's work samples retained by district school board or used in documenting
334 the students' compliance with goals or progress; and reports of computerized testing or instruction
335 which include the student.

336 _____ (2) The names, titles, school email address, home address, telephone numbers of each
337 district school board employee or agent who has provided or directly supervised educational
338 evaluation, instruction or services for the student, or who has been present when services were
339 provided by others or who has attended any Section 504 or individual education program meeting
340 for the previous four years, except that the district need only provide the last known address for any
341 former employee or agent.

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(3) All progress monitoring data for the previous four years in classes and groups attended by the student, and two years for programs in which the district school board is proposing placement; with the names for all students other than the student redacted.

(4) The personnel evaluations, actions and correspondence; discipline records; continuing education and training records; certification records; all data about results that the person has achieved with students to whom they have provided services; and assignment history of each district school board employee or agent named in (9)(d)(2) above; whether created by the district school board or obtained from a previous employer.

(5) When the district school boards request an expedited hearing as permitted by federal law, it must furnish the above information, and all documents pertaining to any recent or proposed discipline at the time it serves the hearing request.

(e) The district school board shall inform each person identified in (9)(d)(2) above that they may speak with parents or parents' representatives concerning their testimony in the case without repercussion; and shall produce for the hearing as witnesses without subpoena, or charge to the parent, any current employee or agent identified in (9)(d)(2) above whom the parent names as a witness, at the time and date requested, and shall pay such witnesses as provided by state law and existing contracts.

(f) Parents shall identify non-rebuttal witnesses within ten days after receiving the information required in (9)(d)(2) above, and give as much information as is practicable about when they will testify five days before the hearing begins.

(g) The hearing will be held at a place and time reasonably convenient for the parents and the parents' witnesses.

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366 (10) Neither an administrative law judge nor the Department may find that a district school board
367 has provided a specific child free appropriate public education, or that the Department has fulfilled
368 its duties under federal or state law if the administrative law judge or the Department or the
369 Department’s Inspector General finds that:

370 _____ (a) The district school board has failed to provide all of the accommodations, special
371 education, supplementary aids, and related services with fidelity that are included in the student’s
372 504 plan or IEP) and/or IFSP or ISP.

373 _____ (b) The district school board did not provide sufficient information and details about any
374 proposal for the parent to have given informed consent thereto, including but not limited to
375 providing it in advance for parents to adequately prepare for meetings.

376 _____ (c) The district school board denied parents or their agents and experts full opportunity to
377 observe the student’s instruction, teachers, service providers, schools, classrooms, or transportation;
378 and to observe any placements and programs to which the district school board proposed to assign
379 the student; or denied parents access to accurate and complete data about the results obtained in
380 those classrooms or programs This provision does not exempt parents from security procedures that
381 apply to all school visitors, nor does it prevent a district school board from seeking and enforcing a
382 court order to exclude a parent whose behavior raises safety questions beyond speech, provided that
383 the district school board has offered and included services in the student’s IEP to address their
384 concerns about the parent’s behavior prior to seeking the court order, and arrange for alternative
385 opportunities for parents’ agents to observe.

386 _____ (d) The district school board or Department prevented or obstructed parents from recording
387 conversations with school employees and agents acting in the course of their official duties,

388 ~~including but not limited to~~
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389 including but not limited to Section 504 and individual education program meetings, or from
390 recording their own child in the school environments. Parents shall not intentionally record other
391 children except to the extent that the children are being instructed, supervised, or transported with
392 their child, and may not disclose any recording permitted under this section of any identifiable child
393 other than their own, except to school personnel, persons who are evaluating or treating their child,
394 persons who are assisting the parent in advocating for the specific child or for students with
395 disabilities generally, and the administrative law judge, Department, or court, without the
396 permission of the parents of the other child(ren).

397 (e) The district school board failed to fully and timely implement current replicable research
398 with fidelity for the student.

399 (f) The district school board denied students with disabilities access to and the benefit of the
400 statutory provisions that apply to all students in Florida.

401 (g) The district school board failed to give supplementary aids and support in the regular
402 classroom, unless the parents gave informed consent to that decision.

403 (h) The district school board failed to prove that its proposed change in accommodations,
404 special education, supplemental services, or related services to which parents do not consent, is
405 required to meet the goals of federal law and this section.

406 (i) The district school board did not produce progress monitoring data, and evidence that it
407 had timely adjusted the scope, frequency, intensity, teacher/pupil ratio, duration, teacher training,
408 content, length of school day or year, delivery of instruction, and/or methodology in attempting to
409 close the achievement gap for the particular student and prepare him or her to successfully
transition; or have the informed consent of the parent in its decisions not to do so.

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410 (j) The district school board or Department obstructed or failed to pay for an Independent
411 Educational Evaluation without seeking a due process hearing within ten days of parent's request
412 for it, including but not limited to paying for the independent evaluator(s) to participate in the IFSP,
413 ISP, IEP or Section 504 meeting where the results were discussed, and for the evaluator(s) to
414 observe the student in the classroom to the extent that the evaluator(s) reasonably determine a need
415 to do so.

416 (k) The Department knew or should have known about the district school board failures in
417 the specific or a similar case and did not take sufficient corrective action immediately to ensure that
418 the failure was corrected.

419 (l) The district school board or Department orally or in writing outside the procedural
420 safeguards notice told the parents that they might have to pay the district school board's legal costs if
421 they went forward with the complaint, unless the district school board has complied fully with
422 federal and state law and this section and (1) the parents complaint on its face has no basis in law or
423 in fact, and parents failed to correct the problem within 30 days after the district school board asked
424 them to do so and provided objective information about how to correct the deficiency; or (2) the
425 district school board has admissible evidence that the parents brought the case for an improper
426 purpose such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.
427 This section does not prevent a district school board from making such statements to an attorney
428 representing the parents.

429 (m) The district school board restrained or secluded the student (1) without the informed
430 consent of the parent; (2) without informing the parents verbally as soon as possible after the
431 restraint or seclusion has ended, and in writing with the incident details within twenty-four (24)
432 hours, which incident report was published on its public website with personal identifying details

redacted: (3) use of physical restraint; and/or (4) used seclusion or restraint for punishment, to
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compensate for inadequate staffing, for the convenience of staff, or when there was no imminent threat of serious bodily injury to staff or student and no current prescription either in writing or oral from a qualified psychiatrist or psychiatric nurse practitioner for such restraint or seclusion; or in other violation of 65E-9.013, F.A.C., as it may hereafter be amended. “Restraint” and “seclusion” are defined under s. 394.455.

(n) The district school board has (1) retained the student without having modified the content of the instruction, the methodology, the amount, frequency, training of instruction, duration, teacher pupil ratio, and/or other delivery of the instruction at least every two weeks over a period of at least one hundred and twenty (120) school days as indicated by progress monitoring data; and /or (2) has retained or promoted the student for cause without having diligently sought parental consent to initial evaluation under the IDEA or Section 504, or re-evaluation, and completed the evaluations before retaining the student.

(o) The district school board discouraged or restricted communication between the parents or their agents and the district school boards’ evaluators, teachers, paraprofessionals, experts, or other persons providing direct services to the student, unless those restrictions were imposed by a court to which the district school board disclosed its duty under federal law (e.g. Title 1, IDEA) concerning full and equal parent participation.

(p) For any period of time (1) that the student was interviewed by school administrative or disciplinary staff and/or the school resource officer about the student’s speech or behavior without a parent being notified and having the opportunity to be present; or (2) if the district school board, or its employees requested, referred, recommended, or encouraged school resource or other law enforcement officers in the arrest of the student who does not have age appropriate academic,

456 communication or social skills, as indicated by objective measures, for behavior that occurred at
457 school or school activities unless the district school board's actions were pursuant to subpoena, or
458 court order.

459 (q) For any time period during which the district school board failed to continue services that
460 it (1) had agreed to provide in an earlier individualized family support plan, individual support plan
461 and/or earlier individual education program, or (2) is required under the transfer provisions of
462 IDEA to provide; which parents have not consented to reduce or eliminate or asked to be changed
463 and/or have revoked consent to reduce or eliminate, until an administrative law judge orders that the
464 service be reduced or eliminated, which decision does not remain under appeal.

465
466 (11) The decision of the administrative law judge shall be final, except that any party aggrieved by
467 the decision rendered by the administrative law judge shall have the right to bring a civil action in
468 the state circuit court or federal district court. In such an action, the court shall receive the records
469 of the administrative hearing from the district school board and/or Department at no cost to the
470 parent, and shall hear additional evidence at the request of either party to the extent that such
471 evidence arose after the initial hearing was held, or was unavailable for that hearing or improperly
472 excluded, or that justice requires its admission. If the court hears additional evidence or the parties
473 require additional discovery, the district school board and/or Department if a party, shall furnish to
474 the parent a verbatim electronic and written transcript of any such hearing of additional evidence, or
475 a verbatim electronic or written transcript of any such discovery, at no charge to the parent.
476

477 (12) Neither the Department nor the administrative law judge nor any courts shall give deference to
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478 district school board and/or the Department's staff or experts, except to the extent that the district
479 school board or Department proves that:

480 (a) At least eighty percent of its students with disabilities in the previous two years have
481 graduated with a standard diploma with their original cohorts.

482 (b) The accommodations, special education, supplementary and/or related services provided
483 by the district school board are based on peer reviewed research applicable to the category of
484 disability where that research is available, and otherwise based upon best practices established
485 through data; and consistent with the high expectations of this section.

486 (c) As implemented in the classes and at the schools where the specific student is being or is
487 proposed to be educated, the accommodations, special education, supplementary and/or related
488 services have closed the achievement gap for students similar to the student in the instant case.

489 (d) The experts and staff to whom deference is given demonstrate to the fact finder that they
490 have both (1) extensive knowledge of current replicable research on the specific issues about which
491 they are testifying, and (2) experience in applying and/or recommending interventions that
492 implement the research and result in successful outcomes for students with disabilities, shown by
493 objective data.

494 (e) District school boards or the Department produce data collected with integrity and
495 capable of independent review in support of their opinions and recommendations, which has not
496 been rebutted or contested.

497 (f) The experts testifying for the district school board were involved in the specific student's
498 evaluations, or recommending or providing accommodations and services based on replicable
499 research for the particular student or category of student in the specific school district before the

500 ~~complaint was made and~~
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501 complaints were not retained as litigation experts. The experts testifying for the
502 Department were substantially involved in identifying scientific research based practices and/or
503 evidence based practices and ensuring that the Department met its obligations to ensure free
504 appropriate public education to all students and/or assisting the Department in applying the research
505 to improve its compliance with federal and state law and this section, which efforts produced
506 objective results; and were not retained as litigation experts.

507 (13) Reviewing courts shall give deference to administrative findings only to the extent that those
508 findings strictly comply with this section, and effect the purposes of this section to provide high
509 quality and equal educational opportunity to students with disabilities.

510
511 (14) The legislature has considered proposals to shorten the statute of limitations and finds that there
512 is no evidence that short deadlines ensure early resolution or informed consent. Rather, short
513 deadlines help district school boards avoid accountability, and encourage the proliferation of
514 litigation, to the detriment of the student and the public. Therefore, the legislature has determined
515 that the appropriate statute of limitations shall be that which applies to actions founded on a
516 statutory liability under s 95.11, Fla. Stat.. The statute of limitations shall not limit appropriate
517 equitable relief for continuing violations when the parents did not give informed consent to the
518 continuing violations. The statute is tolled during any time period in which mediation, state
519 complaint resolution and/or due process hearings, and all appeals are underway. But no parent who
520 removes a child from public school who has actual knowledge of the right to a hearing, may bring
521 an action more than two years after that removal. When at least eighty percent of a district school
522 board's students with disabilities in the previous two years graduated with a standard diploma with

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523 their original cohorts, the statute of limitation for that district school board shall be reduced to two
524 years, provided that the district school board gives the parents of each student annual written notice
525 of the new limitation in the language in which they communicate.

526
527 (15) Burden of proof. District school boards and the Department shall have the burden of proof,
528 burden of persuasion, and burden of production in complaints under this section. When a district
529 school board has graduated for two consecutive years at least eighty percent of its students with
530 disabilities with a standard diploma with their original cohorts, the district school board shall have
531 the burden of proof that initial IFSP, ISP, and IEP or Section 504 plan provides free appropriate
532 public education for the student; and that the district school board has complied with IDEA and this
533 sections's procedures, including but not limited to obtaining informed parental consent; and the
534 party proposing to change the IEP or Section 504 plan or IFSP or ISP shall have the burden of proof
535 that the change is required for free appropriate public education.

536
537 (16) The Florida Department of Education shall have the authority and obligation to:

538 (a) Provide district school boards notice of current peer reviewed research and evidence
539 based best practices for educating students with disabilities in each eligibility category under federal
540 and state law, and preparing them for further education, employment and independent living.

541 (b) Ensure that district school boards seek out and find every student with a disability at the
542 earliest possible time so that appropriate services can be provided.

543 (c) Ensure that district school boards implement current peer reviewed research --- and
544 evidence based practices where scientifically based research does not yet exist---, with fidelity; and
545 in the least restrictive environment for each student with a disability.

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546 (d) Ensure that Division of Administrative Hearing judges are impartial, well-trained in all
547 elements of federal and state law and the research concerning educating students with disabilities,
548 and in district school boards' and Department's obligations under this chapter; and that Division of
549 Administrative Hearings's final orders are consistent with federal and state laws concerning students
550 with disabilities, a high quality education, equal access to the educational opportunities afforded
551 non-disabled students under Florida Statutes, and high expectations for individual student success;
552 and publicly available.

553 (e) Ensure that it reviews each Division of Administrative Hearings final order under this
554 section within thirty days of filing. If the Department determines that Division of Administrative
555 Hearings's findings or conclusions (1) inaccurately describe the disability and/or current research
556 and evidence based best practices; and/or (2) are inconsistent with high expectations for students
557 with disabilities, current research about effective interventions, methodologies or delivery of special
558 education or related services or supplementary services and accommodations; equal access to
559 educational opportunities for students with disabilities; and/or federal or state laws or regulations, it
560 shall notify Division of Administrative Hearings in writing and shall request reconsideration of the
561 findings of fact and/or conclusions of law, and offer to train Division of Administrative Hearings
562 accordingly. That notice of deficiency shall thereafter become part of Division of Administrative
563 Hearings's final order and be publicly available with the Department's website posting of final
564 hearing orders; and the Department and its experts shall appear in any further appellate proceeding
565 without subpoena or cost at the request of either party to testify about the disability and the current
566 state of the research and the high expectations Florida has for its students with disabilities.

567 (f) Enact teacher certification and recertification and course code requirements that:

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568 (1) Ensure that each teacher and paraprofessional working with students with disabilities
569 knows and can apply peer reviewed research and evidence based best practices including progress
570 monitoring for the students they teach; and knows the subject matter content they teach.

571 (2) Ensure that all certification and recertification requirements for teachers and
572 paraprofessionals working with students with disabilities are proven to increase the educational
573 results for such students, eliminating any requirement for which reliable data to that end is not
574 available. This clause shall not prevent the Department from re-imposing requirements after they
575 have obtained data that shows the requirement does lead to improved results.

576 (g) Investigate complaints against district school boards that arise under federal or state laws
577 relating to the education of students with disabilities.

578 (h) Take testimony under oath from district school board employees or agents, from experts,
579 from parents and from other witnesses to fully and fairly determine whether district school boards or
580 their employees or agents have (1) violated federal and/or state laws, regulations or procedures for
581 determining and providing services to students with disabilities; (2) failed to implement scientifically
582 based research where available, or evidence based best practices, accommodations, special education
583 and related services, and supplementary services, in the least restrictive environment; (3) violated
584 FERPA or state educational records laws; or (4) discriminated or retaliated against any person on
585 the basis of disability and/or engaging in advocacy on behalf of those with disabilities.

586 (i) Ensure that those Department staff who investigate and/or monitor compliance under
587 federal law and this section are appropriately trained and knowledgeable about (1) the current
588 educational research, as it applies to identifying and providing free appropriate public education to
589 students with disabilities; (2) investigative techniques, and (3) related ethical issues; and that such

590 staff does not monitor or investigate school districts where they have been or may be employed or
591 have other potential conflicts of interest.

592 (j) Ensure that no public funds are spent by the Department or any district school board or
593 Division of Administrative Hearings on any training or conference concerning the education of
594 students with disabilities which parents and/or parent attorneys are not invited to attend on equal
595 conditions; or to subscribe to materials published as periodicals by organizations that exclude
596 parents and/or their agents and attorneys from full and equal access and participation.

597 (k) Ensure that district school board and Department funding formulas are placement neutral
598 and support inclusion.

599 (l) Identify state employees who are experts concerning evaluating and providing effective
600 services for students with disabilities, and negotiate with their agency employers for such experts to
601 be allowed to assist in implementation of this section, including, but not limited to, testifying in state
602 complaint and due process proceedings.

603 (m) Encourage and support additional research in identifying and implementing successful
604 interventions and strategies for students with disabilities, including but not limited to honoring
605 teachers whose students with disabilities close their achievement gaps, and publishing the
606 demographics of the student group, and the interventions used.

607 (n) Ensure that all the following documents are posted on its public website in an easily
608 retrievable format within ten business days of their filing:

609 (1) Office for Civil Rights complaints and findings concerning Florida district school
610 boards or the Department.

611 (2) Office of Special Education Programs (OSEP) correspondence with the
612 Department.

613 ~~draft11252008~~ (3) OSEP and the Department's monitoring reports.

614 (4) Each grant agreement concerning educational services that the Department or
615 district school boards execute, and all documents that the Department provides the United States
616 Department of Education in compliance with them, including by not limited to those submitted to
617 OSEP for IDEA monitoring purposes.

618 (5) Final decisions of federal courts hearing Florida cases under IDEA, FERPA
619 and/or Section 504 or the Americans with Disabilities Act sections that concern education of
620 students with disabilities and/or discrimination in education on the basis of disability, or retaliation
621 for advocacy on behalf of the disabled.

622 (6) State court decisions on the same matters as (5), and cases interpreting this
623 section.

624 (7) Non-final decisions of either federal or state courts on the same matters, which
625 have been appealed.

626 (8) Settlement or mediation agreements between parents and district school boards or
627 school staff or the Department on the same matters.

628 (9) Grant agreements and Department correspondence, and monitoring data
629 concerning other federal and state laws which fund educational services under which students with
630 disabilities may receive services, including but not limited to NCLB, the Perkins Act, and laws
631 concerning vocational rehabilitation

632 (10) All other documents required under this section to be publicly available.

633
634 (o) Withhold from any district school board's next scheduled disbursement, or from the
635 Department bureau responsible for monitoring if the complaint is against the Department, an

636 ~~amount equal to the Department's cost of conducting an investigation on a parents' or students'~~
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637 complaint, if the Department finds that the district school board violated federal or state laws or
638 rules, or the Inspector finds the Department has. The withheld funds shall immediately be used to
639 reimburse the Department or the Inspector General for the costs of investigation.

640 (p) Enforce Section 504 of the Vocational Rehabilitation Act of 1973 that prohibits
641 discrimination against students, against any school district board, or entity regulated by the
642 department which accepts federal funds for any K-12 educational purpose as a subgrantee of the
643 department, or person.

644 (q) Require that district school boards equip the buses on which it transports students who
645 are non-verbal and/or who cannot developmentally appropriately communicate with working video
646 and audio recording equipment and have a procedure for random review and reporting of any
647 violations of policy, safety problems, or other unusual events no less than once per week; and
648 preserving any recordings showing any abuse until all investigations have ended and the statute of
649 limitations for any claims has passed..

650 (r) Develop school building guidance that makes every new school and school playground
651 fully accessible, and provide incentives district school boards to retrofit existing buildings consistent
652 with the guidance.

653 (s) Enact such non-duplicative rules as are required to ensure the requirements of this section
654 are implemented.

655
656 (17) When the Department or its Inspector General or an administrative law judge or a court of
657 competent jurisdiction finds that one or more district school boards and/or the Department failed to
658 provide free appropriate public education and/or violated federal or state laws or procedures under

659 ~~this section and/or that~~
660 ~~draft 11/25/2008~~

any district school board, school staff, agency or state-certified individual
has discriminated, and/or retaliated against anyone for advocating for a student with a disability or
such students in general, they shall take action to assure the problem is resolved, including, but not
limited to:

663 (a) Order the district school board and/or Department to provide compensatory education for
664 the violations in sufficient amounts so as to make the student whole educationally. The rebuttable
665 presumption is that the Department, administrative law judge or court shall order compensatory
666 education hours at least equal to the amount of time that the student was denied appropriate
667 accommodations, special education, supplementary services, and/or related services, at the
668 prevailing community rate of specialized tutoring for students with disabilities and the cost of
669 transportation, paid to a special needs trust with parents choosing the trustee. The parents shall
670 determine how and when to use any trust created under this section, including, but not limited to,
671 whether or not to obtain the services from the district school board or private providers.

672 (b) Order the district school board and/or Department to provide compensatory education to
673 all other similarly situated students.

674 (c) Order the district school board and/or Department to reimburse parents for expense of
675 providing appropriate services after parents gave ten calendar days notice to the district school board
676 of their intent to seek private services. This may include, but not be limited to, reasonable
677 compensation for any parent- provided educational services that are beyond the amount or type a
678 parent would typically provide a child, if any, if the parent shows that (1) they were unable to find a
679 paid provider or unable to afford to pay a provider, (2) the parent received training as recommended
680 by the publisher of the intervention, and (3) the parent kept accurate time records of the services they
681 provided and the progress made.

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682 (d) Order the district school board and/or Department to pay prevailing parents' attorney
683 fees and costs at the prevailing rate in the community, and expert witness fees and expenses, cost of
684 obtaining and serving subpoenas, legal research, copying costs, exhibit preparation, transportation,
685 child care necessary to allow parents to prepare for and participate in hearing and discovery; and
686 cost of assistance by advocates. Parents who have participated in mediation who show that they
687 were unable to obtain legal counsel after a diligent search, and who keep accurate time records may
688 also be reimbursed for their time to prepare for and pursue the state or due process complaint
689 resolution process at their current hourly rate if employed, billing rate if self-employed, or at
690 minimum wage if they are not. The term 'prevailing party' shall include, in addition to a party who
691 substantially prevails through a judicial or administrative judgment or order, or an enforceable
692 written agreement, a party whose pursuit of a nonfrivolous claim or defense was a catalyst for a
693 voluntary or unilateral change in position by the opposing party that provides any significant part of
694 the relief sought.

695 (e) Order the district school board and/or Department to provide specific services and
696 instruction prospectively to the student and similarly situated students that are required to provide
697 free appropriate public education under federal law and this section.

698 (f) Order the district school board to preserve, correct, provide to parents without charge, or
699 protect from disclosure, educational records in the appropriate case.

700 (g) Order the district school board and/or Department to cease and desist from practices that
701 violate federal or state laws or are inconsistent with this section.

702 (h) Order the district school board and/or Department to privately place and transport
703 students at public expense.

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704 (i) Withhold federal and state funds from a district school board and/or Department which
705 fails to provide a student free appropriate public education and/or timely and permanently correct
706 systemic violations, and require the Department to use those funds to provide the required services
707 itself, directly or through contract.

708 (j) Suspend, revoke or deny certification of any person who discriminates or retaliates
709 against any parent, student, vendor, or school employee or agent because of their advocacy on behalf
710 of students with disabilities.

711 (k) Suspend, revoke or deny certification of any person who knowingly falsifies documents;
712 testifies falsely; or destroys educational records or data or material in any form related to claims
713 under federal or state laws concerning free appropriate public education except as that destruction
714 complies with the established law. This clause shall not require a district school board to retain more
715 than an accurate representative sample of a student's actual work product for each year, and all
716 work product used by the district school board to determine whether IEP goals are met, unless such
717 material is retained for other students.

718 (l) Suspend, revoke or deny certification of any person who prevents or obstructs close
719 relatives or guardians of students with disabilities from visiting their student at school or in school
720 activities without prior notice, and/or in violation of 42 U.S.C. 15009.

721 (m) Suspend, revoke or deny certification of any person who prevents or obstructs surrogates
722 appointed under IDEA from performing their duties under the law; or who fails after written notice
723 to extend to surrogates the full rights of parents under the law; or who participates in any effort to
724 undermine the purposes for which surrogates are appointed under the law.

725 (n) Take over a district school board's exceptional student education services, or a part
726 thereof (e.g. evaluations); and/or the Department's bureau responsible for exceptional student

727 education, including retaining, hiring and dismissing district school board and/or Department
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728 employees and agents who have been in a position to fix the delinquencies, but have failed to do so;
729 and terminating or granting contracts as required to correct the deficiencies.

730 (o) Hold a district school board; or the Department, if a party; or any responsible district
731 school board or Department employee in contempt, ordering payment of a fine and/or incarceration
732 if they fail to obey a Department, Office for Civil Rights, Administrative Law Judge, or Court order.

733 Any fines collected under this section shall be used to improve outcomes for students with
734 disabilities.

735 (p) Require any district school board or Department employee(s) to be retrained generally or
736 on specific issues.

737 (q) Order a District School Board to change a matrix to conform with what the student
738 actually needed for free appropriate public education; and/or to promote a student, when
739 appropriate;

740 (r) In circumstances where parents of a child with a disability disagree on what is
741 appropriate for the child and no court ordered appointment of parent for educational purposes exists,
742 order parents into training about the child's civil rights and/or mediation conducted by a parent
743 attorney or advocate who can help them reach agreement about what is appropriate; and/or order the
744 district school board to respect the informed consent of the parent who has the highest expectations
745 for the child and whose requests will affect the purposes of this section.

746 _____

747 (s) any other or additional remedy available under the law.

748 (t) Grant such other relief as is consistent with this section.

749 _____

750 (8) Restraint. It is the intent of the Legislature that the least restrictive means of intervention be
751 employed based on the needs of the individual student with disabilities. It is the policy of this state
752 that the use of restraint and seclusion on students with disabilities is justified only as an emergency
753 safety measure to be used in response to imminent danger to the students or others.

754 (a) Restraint and secured seclusion are interventions that are potentially physically and
755 psychologically dangerous to students and school personnel. Students with disabilities are especially
756 vulnerable to the harmful effects of restraint and secured seclusion. For these reasons, restraint
757 should be used only in emergency situations (where) in which there are no less intrusive alternative
758 strategies, and secured seclusion should not be permitted under any circumstances.

759 (b) Definitions

760 (1) "Restraint" refers to any manual method or physical or mechanical device,
761 material, or equipment attached to or adjacent to the student's body that the student cannot easily
762 remove and that restricts freedom of movement or normal access to student's body. This definition
763 includes mechanical restraint with a device, manual or physical restraint, and use of medication to
764 manage the student's behavior that is not a standard treatment for the student's condition.

765 (2) "Secured Seclusion" refers to the removal of a student from the educational
766 environment or activity and involuntary confinement of the student in a room or an area from which
767 the student is physically prevented from leaving. Actual physical contact is not necessary; a show of
768 authority or a threat of force or consequences is sufficient. "Secured Seclusion" does not include the
769 use of brief "time-out" interventions.

770 (3) "Time-out" refers to a period of time in which the student is placed in a less
771 reinforcing environment as the result of displaying a well-defined and articulated behavior. It is not
772 synonymous with extended periods of seclusion. With some students, time-out may have no effect on

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773 their behavior and should actually reinforce the targeted behavior. Time-out should never be used as
774 a punishment or a negative consequence of a child's behavior. It is never appropriate for
775 instructional staff to threaten a child with the use of time-out.

776 (c) Restraint.

777 (1) Use of restraint shall be limited to those emergency situations where there is a
778 demonstrable, imminent and ongoing risk of significant physical danger to self or others.

779 (2) Restraint shall never be permissible as a behavioral intervention.

780 (3) Restraint shall never be permissible solely for property damage, unless the
781 behavior otherwise qualifies under (c)(1) above.

782 (4) Restraint shall never be permissible as a response to a behavior(s) that has already
783 taken place unless the behavior otherwise qualifies under (c)(1) above.

784 (5) All school personnel interacting with students with disabilities shall receive initial
785 training and periodic refreshers in district approved emergency procedures for safe restraint of
786 students. Such procedures shall be reported to the Florida Department of Education through the
787 district's Special Policies and Procedures Manual.

788 (6) Prone restraints shall always be prohibited.

789 (7) Any student with a disability being restrained shall be medically evaluated by a
790 physician, nurse or other qualified medical personnel as soon as possible following the incident.

791 (d) Seclusion. Use of secured seclusion shall be prohibited for students with disabilities
792 under any circumstances.

793 (e) Time-out. Time-out will be permitted under the following circumstances:

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794 (1) It is part of a behavior intervention plan (BIP) developed for that student from a
795 functional behavioral assessment (FBA) and documented on that student's individual education plan
796 (IEP);

797 (2) It is preceded by other interventions utilizing positive behavioral supports and
798 only used if those interventions, which must be documented, are not effective;

799 (3) It takes place in the classroom or other environment where the class educational
800 activities are taking place;

801 (4) The child is never physically prevented from leaving the time-out area;

802 (5) The child is constantly observable by an adult;

803 (6) The time-out area and process must be free of anything that would be likely to
804 embarrass or humiliate the child;

805 (7) The time-out ends immediately when the child is calm enough to return to his/her
806 seat, but in no event exceeds one minute for each year of the child's age (i.e. - a five-year-old child
807 cannot be in time-out longer than five-minutes at any one time).

808 (f) Reporting Requirements:

809 (1) Each incident of restraint shall be followed up by a written report within 24 hours
810 from the time the restraint ended. If the restraint occurred on a day preceding a weekend day or
811 school holiday, or if school is closed for any reason on the succeeding day, the report shall be
812 completed by the end of the next school day.

813 (2) Each incident report shall include, but not be limited to, the following: (A) Name
814 or initials of the student; (B) Date and time of incident, including duration; (C) Type of restraint
815 used; (D) Location of incident; (E) Names and job titles of all staff involved in the incident; (F)
816 Names and job titles of all staff observing the incident; (G) Names or initials of all students

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observing the incident; (H) A specific description of the behavior that resulted in the restraint; (I) A statement of how the determination was made that the criteria in (B) above were satisfied; (J) A description of all interventions (if any) that were attempted prior to the restraint; (K) A copy of the report of the physical assessment required by (c)(7) above, and (L) Date of the most recent Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP), and a copy of the current BIP.

(g) Notification Requirements:

(1) The parent or guardian of a student with a disability who has been restrained shall be contacted by telephone as soon as practically possible, but in no case longer than one hour from the time the restraint ended.

(2) If school personnel are unable to reach the parent or guardian they shall document all attempts including the name of the individual(s) calling, the time of the call(s) and the number(s) called.

(3) A copy of the incident report required in (f)(1) above shall be provided to the parent or guardian as soon as possible but in any event no later than 24 hours from the time the restraint ended. The school shall obtain the parent's signed acknowledgment that he or she was notified and shall retain such acknowledgment on file. If the restraint occurred on a day preceding a weekend day or school holiday, or if school is closed for any reason on the succeeding day, the parent or guardian shall be provided the report by the end of the next school day.

(4) A copy of the incident report shall be provided to the Florida Department of Education Bureau of Exceptional Education and Student Services (FLDOE – BEESS).

(5) A copy of the incident report shall be provided to the Advocacy Center for Persons with Disabilities, Inc., the protection and advocacy system for the State of Florida.

(1) A copy of the incident report (with student names redacted) shall be provided to a community review group consisting of parents and school personnel. Such group shall be formed specifically in each county for the purpose of conducting timely reviews of each use of restraints in that county's schools. School districts will cooperate with parents of students with disabilities in setting up and participating in community review groups. At least half of the members of any such group shall be parents of students with disabilities.

~~(2)(a)~~ (19)(a) An exceptional student with a disability who resides in a residential facility and receives special instruction or services is considered a resident of the state in which the student's parent is a resident. The cost of such instruction, facilities, and services for a nonresident student with a disability shall be provided by the placing authority in the student's state of residence, such as a public school entity, other placing authority, or parent. A nonresident student with a disability may not be reported by any school district for FTE funding in the Florida Education Finance Program.

(b) The Department of Education shall provide to each school district a statement of the specific limitations of the district's financial obligation for exceptional students with disabilities under federal and state law. The department shall also provide to each school district technical assistance as necessary for developing a local plan to impose on a student's home state the fiscal responsibility for educating a nonresident exceptional student with a disability.

(c) The Department of Education shall develop a process by which a school district must, before providing services to an exceptional student with a disability who resides in a residential facility in this state, review the residency of the student. The residential facility, not the district, is responsible

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862 for billing and collecting from a nonresidential student's home state payment for the student's
863 educational and related services.

864 (d) The Department of Education shall formulate an interagency agreement or other mechanism for
865 billing and collecting from a nonresidential student's home state payment for the student's
866 educational and related services.

867 (e) This subsection applies to any nonresident student with a disability who resides in a residential
868 facility and who receives instruction as an exceptional student with a disability in any type of
869 residential facility in this state, including, but not limited to, a public school, a private school, a
870 group home facility as defined in s. 393.063, an intensive residential treatment program for children
871 and adolescents as defined in s. 395.002, a facility as defined in s. 394.455, an intermediate care
872 facility for the developmentally disabled or ICF/DD as defined in s. 393.063 or s. 400.960, or a
873 community residential home as defined in s. 419.001.

874
875 Section 2. Effective upon this act becoming a law, section 943.03(2)(d), Florida Statutes,
876 is amended to read:

877 (d) It is lawful under ss. 934.03-934.09 for a person to intercept a wire, oral, or electronic
878 communication when all of the parties to the communication have given prior consent to such
879 interception; or when the party or parties who have not given consent are public employees or agents
880 apparently acting in their official capacity and the interception does not involve unlawful access to
881 the communication.