



To: Florida District School Superintendents
From: Brian T. Moore, FADSS General Counsel
Subject: FADSS Legislative Update – Week of January 10, 2022
Date: Friday, January 14, 2022

The 2022 Legislative Session kicked off this week with the Governor’s State of the State address followed by multiple committee meetings. While the interim committee weeks did not include a lot of activity on bills that would affect school districts, many new bills were filed in the last few days leading up to the start of session, and several committees took up substantive bills right away.

State of the State

Governor DeSantis spent a significant portion of his speech talking about education in Florida, particularly drawing contrasts between Florida’s response to the pandemic and what we have seen in other states where students are still not going to school every day. He repeated his previous call to eliminate the FSA, saying that it will be replaced with periodic progress monitoring. Obviously, we will all need to pay close attention to the bills that have been filed to address this request and be prepared for all the parents and teachers who only hear “eliminate the FSA” and think high-stakes testing has come to an end in Florida.

The Governor also said that he wants to give teachers and principals another \$1,000 bonus this year. He then praised the parents who have been going to school board meetings to fight against critical race theory being taught in schools, because “Our tax dollars should not be used to teach our kids to hate our country or to hate each other.”

Budget and Other Funding Issues

Before we focus on specific bills considered this week, the Governor and Legislature spent quite a bit of time talking about financial issues that are worthy of discussion as well. The Governor pointed out that the state’s revenue continues to exceed forecasts (\$500 million more than forecast in December alone), and his proposed budget would allow Florida to put as much as \$15 billion into reserves. As we have previously discussed, his proposed budget would increase the BSA by about \$124 and increase a few categoricals, like the Teacher Salary Increase Allocation (TSIA) and mental health.

The legislative appropriation committees and subcommittees also received presentations on the Governor’s proposed budget this week. As was the case last year, the Chair of the *House PreK-*

12 Appropriations Subcommittee spent time chastising school districts and the federal government for all of the unspent federal COVID relief dollars, even when the Department of Education (DOE) representative pointed out that most of the “unspent” dollars he cited had been contractually obligated. Also, it does not appear that any districts have had their ARP funds released to them by the DOE yet. The chair also criticized districts for failing to follow the TSIA law, complaining that only 15 of the 67 districts had submitted their allocation plans so far, even though the DOE representative said that most districts were still in negotiations as opposed to simply ignoring the law.

It is also worth noting that FADSS recently surveyed school districts about the cost to implement the minimum wage increases over each of the next five years. Simply getting everyone currently below \$15/hour to that mark by 2026 will cost districts about \$400 million. To avoid having half the workforce compressed to the same \$15/hour salary and to be able to account for different responsibilities and experience, it would cost districts almost double that amount. This information was shared with both House and Senate staff members earlier this week, and the Senate President commented on the need to pay education support professionals more during his opening day remarks. He specifically referenced bus drivers, maintenance workers, food service workers, and “other true public servants in our public schools.” There was nothing akin to the TSIA for education support professionals in the Governor’s proposed budget, so we shall have to see if the Senate or House put forth proposals to designate specific funds for these employees or to otherwise address the new minimum wage requirements.

Legislation

It is apparent that the education-related priorities this session include critical race theory, addressing state assessments and accountability, parental involvement at school board meetings and in the schools, along with the regular topics of school funding and school safety. I will spend more time on these higher-impact items.

The *Senate Education Committee* considered bills that address school safety and statewide assessments.

HB 1421 (Hawkins) / SB 802 (Gruters) - School Safety

SB 802 was reported favorably by the *Senate Education Committee* and has two more committee stops. The House version was filed late last week and has not yet been referred to any committees.

These bills attempt to codify most of the remaining recommendations from the MSD Commission.¹ Among other things, these bills expand state-level oversight and enforcement of district compliance with school safety laws, provide for the withholding of Superintendent or school board member salaries for certain noncompliance, and require the development of family reunification plans for both natural and man-made disasters and emergencies. Districts will need

¹ It is worth noting that the recommendation from the MSD Commission’s Initial Report to “restore local authority to public school boards to levy up to a half mill without a referendum for law enforcement officers or guardians, or other direct school security expenses” has remained absent from proposed school safety legislation.

to work with the Division of Emergency Management, local, state, and federal law enforcement agencies, and others in the creation of these family reunification plans. The bills would also require that all members of a threat assessment team be present at every threat assessment team meeting, and it requires that the safe school officer assigned to the school be physically present whenever an emergency drill is conducted. Finally, the bill provides that school safety officers can make arrests on charter school property, which has been a question for those districts with their own police forces and the extent of their jurisdiction.

While the bill provides that the Commissioner can direct school boards to withhold the salary of the Superintendent if the Office of Safe Schools finds noncompliance with school safety laws, charter schools that fail to comply would receive no financial penalty. Instead, the Commissioner would only be directed to make suggestions to the school board to facilitate the charter school's compliance.

HB 1193 (Plasencia) / SB 1048 (Diaz) – Student Assessments

The Senate version was reported favorably in the *Senate Education Committee* this week and has two more committee stops. The House version was filed last week and has been referred to four committees, but it was not heard in the *House Early Learning and Elementary Education Subcommittee* this week.

As discussed above, the Governor has announced several times that he would like to see Florida move away from the FSA and reduce high-stakes testing. These bills were filed with that goal in mind, but neither provides any substantive changes to the current assessment and accountability system. With respect to the FSA, they do not appear to change anything other than calling the end of the year assessments something other than the FSA. Both bills would add progress monitoring assessments at the beginning and middle of each year with a final assessment being administered at the end of the year for which all the current high-stakes accountability laws would still apply. There is no proposed reduction in the grade levels taking these exams, nor are any changes to the current end of course examinations proposed. The bills also include a section on parents and their right to know how their children are doing, but it is largely just a duplication of what is already set forth in section 1008.25 for students who are exhibiting a reading deficiency.

Both bills require the Commissioner of Education to conduct a study and report the results to the Legislature by January 31, 2025. The Commissioner would be required to recommend “additional innovative ways to streamline testing.” It would also have to include an analysis of the correlation between the two new progress monitoring assessments to be given in the fall and winter and the high-stakes end-of-year assessments to see if the earlier assessments could be used in place of the end-of-year assessments.

The House version of this bill also includes changes to the turnaround statutes. It would require districts to start implementing strategies after a first grade of D, and it would allow districts to seek DOE approval of a turnaround plan after a first grade of D instead of waiting for a second. There are then two provisions that appear very problematic. First, the bill would require districts to enter into two-year contracts with an external operator but then makes that contract between

the district and external operator subject to cancellation at any time and for any reason by the State Board of Education, which would not be a party to the agreement. It raises the question of whether a company would be reluctant to enter into an agreement if it can be canceled by a third party at any time, particularly when these agreements usually require extensive hiring and up-front costs. Second, the House bill would prohibit districts from re-using the external operator provision if the school slides back to a D or F within 3 years of exiting turnaround status. Apparently, the goal is to prevent the start of another potential five-year cycle when a school falls back, but the language would prohibit a district from going back to something that clearly worked. With the only other options being closing the school or finding some way to have a district-run charter, this language would severely limit a district's ability to address the students' needs without dispersing them to other schools farther from home.

Other Concerns: Many parents and staff members heard that there would be an end to the FSA and less high-stakes testing, but these bills change the current assessment requirements very little while also adding two new assessment periods at the beginning and middle of the school year. The progress monitoring and earlier feedback to teachers and parents would certainly be helpful in identifying deficiencies and implementing strategies before the end-of-year assessments, but this bill would not appear to do anything to reduce high-stakes testing.

Other Education Bills Heard this Week

[HB 255 \(Plasencia\)](#) / [SB 538 \(Hooper\)](#) – Private Instructional Personnel Providing Applied Behavior Analysis Services

The *Senate Health Policy Committee* reported this bill favorably, leaving it with only one more committee assignment. The House version has not yet been heard in any of its four assigned committees.

This bill would amend s. 1003.572, F.S. by expanding the definition of “private instructional personnel” to include registered behavior technicians. The registered behavior technician would have to have a nationally recognized paraprofessional certification and be under the supervision of a certified behavioral analyst.

Concerns: When this law was first enacted a few years ago, the idea was to allow psychologists and other professionals access to students during the school day even though they were providing non-educational services or services beyond anything required in the IEP. In this way, the psychologist or occupational therapist could observe the student in the school setting to help guide services outside of school or even develop recommendations to present to the IEP team at the next meeting. It could also allow a student to occasionally receive occupational therapy or physical therapy during the school day, provided it did not interfere with school operations. An issue that has arisen in recent years is that many students have been authorized to receive extensive ABA services, most of which are provided by a behavior technician, not a behavior analyst (BCBA). There are many students who seek to have a behavior technician spend every day with them at school. If allowed, this would put adults who are not district employees in multiple classrooms, exposed to many other students, and not under the direction of the teacher or principal. These technicians are not trained to observe and make service recommendations the

way a BCBA or psychologist might. Further, if the student were to do much better with this extensive adult supervision at school, the argument will soon be that the district needs to pay for it as a required service under the IEP.

The House *Early Learning and Elementary Education Subcommittee* reported three bills favorably this week:

1. [HB 235](#) (Plasencia) / [SB 390](#) (Book) – Restraint of Students with Disabilities in Public Schools

This bill would prohibit the use of mechanical restraints in school except by a school resource officer, school safety officer, guardian, or security guard for students in grades 6-12. There are few times where a student is placed in handcuffs, zip ties, straitjackets, etc. by school personnel, but it does raise the question of what can be done with the student committed to harming himself or others until law enforcement arrives.

The House version still has two more committee assignments. The Senate version has not been heard yet in any of the three assigned committees.

2. [HB 859](#) (Williams) / [SB 1790](#) (Farmer) – Reading Achievement Initiative for Scholastic Excellence Program

This bill would amend last year’s Reading Achievement Initiative for Scholastic Excellence (RAISE) Program, allowing it to be provided after the school day instead of just during regular school hours. The bill would also allow schools to provide the high school students participating as tutors to receive a stipend, as could teachers who would stay after hours to supervise. Currently, the time spent tutoring counts towards the high school students’ community service hours. Under the bill, they could still receive those service hours if they do not receive a stipend.

The House version still has two more committee assignments, while the Senate version was only filed last week and has not been heard in any of its three assigned committees.

3. [SB 1240](#) (Harrell) / [HB 899](#) (Hunschofsky) - Mental Health of Students

The law currently requires mental health assistance allocation plans to include certain elements such as enhancements of school-based student services and contracts with local community behavioral health providers. This bill would add requirements for these plans, including: 1) students referred to mental health screening for mental health concerns must be assessed within fifteen days of referral, 2) parents must be provided information about mental health services available both within the school and the community at large, and, 3) individuals living in a household with a student receiving mental health services must also receive information about behavioral health services available if getting such services could improve the well-being of the student.

While this raises numerous questions about how districts are supposed to know all of the community services available or who lives in the household and what services they might need, the bill does say, “A school may meet this requirement by providing information

about and Internet addresses for web-based directories or guides for local behavioral health services.”

The House version still has three more committee stops, while the Senate version has not yet been heard in any of its three referred committees.

The House’s *Secondary Education and Career Development Subcommittee* reported two bills favorably this week.

1. [HB 447 \(Trabulsy\)](#) / [SB 1516 \(Jones\)](#) – Required Instruction in the History of African Americans

These bills would amend the required instruction of the history of African-Americans to include the following provision: “Members of the instructional staff are encouraged to include the history of local African-American cemeteries in the study of the history of African Americans when practicable.”

This was the first of three committee stops in the House. The Senate version also has three committee assignments but has not been heard yet.

2. [HB 395 \(Borrero & Rizo\)](#) / [SB 268 \(Diaz\)](#) – Victims of Communism Day

This bill would create s. 683.334, F.S. and require that November 7 be proclaimed “Victims of Communism Day.” This would require high school US government classes, beginning in the 23-24 school year, to have 45 minutes of instruction relating to various historical communist leaders such as Mao Zedong, Joseph Stalin, Vladimir Lenin, and Fidel Castro, and how people suffered under such regimes.

Both bills have received one of three assigned committee hearings so far.

Finally, the House *Government Operations Subcommittee* met this week to consider a bill that will have an effect on school districts and all state agencies.

[CS/HB 337 \(McClain\)](#) / [SB 536 \(Diaz\)](#) - Administrative Procedures

Chapter 120, Florida Statutes (the Administrative Procedure Act (APA)), sets forth a set of procedures all agencies must follow when adopting rules (referred to as “policies” in most districts). Agencies do not have the discretion to engage in rulemaking. To adopt a rule, an agency must have a general grant of authority to implement a specific law. Most of the provisions of the APA are geared toward typical state agencies operating under the Governor, but there are still a lot of provisions that apply to school districts when they are acting pursuant to a legislative grant of authority. This summary tries to focus solely on the issues that are likely to affect school districts, which already have several exemptions set forth within the APA.

This bill would require each agency, including school districts, to review its rules for consistency with the powers and duties granted by the enabling statutes. If, after reviewing a rule, the agency determines that substantive changes are not required, it must repromulgate (i.e., re-adopt) the rule. Thus, districts would need to start “re-promulgating” most of their policies over the next several years. Other provisions that would affect school districts apply to materials incorporated

by reference in rules and some notice provisions (e.g., a Notice of Rule Development must be published at least 7 days before a Notice of Proposed Rulemaking can be published). As it is often difficult to navigate the APA with all the exceptions and exemptions created for school districts, this bill will be monitored for any unintended consequences.

The Week Ahead

We can expect more clarity as to which bills appear to be fast-tracked and which will require the most attention. If you have any questions or concerns about any pending 2022 legislation, please reach out to me or anyone else at FADSS.