



To: Florida District School Superintendents
From: Brian T. Moore, FADSS General Counsel
Subject: FADSS Legislative Update – Week of December 13, 2021
Date: Friday, December 17, 2021

The Legislature recently completed its pre-session committee weeks. I have not provided any updates yet, as most of these meetings consisted of different presentations. Very few bills were heard in any of the committees until the final week, which was held while we were in Tampa for the FSBA/FADSS Conference. However, as we now prepare for the start of the 2022 Legislative Session on January 11, 2022, certain issues are coming into more focus, and it is a good time to recap what has happened so far and what we will be focusing on during the upcoming session.

FY 2022-2023 Budget

Last week, the Governor released his Freedom First budget proposal for the 2022-23 fiscal year. As previously discussed, the proposal includes a recommended increase to the BSA of roughly \$124, and it includes an additional \$50 million for the Teacher Salary Increase Allocation, an additional \$20 million for the mental health categorical, an additional \$30 million for the safe schools categorical, and another \$1,000 bonus for teachers and principals. You can access the Governor's budget page:

<http://www.floridaleadsbudget.com/PDFLoader.htm?file=HomeFY23.pdf>, and the direct link to the FEFP summary is available here:

<http://www.freedomfirstbudget.com/content/Current/reports/Education-Choice-Fund-Summary.pdf>.

Hot Topics Heard in Committee

The committees focused on a few different issues in recent weeks, and we have had several superintendents and district staff people present and testifying at these meetings.

Reading

Senator Broxson, the Chair of the Senate Appropriations Subcommittee on Education, is focusing his attention on reading and our efforts to get more students on grade level by the end of the third grade. Toward that end, he has met more than once with multiple superintendents and district staff members, and an entire committee meeting was devoted to the topic as well.

Representatives from Citrus, Collier, and Sarasota testified before the subcommittee about issues affecting our ability to improve our students' reading abilities and different approaches they have taken to address the issue. We continue to work with Senator Broxson and Senate staff and hope to see some encouraging legislation this session to help districts tackle this ongoing problem .

ESE

The House Education and Employment Committee devoted a full meeting to the IEP process. Every year, the Legislature seems to try to get districts to do more in less time, with the same people, for the same or less money. We were fortunate to have the Director of Student Support Programs and Services from Pasco County testify at the meeting to walk the committee through the IEP process. She did a great job showing just how many steps there are, how many team members are required, and just how much our teachers, staff, and administrators do for our ESE students. It would be difficult to walk away from that meeting with the idea that districts waste time in the IEP process and can do things even faster than they do now.

Concurrency and Impact Fees

The House Commerce Committee devoted an entire meeting to the issue of school concurrency, which also included a lot of discussion about impact fees. Tim Forson came to Tallahassee to testify before the committee in person before making his way to Tampa for the conference. The Committee heard from a panel that included another school district representative, a Seminole County Commissioner, two developers, and an attorney who represents developers. Superintendent Forson did a great job offering examples of a successful program to counter some of the anecdotal, localized complaints from the developers. There are currently bills in both chambers that propose eliminating school concurrency zones to make it a district-wide issue which will be discussed more below.

Proposed Legislation to Watch Closely

[HB 57](#) (Fine and Fischer) / [SB 242](#) (Gruters) – Racial and Sexual Discrimination

This bill would create s. 110.1222, F.S., which would prevent state agencies from providing training to agency employees that espouses what the bill defines as “divisive concepts”. These concepts include ideas such as one race or sex being inherently superior to another, the United States being fundamentally racist or sexist, an individual is inherently racist or sexist based on their race or sex, and that an individual should feel discomfort, guilt or anguish based on their race or sex and ideas of that nature. The bill would extend this requirement to the Florida K-20 public education system. Any curriculum or employee training in the school system cannot teach the defined divisive concepts. This does not include promoting racial, cultural, ethnic, or intellectual diversity or inclusiveness, if they do not conflict with the requirements of this law. This also does not include prohibition of the discussion of divisive concepts if they are part of a larger academic instruction in an objective manner and does not endorse them.

Concerns: Obviously, the immediate concern is that everyone right now has a different idea about whether a particular concept is divisive or teaches that one group is inherently better or worse than another. Could a district even recognize inequities, let alone attempt to address them, without someone claiming a violation of this bill?

HB 59 (Hawkins) – Electrocardiograms for Student Athletes

This bill would amend s. 1002.20, F.S. to require student athletes to receive an electrocardiogram (EKG) to participate in sports, with some exemptions. Parents could object in writing to the electrocardiogram if there is a written recommendation stating the student does not need one. The electrocardiogram requirement would apply to students in the 2022-23 school year who are participating in an athletic competition or team, students in grades 6 through 8 who are participating in school athletics for the first time, and students in grades 9 through 12 who are participating in school athletics for the first time.

A parent would also be able to object in writing to a student receiving a medical evaluation or electrocardiogram on religious grounds. If the parent so objects, the parent must provide a written release of liability from an attorney. In addition, a parent may also submit a doctor's recommendation that an EKG is not necessary.

Concerns: Multiple concerns have been raised about this proposal in recent years. These include the added costs of the EKG's, the availability of doctors to provide and interpret them, the number of inconclusive or false-positive exams that then lead to much more expensive tests (and what happens when the students cannot afford these more expensive tests to rule out what is often a false-positive result), potential liability for a district that allows a player to play after an inconclusive exam or a parental waiver (can a parent really waive the rights of the child and absolve the district of responsibility?).

CS/HB 225 (Hawkins and Beltran) / **SB 892 (Burgess)** – Charter School Charters

This bill would amend s. 1002.33, F.S and modify the terms that govern how charter school charters are renewed or denied. The bill adds a provision that would allow a consolidation of multiple charters outside the renewal term window, which would then have to be approved or denied within 60 days. If it were denied, the governing board must provide the specific reasons in reasonable detail to support the denial. More importantly, the bill would require school boards to decide whether a charter will be terminated (unless it is an emergency termination) or nonrenewed at least 90 days prior to the end of the school year. Failure to make the decision not to renew on time would result in the automatic renewal of the current charter with the same terms and conditions.

12/1/21 – The House Early Learning and Elementary Education Subcommittee reported the bill favorably (unanimous). The House version still has two more required committee stops, while the Senate version has not been heard in any of its three committees yet.

Concerns: This bill is a reaction to what happened in Hillsborough at the end of the last school year. While it makes some sense to notify a charter before June whether the district will recommend nonrenewal, if for no other reason than allowing parents and students to make informed decisions earlier in the process, the need to terminate a charter can arise at any time. Finding out about something in May that would justify closing the school, but not necessarily require an immediate termination, should not prevent school districts from taking action for a full year.

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

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 professional 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. So, the psychologist or occupational therapist could come observe the student in the school setting to help guide services outside of school. 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. 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.

[HB 361 \(Yarborough, Driskell\)](#) / [SB 480 \(Burgess\)](#) – Required Instruction in Social Media Literacy

This bill would amend s. 1003.42, F.S. by adding social media literacy to the list of topics of required instruction. The instructional materials used to teach this topic would also need to be available online.

Concerns: The bill does not include any information about how this might be accomplished or how often, but there apparently are some instructional models in CPALMS for a social media course. At this point, it is not clear whether the expectation would be to have social media literacy embedded into multiple courses throughout a K-12 student’s education or of the intent is to create a stand-alone course for middle school students. The Senate bill sponsor compared this to the recent financial literacy requirement enacted recently. He also expressed his

intention that this would be a topic incorporated into an existing class, not a new stand-alone class.

11/30/21 – Senate Education Committee unanimously reported the bill favorably. There are two more committee stops in the Senate, while the House bill has not yet been heard in any of the four assigned committee.

[HB 395 \(Borrero\)](#) / [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 to have 45 minutes of instruction relating to various historical communist leaders and their regimes such as Mao Zedong, Joseph Stalin, Vladimir Lenin, and Fidel Castro. There would have to be instruction on how people suffered violence, starvation, poverty, oppression, etc., under such regimes.

11/2/21 – Senate Education Committee reported the bill favorably. It still has two more committee stops in the Senate. The House version has not been heard yet in any of its three assigned committees.

[HB 609 \(Borrero\)](#) / [SB 622 \(Diaz\)](#) – Florida Institute for Charter School Innovation

This bill would amend s. 1002.33, F.S. by requiring the Department of Education to collaborate with the Florida Institute of Charter School Innovation to develop a sponsor evaluation framework for charter schools. Currently the DOE only has to collaborate with the charter school sponsors and the charter school operators. The Florida Institute of Charter School Innovation would be established at Miami Dade College and would create a resource of best practices for charter school application and review, provide sponsors with training and assistance for review and renewal of charter schools, conduct research on charter schools, provide information and workshops on charter school, and other similar functions. The bill also calls for a one-million-dollar appropriation from the General Revenue Fund to go to Miami Dade College.

11/30/21 – Senate Education Committee voted bill favorably.

Concerns: Districts have been tasked with more and more responsibilities with respect to charter school oversight, but their only enforcement tool remains termination. The State may now attempt to grade school districts on their performance as charter school sponsors while not providing them with any oversight discretion or authority.

[HB 865 \(Rizo\)](#) / [CS/SB 758 \(Diaz\)](#) – Education

This bill would create s. 1002.3301, F.S., which would create a Charter School Review Commission within the Department of Education to review and approve applications for charter schools overseen by district school boards. The members of this Commission would be chosen by the Commissioner of Education and be subject to Senate confirmation. The district school board where the charter school is located would still be the sponsor and supervisor of the charter school despite having no input in the application

approval process. The bill also provides that the Legislature should maintain comparable funding levels from existing and future funding sources for charter school students.

In addition, the bill would require a 15-year charter renewal for charter schools that received an A or B in the final year of their current charter, do not have a deteriorating financial condition, haven't broken the law, and have participated in the state's accountability system. If the school has done the last three but got a grade below a B, it would be entitled to a 5-year renewal. This is based on a proposed change in the law that would limit the ability of a school board to nonrenew a charter to one of those three – deteriorating financial condition, failure to participate in the accountability system, or a material violation of law. The bill would strike "other good cause shown" from the law as another basis for nonrenewal.

Finally, the current Senate version of the bill would have OPPAGA conduct a study on the distribution of capital funds to charter schools and then recommend an "equitable" allocation of capital funds to all schools. This report would be due by January 1, 2023.

11/30/21 – Senate Education Committee reported the bill favorably as a committee substitute. It still has two committee stops remaining. The House version was filed recently and has not yet been referred to any committees.

Concerns: Under this proposal, school districts continue to be limited in their authority to have any input into the charter school process while still being responsible to sponsor and supervise a school that can be approved by people with no local knowledge of the district pursuant to a "contract" for which no negotiations, for all practical purposes, are allowed. Also, school districts have limited capital funding to maintain facilities built and maintained with local tax dollars over the last 50+ years, and districts must annually determine where to allocate those dollars to meet critical needs. If a proportionate share of those funds are distributed to charter schools based solely on their enrollment, critical infrastructure needs may go unmet so that a charter school can get help making rent payments on a privately-owned facility.

[HB 851 \(McClain\)](#) / [SB 706 \(Perry\)](#) – School Concurrency

This bill would amend s. 163.3180, F.S. by requiring local governments that adopt school concurrency to apply it to development on a districtwide basis. Currently, the law only encourages that school concurrency be determined on a district-wide basis.

Concerns: Each district has its own unique needs and growth patterns. There may be some districts that have areas with a lot of growth while other, faraway areas within the county are not growing. It is difficult to say that there is space within the school system if the available seats are more than an hour away by bus. This may make it difficult for districts to build new schools in high growth areas if they have schools in other parts of the district that are not at capacity.

[SB 270 \(Hutson\)](#) – Funds for Student Transportation

This bill would reduce the mandatory transportation requirement from two miles to one mile.

Concerns: Districts currently receive categorical transportation funds that cover a little less than half their costs on average. Adding a large number of new riders will increase district costs to provide transportation unless the transportation categorical is significantly increased. The initial staff analysis suggested the cost to districts could be almost \$200 million with this proposal. On top of that, most districts cannot employ enough bus drivers for their current routes, and worldwide supply issues may prevent districts from being able to obtain new buses necessary to transport all the new riders.

SB 506 (Diaz) – Hope Scholarship Program

This bill would amend s. 1002.40, F.S., by revising the Hope Scholarship Program. The bill would add an additional category of eligibility for the scholarship to include parents of public-school students who attend a school in a district where the school board is subject to action by the State Board of Education due to noncompliance with a law or state board rule (s. 1008.32(4), F.S.). The bill would also require districts to notify parents about the Hope Scholarship regardless of the outcome of any investigation.

In addition, the bill would require school districts to publish information about the Hope Scholarship program on its website homepage. There are also numerous other provisions about the use of program funds, requirements for reporting such use, and other logistical matters.

11/30/21 - Senate Education Committee reported the bill favorably after a 6-4 arty-line vote. The bill has two additional committee assignments in the Senate, and no House companion has been filed at this time.

Concerns: From the beginning, the stated purpose of the program has been to provide relief to students subjected to bullying or violent acts. However, no substantiation of an allegation is necessary to qualify for the funds. The bill would now elevate local district policy decisions as comparable to bullying and battery.

HB 799 (Beltran) / SB 974 (Gruters) – Sovereign Immunity

This bill would amend s. 768.28, F.S., by greatly increasing the tort liability limits for state agencies, like school districts. Currently, the state and its agencies are liable for tort claims for up to \$200,000 per person and \$300,000 per incident. This bill would amend that amount to \$1 million per person with no limit per incident. The bill also would add language to require the Department of Financial Services to adjust these liability limitations annually based on the Consumer Price Index.

Concerns: Obviously, this could greatly increase litigation costs for school districts and may encourage more suits to be filed knowing that there are no limits any more. Right now, obvious errors that cause significant injury or costs can be resolved quickly by negotiating a payout at the capped amounts. With a much higher cap or no cap at all, litigants may feel more compelled to pursue litigation or drag out claims much longer in the hopes of a greater payout.

SB 1048 (Diaz) – Student Assessments

As you know, the Governor announced earlier this year that he would like to see Florida move away from the FSA and reduce high-stakes testing. This bill is the first one filed with that goal in mind. It would address standards for progress monitoring of pre-K through second grade. With respect to the FSA, it does not appear to change anything other than calling the end of the year assessments something other than the FSA. The bill 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 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 bill also includes 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.

Finally, the bill would 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.

Concerns: While many parents heard that there would be an end to the FSA and less high-stakes testing, this bill appears to 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 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.

SB 1086 (Gruters) – Exceptional Student Due Process Hearings

This bill would put the burden of proof on the school district for all identification, evaluation, and eligibility determinations in a due process hearing regardless of who actually files the claim. Furthermore, it puts the burden on the district in all due process hearings to prove “that any challenged IEP is appropriate.”

Concerns: This shifting of the burden of proof could create more conflict and greatly increase both the number and cost of due process cases in the district. Right now, many of the biggest disputes within districts come from parents who do not understand the law and demand much more than what they are entitled to receive. These parents often file a due process claim that is so obviously without merit that the district has to do little in defense, which cuts down on the cost. It is also difficult for these parents to get an attorney to argue a case that is clearly without merit. With this proposed new law, districts would have no choice but to mount a

complete and thorough defense, because the burden of proof would be on the district no matter how frivolous the claim of the parent. Districts will have to pay for more legal preparation and court time, and district employees will have to miss work to appear in court to help the district prove its case. Finally, many parents who know they have a losing case decide to avoid the cost and time needed to file a claim, but they will be encouraged to proceed under this proposed new law because they would not have to prove anything. All they would have to do is file the paperwork, while the district would then be required to prove that every portion of the IEP is appropriate. In essence, prove your innocence.

The Weeks Ahead

The Legislature is currently on break until it starts the 2022 session on January 11, 2022. I hope all of you will be able to take a meaningful break over the next two weeks. Spend time with family and friends or doing something else you love to do, as we greet the new year with the same optimism we had for 2021 before the term “delta variant” brought us back to 2020 with a vengeance just as we were starting back to school.

As always, please let me know if you have any questions about a bill or anything else happening here in Tallahassee.