



To: Florida District School Superintendents
From: Brian T. Moore, FADSS General Counsel
Subject: FADSS Legislative Update – Week of January 17, 2022
Date: Friday, January 21, 2022

The 2022 Legislative Session completed its second week and managed to cover a lot of ground despite the shortened timeframe. While several bills heard this week will affect schools to some degree if passed, a few would have a major impact on district operations and deserve extra attention. As I mentioned last week, it is apparent that the education-related priorities this session include preventing the teaching of critical race theory (CRT), addressing state assessments and accountability, and parental involvement at school board meetings and in the schools. Regarding parental involvement, there appears to be an effort to amplify anecdotal occurrences within school districts to garner political support for additional parents' rights while encouraging litigation and public displays of anger directed at school boards and individual school personnel.

High-Impact Legislation

[HB 7 \(Avila\)](#) / [SB 148 \(Diaz\)](#) – Individual Freedom

These bills represent an attempt to prevent CRT and other forms of “wokeness” from appearing in the workplace and schools. They would amend Florida’s anti-discrimination law by making it a discriminatory practice to require an employee to undergo training that promotes, advances, or compels anyone to believe in any of the following concepts:

1. members of one race, color, sex, or national origin are morally superior to members of another;
2. an individual is inherently racist, sexist, or oppressive based on their race, color, sex, or national origin;
3. an individual’s moral character or status is determined by race, color, sex, or national origin; or
4. an individual should be discriminated against or receive adverse treatment because of acts committed by other members of the same race, color, sex, or national origin.

In addition, the training cannot cause an individual to “feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race, color, sex, or national origin.”

The bill also amends s. 1003.42, F.S., to add that required education taught in K-12 schools include life skills that build confidence, support mental and emotional health, and enable students to overcome challenges, such as: self-awareness, decision-making, and conflict resolution. Also, for high school students, schools must teach leadership skills, interpersonal skills, organization and research skills, resume writing, career path exploration, and the development of other skills necessary for employment.

The bill also adds that instruction and supporting materials must be consistent with the principles set forth in the anti-discrimination language discussed above. Thus, a student cannot “be made to feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race.” While the bill states that instructional personnel may facilitate discussions to address how freedoms of persons have been infringed by sexism; slavery; and racial oppression, segregation, and discrimination; it also adds that these topics and discussions may not be used to indoctrinate or persuade students of a particular point of view inconsistent with the principles stated within the bill.

The *Senate Education Committee* heard and reported this bill favorably. It has only one more committee stop in the Senate. The House version has not yet been heard in any of its three assigned committees.

Concerns: The primary concern is the vagueness of the language regarding how people feel. Anyone learning about the Holocaust, slavery, segregation, or Japanese internment camps may feel a sense of compassion and perhaps even guilt due to the gravity of the topic. Does a child feeling some guilt as an American for slavery know the difference between guilt based on their race as opposed to a sense of guilt about what their country may have done?

With this language, it is easy to imagine parents filing complaints against teachers because their student was emotionally impacted by something learned at school. Whether these will be complaints filed with district HR departments or the Education Practices Commission is uncertain, but it may cause teachers to limit their instruction on difficult topics out of fear that a child’s discomfort will put their certification at risk or at least result in a time-consuming and costly legal action.

The danger here is that this type of legislation puts teachers and school districts on the defensive for teaching the required, State Board of Education-approved standards. For example, United States History includes the following standard – “Analyze support for and resistance to civil rights for women, African Americans, Native Americans, and other minorities.” Per the U.S. History End-of-Course Assessment Test Item Specifications published by the Florida Department of Education, the content focus for this standard may include the Ku Klux Klan and Rosewood Incident, among other topics. Discussion of these topics may evoke a wide range of reactions among students, but this bill would require a teacher to ensure that no

student felt “discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race.”

Finally, because this bill seeks to amend section 1003.42, Florida Statutes, to include the language about instruction that provokes difficult feelings in students, it would not apply to charter schools, as that section is not included in the list of statutes with which charter schools must comply.

HB 1467 (Garrison) - K-12 Education

This bill would eliminate school board member salaries and put every book in every school on a public watchlist. The staff analysis for the bill summarizes the proposed changes to include:

1. requiring that school district instructional material review committee meetings be noticed and open to the public;
2. requiring school district personnel who are involved in reviewing and selecting certain instructional materials and library materials to complete training developed by the Department of Education (DOE) on selecting quality, age-appropriate books, prior to making selections;
3. requiring school districts to adopt and publicly post procedures for developing library media center collections;
4. requiring each elementary school to post on its website a list of all materials maintained in the school library or required in a classroom booklist;
5. requiring that each material in a school library or classroom booklist be selected by a certified educational media specialist;
6. requiring school districts to provide access to all materials for public inspection as allowed by law and to publish a list of all materials available to students on the school website in a searchable format;
7. requiring school districts to provide a public review process for the adoption of all materials and to select, approve, adopt, or purchase materials as a separate line item on a board meeting agenda and provide reasonable opportunity for public comment;
8. beginning June 30, 2022, requiring school districts annually to submit to the Commissioner of Education a report identifying materials for which the school district received an objection for the school year and requiring the DOE to publish removed or discontinued materials as a result of an objection; and
9. requiring that school principals to oversee compliance with school library media center materials selection procedures.

The *House Education and Employment Committee* reported this bill favorably this week with a party-line vote. It has only one more committee assignment, but there is no Senate companion at this time.

Concerns: Under the bill, each book made available to students through a school library or classroom list must be selected by a school district employee who holds a media specialist certificate. This requirement generates numerous questions and concerns. For example:

- Does this mean that the AP English teacher cannot select books for a reading list without consulting the media specialist first?
- Is a committee of media specialists, teachers, parents, and community members required to approve every book on every list selected by that media specialist? Does each book then have to get approved by the School Board after a 30-day review process?
- Can a civics teacher ask a class to read and discuss a recent newspaper article about a current event, or does that article have to go through the review process first too?

This bill creates the potential for a very time-consuming, costly process so that everyone with an opinion – whether or not they live in the district or have a child in the school – can second-guess the knowledge and expertise of media specialists and teachers. In its current form, this bill will stifle a school districts ability to incorporate supplemental books and other written materials into the curriculum.

Finally, it is worth noting that this bill would not apply to charter schools -- only traditional Florida public schools. Again, this is another example of a bill promoted as something to protect all Florida school children and involve parents, but an exception is carved out for those parents and students receiving the same state funding but attending a charter or private school.

[HB 1557 \(Harding\)](#) / **[SB 1834 \(Baxley\)](#) - Parental Rights in Education**

This bill would amend section 1001.42, Florida Statutes, which sets forth the powers and duties of district school boards (not charter school boards), to require school boards to adopt procedures for notifying a student’s parent if there are changes in the student’s mental, emotional, or physical health or well-being and the school’s ability to provide a safe and supportive learning environment. The schools district would also be prohibited from withholding information from a parent regarding the student’s mental health or well-being unless a reasonably prudent person would believe that disclosure would lead to abandonment, abuse, or neglect.

There is also language that would prohibit a school district from encouraging classroom discussion about sexual orientation or gender identity in primary grade levels (not defined in the bill, but the sponsor said K-5), or in a manner that is not age-appropriate. Finally, the bill adds that a parent can bring a declaratory action against a school district seeking injunctive relief if the parent believes that a district “procedure or practice” violates these new provisions, and the parent would be entitled to reasonable attorney fees and court costs if they prevail.

This bill received its first hearing in either chamber this week when it was considered by the *House Education and Employment Committee*. It was reported favorably along party lines and

has only one more committee assignment in the House. The Senate version has three committee assignments and has not yet been heard in any of them.

Concerns: First, these bills appear to be aimed at school attempts to navigate issues with LGBTQ students, which often involves a lot more turmoil at home than at school. There appears to be a perception that school counselors and teachers are conspiring with students to make major decisions affecting the student's life without the knowledge or input of the parents.

The major concern here is the provision allowing parents to file suit when there are so many subjective and vague provisions in the bill. Most of the bill is aimed at district policies and "practices," but that could be interpreted quite broadly. If a 4th grade teacher is asked a question by a student in class about sexual orientation and attempts to answer it, would the lack of a specific document telling teachers not to discuss these issues be considered a "practice" of encouraging classroom discussion? Do districts want to be facing declaratory actions with every disgruntled parent who may now find it easy to hire an attorney when they can recover attorney's fees and costs from the district? The bill may say that the lawsuit can be filed against *district* practices, but it is easy to imagine many parents taking action based on things happening in individual classrooms. After all, the teacher is a district employee.

Finally, it is not clear whether this bill would apply to charter schools. As noted above, the bill amends section 1001.42, which sets forth the powers and duties of school boards. The charter school statute exempts charter schools from all laws other than those listed in the charter school statute. That list includes laws protecting the health, safety, and welfare of students, which this bill claims to be doing; however, it is questionable whether any provisions within a law entitled "Powers and duties of district school board" would be found to apply to charter schools absent more clarity in the charter school statute.

[SB 974 \(Gruters\)](#) / [HB 985 \(Beltran\)](#) – Sovereign Immunity

These bills would change the sovereign immunity limitations established in statute. Currently, an individual is limited to no more than \$200,000 for a tort claim with a \$300,000 cap for the entire incident. Thus, if 5 people are injured due to district negligence, none of them could recover more than \$200,000, and collectively the five could not recover more than \$300,000. These bills would raise the individual cap from \$200,000 to \$1 million and eliminate the per occurrence cap altogether. The \$1 million cap would then increase each year based on the Consumer Price Index.

This proposal appears to have extra attention and momentum in light of the Stoneman Douglas case, where the courts held that all of the victims of that tragedy were limited by the \$300,000 per occurrence cap. The House's *Civil Justice and Property Rights Subcommittee* reported the bill favorably with only one dissenting vote. The House version has two committee stops remaining, while the Senate version has not yet been heard in any of its three assigned committees.

Concerns: Obviously, this could greatly increase litigation costs for school districts and may encourage more suits to be filed knowing that there are hardly any limits. 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.

All local governments are against these bills. Smaller districts, cities, and counties will surely struggle under these new limitations, however all school districts should be especially concerned about their ability to cover the increased litigation/risk management costs that would likely follow.

Other Legislation

HB 15 (Tant) / SB 236 (Jones) – Children with Developmental Delays

This bill would expand the definition of “exceptional student” to include children with developmental delays identified from birth through nine years of age or completion of second grade (whichever occurs first), as opposed to the current birth through five years of age. Moving the upper limit to age 9 would align Florida’s definition with the maximum allowable age under federal law.

The House *Early Learning and Elementary Education Subcommittee* reported the bill favorably, and it has two more committee assignments remaining. The Senate version has also been reported favorably in one of its three assigned committees.

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

This bill would amend the law with respect to the nonrenewal of charter schools. In response to four charters initially slated for nonrenewal in Hillsborough County last year, the bill would require school boards to make the decision not to renew a charter at least 90 days before the end of the school year. If the decision is not made by that time, the charter will automatically renew under the same terms and conditions. The bill also adds a provision for requests to consolidate multiple charters outside the renewal term window.

The House *Secondary Education and Career Development Subcommittee* reported the bill favorably, leaving just one more committee stop in the House. The Senate version is scheduled to receive its first hearing next week in the *Education Committee*.

HB 281 (Eskamani) / SB 490 (Stewart) – Required Instruction in the History of Asian Americans and Pacific Islanders

This bill would add the history of Asian Americans and Pacific Islanders to the list of topics of statutorily required instruction. Instruction about their immigration, citizenship, civil rights, identity, and culture would become required topics of instruction.

The bill was reported favorably by the Senate *Education Committee* and has two more committee assignments left. The House has not yet heard this bill in any of its four assigned committees.

[HB 497 \(Persons-Mulicka\)](#) – Lee County School District Lee County

This bill would repeal a 1974 decision by the Lee County School Board to have an appointed superintendent and put the question before Lee County voters in 2022 whether they wish to return to having an elected superintendent.

This local bill was reported favorably by the House’s *Early Learning and Elementary Education Subcommittee* and has now been reported favorably in two of its three assigned committees. A similar attempt to bypass section 1001.461, Florida Statutes, in Hernando County failed last year after the bill died in committee.

[HB 573 \(Snyder\)](#) / [SB 896 \(Burgess\)](#) – Educator Certification Pathways for Veterans

This bill creates an additional pathway to educator certification for military service members. It specifies that a military service member may receive a temporary educator certificate if he or she meets the following requirements instead of holding a bachelor’s degree: 1) document 48 months of active-duty military service with an honorable discharge or a medical separation; and 2) completed 60 college credits with a minimum GPA of 2.5. Also, this temporary certification would be valid for five years instead of three, but it is not renewable.

The House *Secondary Education and Career Development Subcommittee* reported the bill favorably. It has now been reported favorably in one of three committee assignments in both the House and Senate.

[HB 179 \(Altman and Slosberg\)](#) / [SB 702 \(Burgess\)](#) – Photographic Enforcement of School Bus Safety

This bill would create a new statute allowing school districts to install a “side stop signal arm enforcement system” on school buses to help enforce the law against passing school buses while they are loading or unloading students. It would require a camera system of two or more cameras attached to the school bus that records photos and video of motor vehicles that violate the law. Districts would need to post warning signs and stickers on buses using the system. Law enforcement could then use the photo and video evidence against violators. Fines collected as a result of these violations would be returned to the district to install and maintain these enforcement systems. An annual report of the results would be sent to the Governor, Senate President, Speaker, and the Department of Highway Safety and Motor Vehicles.

The bill was reported favorably by the Senate *Transportation Committee* and has two stops remaining in the Senate. The House version has not been heard in any of its three assigned committees yet.

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

These bills, as originally drafted, would amend school concurrency law by requiring local governments that adopt school concurrency to apply it to development on a districtwide basis, not to specific and adjacent concurrency zones. Currently, local governments that adopt school concurrency are only encouraged by law to apply it to development on a districtwide basis, these bills, as originally drafted, would require it.

The House Local Affairs and Veterans Affairs Subcommittee reported the bill favorably with a committee substitute that removed the districtwide language. Instead, the House version of the bill now provides only that impact fees raised must be expended upon school capacity improvement projects identified in the district's five-year plan or held until the project is added to that five-year plan. There are two remaining committee stops in the House. The Senate version will receive its first committee hearing next week, and it is hoped that a similar amendment will be filed for it as well.

Concerns: The concerns identified are almost exclusively related to the language that was not included in the House committee substitute. 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.

[HB 1187 \(Trabulsy\)](#) / [SB 1656 \(Rodriguez\)](#) - Reduced Price School Breakfast Meals

This bill would require the Department of Agriculture and Consumer Services to provide reimbursements to sponsors for reduced-price breakfast meals. The Department would have to reimburse sponsors the greater of 30 cents or the difference between the federal school free breakfast program reimbursement rate and the reduced-price breakfast rate for each meal that is served to students who qualify for reduced-price meals.

The Senate Agriculture Committee reported the bill favorably, and it has two more committee stops in the Senate. The House version has not been heard in any of the three assigned committees yet.

The Week Ahead

The Senate Education Committee is scheduled to hear [10 bills next week](#), including several that FADSS has been following closely, and we can expect several other committees to be just as busy. Also, if the 3rd Calculation is finally finished, budgeting conversations should also begin in more earnest. As always, if you have any questions or concerns about any pending 2022 legislation, please reach out to me or anyone else at FADSS.