



## Responsibility for the Education of Exceptional Students in Residential Treatment Facilities Needs Clarification

### *at a glance*

Approximately 2,850 exceptional students were in residential facilities across the state as of October 2007. Most of these students were housed in Department of Juvenile Justice facilities. However, 469 were placed in residential treatment facilities regulated by the Department of Children and Families, the Agency for Persons with Disabilities, and the Agency for Health Care Administration.

Typically, the school district in which a residential facility is located assumes responsibility for providing and funding the educational services for exceptional students in the facility. However, districts usually are not involved in the decision to place exceptional students in residential facilities. They also often do not receive prior notification of placements, which hinders their ability to begin delivering educational services in a timely manner.

State policy should be clarified regarding the financial responsibility for educational services provided to exceptional students in residential treatment facilities.

### Scope

The Florida Legislature directed OPPAGA to review the provision of exceptional student education services in residential facilities.<sup>1</sup> This report addresses two questions.

- What is the level of school district involvement in decisions to place exceptional students in residential facilities?
- How do Florida school districts allocate financial resources and provide individual educational plans for these students?

### Background

Florida's Exceptional Student Education (ESE) program is required by federal and state law to provide both students with disabilities and gifted students a free appropriate public education in the least restrictive environment possible. In the fall of 2007, there were over 380,000 exceptional students in the state, not including those designated as gifted students. When a student is identified as having a disability, the school district is required to develop an individual education plan and to provide instruction that is appropriate to the student's needs.

<sup>1</sup> The scope of this report includes those residential facilities at which educational services are provided at the facility location to the students. The scope excludes facilities using hospital home bound services and other residential facilities that do not provide educational services at the facility itself, such as most group homes.

Some exceptional students are placed in residential facilities due to behavior problems (i.e., criminal acts, substance abuse or self-injurious acts) or physical or mental conditions such as developmental disabilities. Students can be placed in residential facilities by their parents, a state agency, a school district, or order of the court as a result of mental health, substance abuse, dependency, or delinquency issues.

Federal laws require educational services for exceptional students placed in residential facilities. States must provide a free appropriate public education to all eligible children with disabilities regardless of their living arrangement. This education must be provided in a manner consistent with the child's individual education plan which is developed by a multidisciplinary team including teachers, professionals with expertise in mental health or other disabilities as appropriate for each student, and the child's parents.

The Legislature annually appropriates funds for ESE services. Florida provides higher funding levels for exceptional students than other students due to the need to provide individualized instruction and support services. Exceptional student education services are funded from state general revenue and local tax revenue through the Florida Education Finance Program.<sup>2</sup> Total expenditures for ESE programs and services in Fiscal Year 2006-07 was \$5.6 billion, of which \$5 billion was from state and local sources.

The state sets ESE funding levels using a matrix of services that calculates funding for school districts based on the average costs of providing services to exceptional students. The matrix classifies students' services on a scale of one to five, with one representing the lowest and five the highest level of service.<sup>3</sup> For the 2007-08

school year, the state funded students in level 4 of the ESE funding matrix at approximately \$14,789 per full-time equivalent student, while districts received approximately \$20,651 for each full-time equivalent student in level 5.<sup>4</sup> Districts received an average of \$2,251 for each full-time equivalent student in levels 1 through 3 in addition to the base individual funding for all students of \$4,079. These figures do not represent the actual costs for individual students, but the average costs for all students within a matrix level.

Approximately 2,850 exceptional students are in residential facilities across the state. While most exceptional students are served in regular schools, residential facilities served approximately 2,850 exceptional students as of October 2007. Most of these students were in residential delinquency facilities managed by the Department of Juvenile Justice. The department reported serving a total 10,469 exceptional students in residential delinquency facilities during the 2006-07 school year, representing about 25% of all delinquency commitments.<sup>5</sup> We estimate that juvenile justice facilities served approximately 2,400 exceptional students at any given time during 2006-07.<sup>6</sup> School districts reported serving 469 exceptional students in residential treatment facilities regulated/licensed by the Department of Children and Families, Agency for Health Care Administration, or the Agency for Persons with Disabilities as of October 2007.

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<sup>2</sup> For more in-depth information on the Florida Education Finance Program, see *Special Report: Exceptional Education Student Population Grows Dramatically; Funding Matrix Needs Improvement*, [Report No. 03-40](#), July 2003.

<sup>3</sup> For more information on the ESE Matrix of Services, see *Special Report: Exceptional Education Student Population Grows Dramatically; Funding Matrix Needs Improvement*, [Report No. 03-40](#), July 2003.

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<sup>4</sup> These amounts reflect dollars provided through the ESE funding matrix and does not include any additional money districts may receive for these students. Total costs of residential placements are much higher. (See Appendix A.)

<sup>5</sup> The Departments of Education and Juvenile Justice have a current agreement in place that governs issues related to providing and paying for educational services to students placed in juvenile justice facilities. Thus, this report focuses on exceptional students placed in residential treatment facilities.

<sup>6</sup> The Department of Education provided aggregate totals of exceptional students for Juvenile Justice residential facilities. We used facility capacities and the percentage of exceptional students within the aggregate to estimate the number of exceptional students in those facilities at any one time.

## Questions

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### What is the level of school district involvement in decisions to place exceptional students in residential facilities?

School districts report that they are not involved in the placement of the vast majority of exceptional students in residential facilities.<sup>7</sup> School districts learn of these placements after such decisions have been made, often only after the student arrives at the facility. When school districts have not been notified promptly of these placements, delays in delivering educational services to exceptional students have resulted.

School districts report they have limited involvement in placement decisions. Although no comprehensive state-level database exists on the placement of exceptional students in residential facilities, school districts indicate that they are generally not involved in these decisions. A variety of entities can place exceptional students in residential facilities including parents, state agencies, courts, and school districts. On rare occasions, a school district may initiate the placement of a child in a residential facility if the district finds that it cannot serve the student in the public school setting.

State agencies have varying roles in the placement of children in residential treatment facilities. The Department of Children and Families regulates and/or operates facilities for substance abuse treatment or mental illness. The Department of Children and Families, parents, or the court places children in these facilities. In addition, the Agency for Persons with Disabilities licenses some facilities and provides a portion of the funding for children with developmental disabilities in those and other

facilities. Parents or a student's guardians generally place students in these facilities in consultation with the Agency for Persons with Disabilities' waiver support coordinator. The Agency for Health Care Administration licenses health-related facilities but plays no role in the placement of students in these facilities.

Exceptional students are often placed in residential facilities outside of their home districts. Thirty-one of the state's 67 school districts reported serving the 469 exceptional students in residential treatment facilities regulated/licensed by the Department of Children and Families, the Agency for Persons with Disabilities, or Agency for Health Care Administration as of October 2007.<sup>8</sup> Because there are a limited number of residential facilities in Florida, many exceptional students reside in facilities located outside of the parent's county of residence. For example, over half (276, or 59%) of the 469 exceptional students resided in facilities in a school district that is different from the county in which the student's parent(s) lived.<sup>9</sup>

When an exceptional student is transferred between districts, the receiving district must obtain school records, including the student's individual education plan, and arrange for the necessary educational services to be provided that student. The receiving district assembles a new interdisciplinary team to review the child's educational needs and services as affected by the new residential placement. While it is not always feasible for districts to be formally notified prior to placements due to urgent or emergency situations, timely formal notice can facilitate timely transition and delivery of educational services.

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<sup>8</sup> Those school districts that reported students were Alachua, Bay, Brevard, Broward, Citrus, Collier, Dade, Duval, Hendry, Hernando, Hillsborough, Lake, Lee, Levy, Leon, Manatee, Marion, Martin, Orange, Osceola, Palm Beach, Pasco, Pinellas, Sarasota, Seminole, St. Johns, St. Lucie, Suwannee, Taylor, Volusia, and Washington.

<sup>9</sup> Department of Education data on exceptional students in Department of Juvenile Justice residential facilities does not indicate what portion are housed in facilities outside of their home districts.

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<sup>7</sup> For purposes of this report, exceptional students generally refers to students with disabilities.

While the ESE directors we interviewed indicated that transfers were routine, they noted instances in which they did not receive prompt notification of placements and educational service delivery was disrupted until they received student records and could assess educational needs and plans. Similarly, they noted occasions when students were transferred out of residential placements without prior notice, which can affect the district's ability to ensure that the students meet course requirements. Untimely notification can also compromise the procedures for funding educational services since the district undertaking to provide the services must claim the student in its FTE count and a district that is no longer providing educational services must ensure that it does not claim the FTE.

The Department of Education has not developed interagency agreements needed to facilitate cooperation between state agencies. As required by Florida law, the Department of Education has established a written cooperative agreement with the Department of Juvenile Justice to address issues related to educational services for students in juvenile justice facilities.<sup>10</sup> The agencies signed the most recent agreement on January 19, 2007. The agreement provides a structure and process for interagency communication and collaboration, including requirements for local school district agreements with juvenile justice facilities, quality assurance standards for educational programs, dispute resolution procedures, and requirements for information sharing between the agencies.

However, the Department of Education has not established similar interagency agreements with the Department of Children and Families or the Agency for Persons with Disabilities that cover all exceptional students in residential facilities regulated by state agencies.<sup>11</sup> Cooperative

agreements with these agencies could help resolve issues regarding district notification, program completion, and coordinating student individual education plans by establishing protocols and expectations for addressing student placements and transfers in residential programs. While the agreement with the Department of Juvenile Justice has not resolved all of the issues related to timely notification, it serves as the basis for managing the relationship between the agencies and provides a forum for resolving issues as they arise.

## How do Florida school districts allocate financial resources and provide services for exceptional students in residential facilities?

By federal law, school districts are required to determine the educational needs of exceptional students through an individual education plan, and then to provide the services outlined in that plan. Typically, the school district in which a residential treatment facility is located provides the educational services based upon the needs it identifies through the individual education plan process. Because it is providing services to the student, it reports the student on its full-time equivalency report and thus receives state funds based upon the student's matrix level. However, for some private facilities that provide private educational services, the facility contracts directly with the student's home district to receive the state funding for that student. While this system has generally worked well, a recent disagreement regarding financial responsibility for the cost of educating exceptional students indicates that the state's policy should be clarified.

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<sup>10</sup> Section 1003.52(1)(d), *F.S.*

<sup>11</sup> The Department of Children and Families has established an interagency agreement with the Department of Education covering educational issues related to children found to be dependent or children in shelter care pursuant to s. 39.0016, *F.S.* However, this agreement does not address educational issues of children who are in residential facilities and in their parent's custody.

The school district in which a residential treatment facility is located generally provides the educational services for exceptional students. The state is responsible for providing a free appropriate public education to students placed in a residential facility regardless of whether the placement is made by the child's parents or by a state agency. In most cases, the school district where the facility is located provides educational services, either through teachers employed by the district and assigned to the facility or through a contract if the facility employs its own teaching staff.

Data provided by district ESE directors revealed that all of the exceptional students in juvenile justice facilities and most exceptional students (406 of 469, or 87%) in Department of Children and Families or Agency for Persons with Disabilities residential facilities receive educational services that are coordinated by the school district in the county where the facility is located. In these cases, the district in which the facility is located receives state funds to pay for the student's educational expenses. The students in these facilities are reported by the district on the periodic student counts that determine the amount of funds received by the district. This district also assembles the multi-disciplinary teams that review, update, and implement the students' individual education plans.

In general, providing educational services to exceptional students in residential facilities does not place a financial burden on school districts. Most districts did not report an inordinate financial burden as a result of serving exceptional students in residential facilities located within their districts. ESE directors indicated that state funds provided for these students generally were sufficient to cover the costs of the educational services.

Some private facilities provide educational services without involving the local school district. In these cases, the facility contracts with the student's home district to receive the state funds provided for that student's education.

As of October 2007, there were 63 exceptional students that were placed in facilities that provided educational services without the local district's involvement. For example, the Carlton Palms facility in Lake County serves students with developmental disabilities, such as autism and mental retardation, and establishes contracts with these students' home school district to forward the state ESE funding so that the facility can provide those services. The Lake County School District has no involvement in the provision of educational services for these students. Instead, the home district reviews the student's individual educational plan and monitors the delivery of contracted services. Some districts indicated that they retained a portion of the FTE funding allowance for these students to cover administrative costs, while other districts indicated that they passed on all of the FTE received to the facility providing these services. As the number of these cases is relatively small, no district reported more than eight students assigned to such a facility.

ESE directors in Orange, Brevard, Martin, and DeSoto county school districts reported cases where state funding did not cover costs of serving some exceptional children who have been placed in private facilities. Each of these districts reported one or more exceptional students that the district was unable to serve through its own programs.<sup>12</sup> In these cases, the student was placed in a private residential facility in which the local school district did not provide services, and the state ESE funding did not cover the costs of the students' educational expenses, which officials reported to be as high as \$150,000 per year. In some cases the school district made the placement decision because the district had determined that it could not serve the student appropriately in its own facilities, but in other cases, the district was not involved in the placement decision. According to

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<sup>12</sup> Brevard, Martin, and DeSoto ESE directors each described one student in the recent past who fit this category. Orange's ESE director reported that the district currently has three such students from Orange County that are being served in privately run facilities within the county at district expense in excess of the state ESE allotment.

Department of Education officials, the ESE allocation is not intended to cover the cost for each individual student; they asserted that because the costs for some exceptional students will be less than the amount of state ESE funding, the average costs for all exceptional students in the districts should be covered through the ESE allocation.

Districts need additional direction to clarify financial responsibility for educational services provided to exceptional students in residential treatment facilities. ESE directors reported that the current financial arrangements for exceptional students in residential facilities generally work well. However, a recent disagreement regarding financial responsibility for these costs highlights the need to clarify state policy.

In 2006, a controversy arose among three districts regarding which district was responsible for paying for educational services for an exceptional student who had been placed in a residential facility in another district. In this case, parents placed a student from Palm Beach County in a facility in Seminole County; the student was subsequently moved to a facility in Orange County. The Seminole County School District paid the educational expenses while the student was in that county's residential facility, although the district was not directly involved in delivering services at the facility. When the Seminole facility closed, the student was moved to a sister facility in Orange County, a private facility that provided educational services without involvement from the school district. Although officials in Orange County were contacted regarding the transfer, the district did not become involved in the delivery of educational services, and the individual education plan was not updated. When the facility attempted to bill first Seminole County and then Orange County for the student's educational expenses, both districts asserted that they were not responsible for payment. An administrative complaint was filed on behalf of the student's parents against the Orange, Seminole, and Palm Beach county school districts. The Commissioner of Education issued

an interim order directing the Palm Beach School District, the residence of the student's parents, to begin paying the costs pending the outcome of the administrative hearing. The involved districts accepted this order as a resolution to the case, and the case was settled with Palm Beach County School District agreeing to pay for the educational expenses and to report the student on its FTE count.

Key issues in this dispute were that the Orange County School District was not formally notified, had no direct responsibility for providing educational services to the student, and had no opportunity to determine whether it could serve the student in a less costly environment. District officials expressed the opinion that while it would be appropriate to pay for services in excess of the FEFP allotment to one of its own students, it was not appropriate to be billed for services for another district's student when it had no opportunity to review the placement and determine whether the child could be served at a lower cost in district programs.

## Policy Options

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To avoid future disputes, the Legislature could consider clarifying state policy on financial responsibility of school districts for educational services provided to exceptional students in residential treatment facilities. Current Florida laws and rules govern the funding of exceptional students from outside of Florida being served educationally in Florida, as well as those served within Department of Juvenile Justice facilities. However, Florida law and rules do not directly address funding for exceptional students placed in Department of Children and Families or Agency for Person with Disabilities facilities. While the Department of Education has established a cooperative agreement with the Department of Juvenile Justice to address educational services for students in juvenile justice facilities, it has not established such agreements with the other state agencies that cover all exceptional students in residential facilities regulated by state agencies.



To address this issue, the Legislature could consider two options: setting a deadline in proviso for the Department of Education to complete interagency agreements, and amending current law to clarify responsibilities regarding funding and managing exceptional students in residential facilities.

Option 1. Set a deadline for the Department of Education to develop interagency agreements. The Legislature could use proviso language to set a deadline for the Department of Education to establish interagency agreements with the Department of Children and Families, and the Agency for Persons with Disabilities and to adopt applicable rules.<sup>13</sup> The interagency agreements should address the notification of school districts of impending student placements, the timing of students discharge from these facilities, and what activities should be included within the education portion of the costs for students assigned to residential care facilities. The State Board of Education rules would govern the responsibilities of school districts related to the provision of educational services while students are in facilities outside of their home districts.

Option 2. The Legislature could amend Florida law to clarify responsibility for the delivery of educational services to exceptional students in residential treatment facilities. Alternately, the Legislature could amend s. 1003.58, *Florida Statutes*, to require the actions below be taken.

- The Department of Education, in consultation with Department of Children and Families, the Agency for Persons with Disabilities, and the Agency for Health Care Administration, and school districts, develop procedures for the timely notification of school districts regarding the placement of exceptional students in residential treatment facilities. The procedures must provide written notification within 10 days of the placement to the school district where the

facility is located and to the school district where a student's parents live (if the facility is located outside the student's parent's county of residence). The procedures also must identify the entity responsible for notification for each type of facility that the state agencies operate, regulate, and/or license; and

- The school district that provides the educational services to a facility must report the students at that facility as a part of their district FTE count, and shall receive state funds to serve those students. If the school district where the facility is located is not involved in delivering, coordinating, or contracting for services at the facility, then the district where the student's parents reside is designated as the district where the student will be counted for FTE purposes and the district that will contract with the facility for educational services for each student from his or her district.

## Agency Response

In accordance with the provisions of s. [11.51\(5\)](#), *Florida Statutes*, a draft of our report was submitted to the Department of the Education, Agency for Persons with Disabilities, Agency for Health Care Administration, Department of Children and Families, and Department of Juvenile Justice to review and respond. The written responses to this report are available on OPPAGA's website at [www.oppaga.state.fl.us](http://www.oppaga.state.fl.us).

<sup>13</sup> Proviso language also could direct the Department of Education to determine the need for a similar agreement with the Agency for Health Care Administration, and, if necessary, establish such an agreement.



April 14, 2008

Charlie Crist,  
Governor

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Jane E. Johnson,  
Agency Director

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4030 Esplanade  
Way,  
Suite 380  
Tallahassee,  
Florida  
32399-0950

\*\*\*

(850) 488-4257

Fax:

(850) 922-6456

Toll Free:

(866) APD-CARES

(866-273-2273)

Gary R. VanLanningham, Director  
The Florida Legislature  
Office of Program Policy Analysis and  
Government Accountability  
111 West Madison Street  
Room 312, Claude Pepper Building  
Tallahassee, Florida 32399-1475

Dear Mr. VanLanningham:

This is the Agency's response to the OPPAGA report "Responsibility for Education of Exceptional Students Placed in Residential Treatment Facilities Needs Clarification." We appreciate the opportunity to respond to the report recommendations.

#### **OPPAGA Recommendations**

Option 1- Set a deadline for the Department of Education to develop interagency agreements. Option 2- The Legislature could amend Florida law to clarify responsibility for the delivery of educational services to exceptional students in residential treatment facilities.

#### **APD Response**

The Agency for Persons with Disabilities (APD) licenses over 1,500 residential facilities which serve approximately 1,100 children with developmental disabilities. Out of the 469 students identified, in OPPAGA's report, approximately 69 are APD consumers. Out of the 26 facilities identified in the report only three are licensed by APD and each have long standing agreements with the affected school districts.

APD is not authorized to place individuals in facilities; therefore APD would be unable to consistently comply with the 10 day notification requirement, because APD is not always notified within 10 days of the admission. The licensed facility that admits the student should be the entity that notifies the applicable school district. APD has conferred with Legislative personnel, Department of Children and Families, and Department of Education (DOE) about the amendment to House bill 359, adopted by the House Council on Schools and Learning, in its April 11, 2008 meeting. APD concurs with the amendment which requires that notification for students admitted to residential facilities licensed by APD be provided by the facility. At the



Mr. VanLandingham:  
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agency level, APD will work with DOE to develop mechanisms to address the relationships between school districts and applicable APD licensed facilities.

If further information concerning our response is needed, please contact Karen Laiche, Director of Auditing.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jane E. Johnson". The signature is fluid and cursive, with the first name "Jane" being the most prominent.

Jane E. Johnson  
Director

cc: Charles Faircloth, Inspector General  
Karen Laiche, Director of Auditing



**State of Florida  
Department of Children and Families**

**Charlie Crist**  
Governor

**Robert A. Butterworth**  
Secretary

April 25, 2008

Gary R. VanLandingham, Director  
Office of Program Policy Analysis and  
Government Accountability  
111 West Madison Street, Room 312  
Claude Pepper Building  
Tallahassee, Florida 32399-9083

Dear Mr. VanLandingham:

Thank you for your April 9 letter providing the preliminary findings and conclusions of your agency's recent report entitled, *Responsibility for Education of Exceptional Students Placed in Residential Treatment Facilities Needs Clarification*. The Department of Children and Families staff have reviewed the original preliminary report and two subsequent revisions identifying issues that are of concern to the Department for all children in Florida.

The existing interagency agreement between the Department of Children and Families and Department of Education and the local agreements between the community-based care lead agencies and school districts were designed to ensure that communication occurs in a timely manner. This is essential for the agencies responsible for providing services to children and youth placed in residential treatment. The Department of Children and Families staff would be happy to work with the Department of Education to refine these agreements in order to better address concerns raised by your report.

If you or your staff have any questions, please contact Ms. Laurie Blades, Chief of Children's Mental Health, at (850) 921-4474.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rob Butterworth', is written over a horizontal line.

Robert A. Butterworth  
Secretary

1317 Winewood Boulevard, Tallahassee, Florida 32399-0700

Mission: Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families, and  
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## *The Florida Legislature*

# *Office of Program Policy Analysis and Government Accountability*



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Project supervised by David D. Summers (850/487-9257)

Project conducted by Byron Brown (850/487-9215), Brook Pace, and Laurie Scott

Jane Fletcher, Education Policy Area Staff Director, OPPAGA

Gary R. VanLandingham, Ph.D., OPPAGA Director