

(6)(7) Each athletic trainer shall maintain proof of completion of the required continuing education hours for a period of 4 years, and shall provide such proof to the department upon request.

Specific Authority 468.705, 468.711(2),(3), 455.564 FS. Law Implemented 468.711(2) FS. History—New 8-4-98, Formerly 64B30-25.0031, Amended _____.

DEPARTMENT OF HEALTH

Board of Athletic Training

RULE TITLE: Fees
RULE NO.: 64B33-3.001

PURPOSE AND EFFECT: The Board proposes the development of rule amendments to address the initial licensure fee for those licensed in the second year of the biennium; to increase the delinquent license fee; and to set forth a fee for a duplicate license.

SUBJECT AREA TO BE ADDRESSED: Fees.

SPECIFIC AUTHORITY: 455.587, 468.705, 468.70 FS.

LAW IMPLEMENTED: 455.587, 468.709 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Sue Foster, Executive Director, Board of Athletic Training/MQA, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B33-3.001 Fees.

The following fees are prescribed for athletic trainers:

- (1) The application fee shall be \$100.
- (2) The initial licensure fee for those initially licensed in the first year of the biennium shall be \$125. For those initially licensed in the second year of the biennium, the initial licensure fee shall be \$75.
- (3) The biennial renewal fee shall be \$125.
- (4) The inactive fee shall be \$50.
- (5) The delinquent fee shall be \$75 \$25.
- (6) The reactivation fee shall be \$25.
- (7) The change of status fee shall be \$25.
- (8) The duplicate license fee shall be \$25.

Specific Authority 455.587, 468.705, 468.709 FS. Law Implemented 455.587, 468.709 FS. History—New 7-12-95, Amended 5-29-96, Formerly 61-25.001, 64B30-25.001, Amended _____.

**Section II
Proposed Rules**

DEPARTMENT OF BANKING AND FINANCE

Board of Funeral and Cemetery Services

RULE TITLE: Effectiveness of Cemetery Licenses Valid on September 30, 1993
RULE NO.: 3F-5.001

PURPOSE AND EFFECT: To repeal this rule.

SUMMARY: This rule was enacted to give authority to licensees with valid cemetery licenses valid from September 30, 1993 until May 24, 1994, under Ch. 197, Fla. Stats.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 497.103(1) FS.

LAW IMPLEMENTED: 497.405, 497.407 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Diana Evans, Executive Director, Board of Funeral and Cemetery Services, 101 East Gaines Street, Tallahassee, Florida 32399-0350

THE FULL TEXT OF THE PROPOSED RULE IS:

3F-5.001 Effectiveness of Cemetery Licenses Valid on September 30, 1993.

~~Unless revoked or otherwise restricted, any cemetery license valid on September 30, 1993 shall remain in effect for purposes of authority to sell preneed contracts under Chapter 197, Florida Statutes, until May 31, 1994.~~

Specific Authority 497.103(1) FS. Law Implemented 497.405, 497.407 FS. History—New 4-25-94, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Funeral and Cemetery Services

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Funeral and Cemetery Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 18, 2000

DEPARTMENT OF BANKING AND FINANCE

Board of Funeral and Cemetery Services

RULE TITLE: Certificate of Authority; Financial Requirements RULE NO.: 3F-5.0016

PURPOSE AND EFFECT: The purpose of this amendment is to set forth standards which will require Certificate of Authority holders to be more financially sound by requiring that they attest to and maintain \$50,000 network.

SUMMARY: This rule sets forth the financial requirements that must be met and maintained by applicants and certificate of authority holders in order to maintain a normal course of business.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 497.103 FS.

LAW IMPLEMENTED: 497.405, 497.407 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:00 a.m., June 6, 2000

PLACE: Board of Funeral and Cemetery Services, Fletcher Building, 101 E. Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Diana M. Evans, Executive Director, Board of Funeral and Cemetery Services, 101 East Gaines Street, Tallahassee, Florida 32399-0350

THE FULL TEXT OF THE PROPOSED RULE IS:

3F-5.0016 Certificate of Authority; Financial Requirements.

(1) A Certificate of Authority holder or applicant must meet and maintain the following requirements on an annual basis, demonstrating its ability to discharge its liabilities as they become due in the normal course of business and must have sufficient funds available to perform its obligation under its existing preneed contracts.

(2) A Certificate of Authority holder or applicant must submit its most recent year-end financial statements (including a balance sheet and income statement), with the Certificate of Authority application and annually thereafter as provided in Section 497.407(1), F.S. The financial statements must be prepared in accordance with generally accepted accounting principles (GAAP) as those principles have been defined by the Florida Board of Accountancy in Chapter 61H1-20, F.A.C. The financial statements may omit notes to financial statements and the statement of cash flows.

(3) The Certificate of Authority holder must attest to a \$50,000.00 level of net worth:

~~(a) Certificate of Authority holder that has total preneed contracts of \$100,000 or less — \$5,000 net worth;~~

~~(b) Certificate of Authority holder that has total preneed contracts of \$100,001 to \$200,000 — \$10,000 net worth;~~

~~(c) Certificate of Authority holder that has total preneed contracts of \$200,001 to \$300,000 — \$15,000 net worth;~~

~~(d) Certificate of Authority holder that has total preneed contracts of \$300,001 to \$400,000 — \$20,000 net worth;~~

~~(e) Certificate of Authority holder that has total preneed contracts of greater than \$400,001 — \$25,000 net worth.~~

(4) In the case of a Certificate of Authority holder or applicant offering preneed sales through a subsidiary agent, as provided in Rule 3F-5.0015, the Certificate of Authority holder or applicant shall execute a guarantee agreement with respect to any contract obligations resulting from preneed sales of such a selling agent.

(5) If the Certificate of Authority holder or applicant does not meet the financial requirements in (3) above, the entity may, within thirty (30) days of notification by the Board, voluntarily submit to the Board additional evidence or agree to additional oversight as to its meeting the requirements of (1) above and as a condition of receiving and retaining a Certificate of Authority. Such additional evidence or oversight agreement shall include as appropriate:

~~(a) agreement to submit monthly financial statements of the entity~~

~~(b) agreement to submit quarterly financial statements of the entity~~

~~(c) appraisal of the entity's property or broker's opinion of value of entity's assets~~

~~(d) credit report of the entity or its principal owners~~

~~(e) subordination of debt agreement from the entity's principal owners~~

~~(f) indemnification/subrogation agreement binding the entity and principal owners~~

~~(g) guarantee agreement for the entity from its principal owners~~

~~(d)(h)~~ written explanation of past financial activity

~~(e)(i)~~ submission of a twelve month projected plan for financial recovery

~~(f)(j)~~ submission of previous Department examination reports

~~(g)(k)~~ 100% voluntary trusting agreement by the entity.

Upon the Board's review of such additional information or agreements, submitted within the thirty (30) day time period, as stated above, the Board shall issue a Certificate of Authority if such information or agreement results in the Board determining that the applicant or certificate holder meets the requirements of Sections 497.405 and 497.407, F.S.

As to all new applicants, this rule will become effective 20 days after filing with the Department of State. As to renewals of existing Certificates of Authority, this rule will become effective on April 1, 2001.

Specific Authority 497.103 FS. Law Implemented 497.405, 497.407 FS. History—New 5-21-95, Amended 12-7-98, 10-18-99,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Funeral and Cemetery Services

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Funeral and Cemetery Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 16, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 14, 2000

DEPARTMENT OF INSURANCE

RULE TITLE: Purpose and Scope

RULE NO.: 4-211.029

PURPOSE AND EFFECT: The amendment makes it clear that this rule chapter does not apply to crimes described in section 18 U.S.C. 1033. This hearing will be held in conjunction with 4-231.020; Penalty Guidelines for Insurance Representatives.

SUMMARY: The intended effect of licenses under 4-211 on agents subject to prohibitions imposed by section 18 U.S.C. 1033.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No SERC has been prepared.

Any person who wishes to provide information retarding the statement if estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 624.308 FS.

LAW IMPLEMENTED: 112.011, 624.307(1), 626.161, 626.171, 626.201, 626.211, 626.291, 626.601, 626.611(7),(14), 626.621(8), 626.631, 626.641, 648.34, 648.37 FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., June 20, 2000

PLACE: Room 116, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bill Tharpe, Division of Legal Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0333, (850)413-4110

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting Yvonne White at (850)413-4214.

THE FULL TEXT OF THE PROPOSED RULE IS:

4-211.029 Purpose and Scope.

(1) This rule part sets forth Department policy, statutory interpretation, and procedure, regarding the effect of an applicant's law enforcement record on the applicant's application for any license as agent, adjuster, sales representative, or other licensure as an individual, under the Florida Insurance Code.

(2) This rule part does not apply to the licensure of bail bondsmen, runners, or limited surety agents, under Chapter 648, Florida Statutes.

(3) This rule chapter does not apply to crimes described in section 18 U.S.C. 1033.

Specific Authority 624.308 FS. Law Implemented 112.011, 624.307(1), 626.161, 626.171, 626.201, 626.211, 626.291, 626.601, 626.611(7),(14), 626.621(8), 626.631, 626.641, 648.34, 648.37 FS. History—New 2-2-95, Amended_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Bill Tharpe, Executive Senior Attorney, Division of Legal Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Donald A. Dowdell, Director, Division of Legal Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 31, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 14, 2000

DEPARTMENT OF INSURANCE

RULE TITLE: Scope

RULE NO.: 4-231.020

PURPOSE AND EFFECT: The amendment makes it clear that this rule chapter does not apply to crimes described in section 18 U.S.C. 1033. This hearing will be held in conjunction with 4-211.029; Insurance Representative.

SUMMARY: The intended effect of penalties under 4-231 on agents subject to prohibitions imposed by section 18 U.S.C. 1033.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No SERC has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 624.308 FS.

LAW IMPLEMENTED: 624.307(1), 626.611, 626.621, 626.681, 626.691 FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., June 20, 2000

PLACE: Room 116, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bill Tharpe, Division of Legal Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0333, (850)413-4110

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting Yvonne White at (850)413-4214.

THE FULL TEXT OF THE PROPOSED RULE IS:

4-231.020 Scope.

(1) This rule chapter shall apply to all resident and nonresident insurance agents, customer representatives, solicitors, adjusters and claims investigators licensed under Chapter 626, Florida Statutes, who are subject to discipline under sections 626.611 and 626.621, Florida Statutes.

(2) This rule chapter does not apply to title insurance agents, insurance administrators, surplus lines agents, managing general agents or health care risk managers.

(3) This rule chapter does not apply to crimes described in section 18 U.S.C. 1033.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.611, 626.621, 626.681, 626.691 FS. History--New 7-13-93, Amended

NAME OF PERSON ORIGINATING PROPOSED RULE: Bill Tharpe, Executive Senior Attorney, Division of Legal Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Donald A. Dowdell, Director, Division of Legal Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 31, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 14, 2000

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Plant Industry

RULE TITLE: Citrus Canker Eradication

RULE NO.: 5B-58.001

PURPOSE AND EFFECT: The purpose of this rule amendment is to establish decontamination requirements of personnel and equipment moving between citrus groves and is necessary to prevent additional spread of citrus canker.

SUMMARY: Removes the five mile limitation around an infestation of citrus canker in the quarantine area and establishes decontamination requirements for harvesters, intermediate handlers, grove caretakers, packers, and processors both within and outside the quarantine area.

SPECIFIC AUTHORITY: 570.07(21),(23), 581.091(1), 581.101(1), 581.031(1),(4),(5), 581.184 FS.

LAW IMPLEMENTED: 580.07(2),(13),(21), 581.031(6),(7), (9),(15),(17),(19),(30), 581.083, 581.101, 581.131, 581.141, 581.184, 581.211 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., June 19, 2000

PLACE: Doyle Conner Building, 1911 S. W. 34 Street, Gainesville, FL 32608

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Constance C. Riherd, Assistant Director, Division of Plant Industry, Department of Agriculture and Consumer Services, Doyle Conner Building, 1911 S. W. 34th Street, Gainesville, Florida 32614-7100, Phone (352)372-3505

THE FULL TEXT OF THE PROPOSED RULE IS:

5B-58.001 Citrus Canker Eradication.

(1) through (3) No change.

(4) Quarantine area. An area ~~not to exceed a distance of 5 miles~~ around a site where an infestation of citrus canker is known to occur will be quarantined. The geographical boundaries of the quarantine area shall be established by risk assessment procedures and will be published in a major newspaper of general distribution in each area affected and through other appropriate media. Risk assessment procedures will consider the aggressiveness of the pathogen in the field, the level of disease inoculum, the location and spatial distribution of infected and exposed plants, the variety and type of plants, the risk of spread to areas growing citrus commercially, maintenance practices, and other relevant information. An area shall be released from quarantine provided no detections of citrus canker have occurred during a minimum two-year period of intensive survey and a declaration that citrus canker has been eradicated from the area.

(5) through (10) No change.

(11) Decontamination requirements. All harvesters, intermediate handlers, grove caretakers, packers, and processors both within and outside of the quarantine area must decontaminate equipment and personnel and sign the applicable compliance agreement, DACS-08031, effective 5/99, and incorporated into this rule by reference. A copy of DACS-08031 may be obtained from the Citrus Canker Program, 3027 Lake Alfred Road, Winter Haven, Florida 33881.

~~(12)(11)~~ Treatment of citrus fruit. Citrus fruit for which treatment is required by this rule must be treated in accordance with label directions in one of the following ways in the

presence of an authorized representative of the department, or at a facility operating under a compliance agreement, DACS-08031, effective 5/99, with the department:

(a) Thoroughly wetted for at least 2 minutes with a solution containing 200 parts per million sodium hypochlorite, with a solution maintained at a pH of 6.0 to 7.5, or

(b) Thoroughly wetted with a solution containing sodium o-phenyl phenate (SOPP) at a concentration of 1.86 to 2.0 percent total solution for 45 seconds if the solution has sufficient soap or detergent to cause a visible foaming action, or for 1 minute if the solution does not contain sufficient soap to cause a visible foaming action.

~~(13)~~(12) Treatment of Regulated Articles. Regulated Articles for which treatment is required by this rule must be treated in one of the following ways in the presence of an authorized representative of the department, or at a facility operating under a compliance agreement with the department:

(a) All surfaces must be treated to the point of runoff with 200 parts per million sodium hypochlorite solution. A pH of 6.0 to 7.5 must be maintained in the solution.

(b) All surfaces must be treated to the point of runoff with 2000 parts per million solution of quaternary ammonium chloride (0.2% OAC).

(c) All surfaces must be washed thoroughly to the point of runoff with a hot water and detergent solution under high pressure maintained at a minimum temperature of 160 degrees F. (71 degrees C).

(d) All surfaces must be thoroughly cleaned with steam with a minimum temperature of 160 degrees F (71 degrees C) maintained at the point of contact.

~~(14)~~(13) Treatment of Personnel. Personnel departing from property in the quarantine area shall wash or treat all exposed areas of the body and clothing with an antibacterial soap, wash, spray or other approved solution.

~~(15)~~(14) Citrus plants in containers. Maintaining citrus plants in containers within the quarantine areas is prohibited unless they are located in a nursery or nursery stock dealer establishment which is registered with the department. It shall be unlawful for nurseries or nursery stockdealers in the quarantine areas to add citrus plants to their inventory.

~~(16)~~(15) Entry of authorized representatives. All owners and occupants of properties on which citrus canker is known or suspected to exist shall permit entry of authorized representatives of the Department of Agriculture and Consumer Services for purposes of inspecting, taking of specimens, or collecting suspect infected fruit, photographing or documenting tree information, applying or supervising treatments, or conducting control activities.

Specific Authority 570.07(21),(23), 581.091(1), 581.101(1), 581.031(1),(4),(5), 581.184 FS. Law Implemented 570.07(2),(13),(21), 581.031(6),(7),(9),(15),(17), 581.083, 581.101, 581.131, 581.141, 581.184, 581.211 FS. History—New 1-17-96, Amended 4-9-96, 5-14-97, 8-19-97, 11-19-97, 11-16-99.

NAME OF PERSON ORIGINATING PROPOSED RULE: Constance C. Riherd, Assistant Director, Division of Plant Industry, Department of Agriculture and Consumer Services, P. O. Box 147100, Gainesville, Florida 32614-7100

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Richard Gaskalla, Director, Division of Plant Industry, Department of Agriculture and Consumer Services, P. O. Box 147100, Gainesville, Florida 32614-7100

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 1, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 14, 2000

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: Special Programs for Students Who Are Homebound or Hospitalized

RULE NO.: 6A-6.03020

PURPOSE AND EFFECT: The purpose of this rule revision is to align procedures for eligibility of students eligible for homebound and hospitalized services with the procedures for other students with disabilities as defined in 228.041, F.S. and as required in PL105-17 (20 USC 1415) – Individuals with Disabilities Education Act, 1997.

SUMMARY: Changes to this rule include definition of a licensed physician through Florida Statutes, reference to absences of the equivalent of fifteen days on a block schedule as well as at least fifteen days, addition of eligibility for students ages birth to five, specification of an annual medical statement, and alignment of procedures for eligibility and individual educational plan development in accordance with appropriate state board of education rules.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of the notice.

SPECIFIC AUTHORITY: 229.053(1), 230.23(4)(m), 232.01(1)(c) FS.

LAW IMPLEMENTED: 228.041(18)(19), 229.565(3)(b)(c), 230.23(4)(m)4., 232.01(1)(e), 236.081(1)(c) FS., PL 105-17 (20 USC 1415).

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., June 26, 2000

PLACE: Room LL03, The Capitol, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Betty Coxe, Director, Division of Public Schools and Community Services, 325 West Gaines Street, Room 514, Tallahassee, Florida 32399-0400, (850)488-2601

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-6.03020 Special Programs for Students Who Are Homebound or Hospitalized.

(1) Homebound or hospitalized. A homebound or hospitalized student is a student who has a medically diagnosed physical or mental condition which is a chronic illness or is a repeated intermittent illness due to a persisting medical problem, which confines the student to home or hospital, and restricts whose activities are restricted for an extended period of time. The medical diagnosis shall be made by a licensed physician.

(2) The term licensed physician, as used in this rule, is defined in Chapters 458 through 463, and Chapter 466, Florida Statutes, and Rule 6A-6.03020, FAC., is one who is qualified to assess the student's physical or mental condition.

(3) Criteria for eligibility. A student is eligible for special programs for homebound or hospitalized if the following criteria are met:

(a) A Certification by a licensed physician(s) must certify: as specified in Rule 6A-6.03020(2), FAC.

1. That that the student is expected to be absent from school due to a physical or mental condition for at least fifteen (15) consecutive school days, or the equivalent on a block schedule or due to a chronic condition, for at least fifteen (15) school days or the equivalent on a block schedule which need not run consecutively;

2. That the student is confined to home or hospital; and

3. That the student will be able to participate in and benefit from an instructional program; and

(b) Student is under medical care for illness or injury which is acute or catastrophic in nature; and

(c) Certification by a licensed physician as specified in Rule 6A-6.03020(2), FAC., that the student can receive an instructional program without endangering the health of the instructor or other students with whom the instructor may come in contact; and

(d) Student is enrolled in a public school prior to the referral for the homebound or hospitalized program, unless the student meets criteria for eligibility under Rules 6A-6.03011, 6A-6.03012, 6A-6.03013, 6A-6.03014, 6A-6.03015, 6A-6.03016, 6A-6.03018, 6A-6.03019, 6A-6.03021, 6A-6.03022, 6A-6.03023, 6A-6.03024, and 6A-03025, 6A-6.03027, and 6A-6.03030, FAC. and

(e) A parent, guardian or primary caregiver signs parental agreement concerning homebound or hospitalized policies and parental cooperation.

(4) Procedures for student evaluation.

(a) The minimum evaluation for a student to determine eligibility shall be an annual medical statement from a licensed physician(s) as specified in Rule 6A-6.03020(2), FAC., including a description of the disabling handicapping condition

or diagnosis with any medical implications for instruction. This report shall state the student is unable to attend school and give an estimated duration of condition or prognosis.

(b) A physical reexamination and a medical report by a licensed physician(s) as specified in Rule 6A-6.03020(2), FAC., may be requested by the administrator of exceptional student education or the administrator's designee on a more frequent basis than required in this rule Rule 6A-6.0331(1)(e), FAC., and shall be required if the student is scheduled to attend school part of a day during a recuperative period of readjustment to a full school schedule.

(5) Procedures for determining eligibility. Procedures for determining eligibility shall be in accordance with Rule 6A-6.0331, FAC.

~~(a) For a student who is medically diagnosed as chronically ill or who has repeated intermittent illness due to a persisting medical problem, staffing as required in Rule 6A-6.0331(2) and (4)(b),(c),(d), and (e), FAC., shall be held annually to establish continuing eligibility for homebound or hospitalized services.~~

~~(b) A student may be alternately assigned to the homebound or hospitalized program and to a school-based program due to a severe, chronic or intermittent condition as certified by a licensed physician, as specified in Rule 6A-6.03020(2), FAC.~~

(6) Procedures for providing an individual educational plan.

~~(a) For the homebound or hospitalized student who meets the eligibility criteria for programs as listed in Rule 6A-6.03020(3)(d), FAC., the individual educational plan shall be developed or revised prior to assignment to the homebound or hospitalized program placement as required in Rule 6A-6.03028, FAC.~~

~~(b) For the homebound or hospitalized student who does not meet the eligibility criteria for programs as listed in Rule 6A-6.03020(3)(d), FAC., whose physician expects the placement in the homebound or hospitalized program to exceed thirty (30) consecutive school days, the individual educational plan shall be developed prior to assignment but may be developed without a formal meeting, as required in Rule 6A-6.0331, FAC.~~

~~(c) For the homebound or hospitalized student who does not meet the eligibility criteria for programs as listed in Rule 6A-6.03020(3)(d), FAC., whose physician expects the placement in the homebound or hospitalized program not to exceed thirty (30) consecutive school days, the individual educational plan may be developed after assignment and without the formal meeting required in Rule 6A-6.0331, FAC.~~

(7) Instructional program. The following settings and instructional modes are acceptable for this program:

(a) Instruction in a home. The parent, guardian or primary caregiver shall provide a quiet, clean, well-ventilated setting where the teacher and student will work; ensure that a responsible adult is present; and establish a schedule for student study between teacher visits.

(b) Instruction in a hospital. The hospital administrator shall provide appropriate space for the teacher and student to work and allow for the establishment of a schedule for student study between teacher visits.

(c) Instruction through telecommunications devices. When instruction is by telecommunications ~~telephone~~, the parent, guardian, or primary caregiver shall provide an open, uninterrupted telecommunication link ~~telephone line~~ during the instructional period and shall ensure that the student is prepared to actively participate in learning.

~~(8) Funding. Students shall be counted for the homebound or hospitalized cost factor when instruction is by any of the following methods: individual instruction on a one-to-one basis, group instruction when all students in the group are members of the same family, and instruction provided through telecommunications.~~

Specific Authority 229.053(1), 230.23(4)(m), 232.01(1)(c)(e), 236.081(1)(c) FS. Law Implemented 228.041(18),(19), 229.565(3)(b),(c), 230.23(4)(m)4., 232.01(1)(e), ~~236.081(1)(e)~~ FS.; PL 105-17, (20 USC 1415). History—New 7-1-77, Amended 7-2-79, 4-27-82, Formerly 6A-6.3020, Amended 5-18-86,

NAME OF PERSON ORIGINATING PROPOSED RULE:
John Stewart, Deputy Commissioner of Educational Programs,
Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: Tom Gallagher, Commissioner of
Education

DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: May 13, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: February 18, 2000

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: Development of Individual Educational
Plans and Educational Plans for
Exceptional Students

RULE NO.: 6A-6.03028

PURPOSE AND EFFECT: The purpose of this rule revision is to outline procedures for the development of individual educational plans (IEPs) and educational plans for exceptional students as outlined in PL105-17 (20 USC 1415) – Individuals with Disabilities Education Act, 1997.

SUMMARY: This rule is revised to provide sections on: considerations in IEP development, review, and revision; contents of the IEP; transition services for students moving to post-school activities; transition of children from infants and toddlers early intervention programs to the school district

prekindergarten programs for students with disabilities; timelines; review and revision of the IEP; IEP implementation; IEP team participants; nonpublic schools for students with disabilities; parent participation for students with disabilities; and IEPs or educational plans for students who are gifted.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of the notice.

SPECIFIC AUTHORITY: 229.053(1),(2)(i), 230.23(4)(m), 236.081(1)(c) FS.

LAW IMPLEMENTED: 120.53(1)(b), 228.041(18),(19), 229.053(2)(i), 230.23(4)(m), 236.081(1)(c) FS.; PL 105-17 (20 USC 1415)

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., June 26, 2000

PLACE: Room LL03, The Capitol, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Betty Coxe, Director, Division of Public Schools and Community Services, 325 West Gaines Street, Room 514, Tallahassee, Florida 32399-0400, (850)488-2601

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-6.03028 Development of Individual Educational Plans and Educational Plans for Exceptional Students.

Procedures for the development of the individual educational plans for exceptional students and educational plans for students who are gifted ~~educational planning~~ shall be set forth in each district's Special Programs and Procedures of Exceptional Students document consistent with the following requirements.

(1) Considerations in IEP development, review, and revision. The IEP team shall consider the following in IEP development, review, and revision and if the IEP team determines that a student needs a particular device or service in order for the student to receive a free appropriate public education, the IEP team must include a statement to that effect in the student's IEP:

(a) The strengths of the student and the concerns of the parents for enhancing the education of their child;

(b) The results of the initial or most recent evaluation of the student;

(c) As appropriate, the results of the students' performance on any general state or district assessment;

(d) In the case of a student whose behavior impedes learning or the learning of others, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(e) In the case of a student with limited English proficiency, the language needs of the students as those needs relate to the student's IEP;

(f) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs (including future needs), and appropriate reading and writing media that instruction in Braille or the use of Braille is not appropriate for the student;

(g) The communication needs of the student, and in the case of a student who is deaf or hard of hearing, the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode;

(h) Whether the student requires assistive technology devices and services; and

(i) Whether extended school year services are necessary for the provision of a free appropriate public education to the student. Extended school year services must be provided only if a student's IEP team determines, on an individual basis, that the services are necessary for the provision of a free appropriate public education to the student. School districts may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services. Extended school year services means special education and related services that are provided to a student with a disability beyond the normal school year of the school district, in accordance with the student's IEP, and at no cost to the parents of the students.

(2)(4) Contents of the IEP. Each district shall develop an individual educational plan (IEP) for each student with a disability. For children with disabilities ages birth through five (5) years, districts may develop an IEP or a family support plan in accordance with Rule 6A-6.03029, FAC. An IEP consists of written statements including:

(a) A statement of the student's present levels of educational performance including how the student's disability affects the student's involvement and progress in the general curriculum or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(b) A statement of measurable annual goals, including benchmarks or short term instructional objectives related to meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general curriculum or for preschool children, as appropriate, to participate in appropriate activities and meeting each of the child's other educational needs that result from the child's disability;

(c) A statement of the specific special education and related services and supplemental aids and services to be provided to the student or on behalf of the student the extent to which the student will be able to participate in regular educational programs;

(d) A statement of the program modifications or supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals; to be involved and progress in the general curriculum in accordance with paragraph (2)(a) of this rule; to participate in extracurricular and other nonacademic activities; and to be educated and participate with other students with disabilities and non disabled students in the activities described in this paragraph; The projected dates for initiation of services and the anticipated duration of the services;

(e) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in the activities described in paragraph (2)(c) of this rule; Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved; and

(f) A statement of any individual accommodations in the administration of the state or district assessments of student achievement that are needed in order for the student to participate in the assessment and if the IEP team determines that the student will not participate in a particular state or district assessment of student achievement (or part of an assessment), a statement of why that assessment is not appropriate for the student and how the student will be assessed; A statement of the needed transition services in accordance with subsection (2) of this rule including, if appropriate, a statement of each school district's and each participating agency's responsibilities or linkages, or both, for each student beginning no later than age sixteen (16) or at a younger age if determined appropriate.

(g) The projected date for the beginning of the services and modifications described in paragraph (2)(c) of this rule and the anticipated frequency, location, and duration of those services and modifications;

(h) A statement of how the student's progress toward the annual goals will be measured and how the student's parents will be regularly informed (at least as often as parents are informed of their nondisabled children's progress) of the student's progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year;

(i) For each student with a disability beginning by the fourteenth birthday (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable

components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program;

(j) For each student beginning by the sixteenth birthday (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

(k) Beginning at least one year before a student's eighteenth birthday, the student's IEP must include a statement that the student has been informed of rights under Part B of the Individual with Disabilities Education Act that will transfer to the student on reaching the age of majority (eighteen years of age).

(3)(2) Transition Services Definition. Transition services means a coordinated set of activities for a student with a disability designed within an outcome-oriented process that promotes movement from school to post-school activities which may include postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

(a) The coordinated set of activities described in subsection (3)(2) of this rule must be based on the student's needs and take into account the student's preferences and interests and shall include:

1. Needed activities in the areas of instruction, related services, community experiences, the development of employment, and other post-school adult living objectives; and
2. If appropriate, acquisition of daily living skills and functional vocational evaluation.

(b) If the IEP team determines that the transition services are not needed in one (1) or more of the areas listed in subparagraph (3)(2)(a)1. of this rule, the IEP shall include a statement to that effect and the basis upon which the determination was made.

(c) If a participating agency, other than the school district, fails to provide the transition services described in the IEP, the school district shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(d) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

(4) Transition of children from infants and toddlers early intervention programs to the school district prekindergarten programs for students with disabilities.

(a) By the third birthday of a child participating in early-intervention programs in accordance with Section 230.2305, Florida Statutes, and who will participate in prekindergarten programs in accordance with Section

228.041(18),(19), Florida Statutes, an IEP consistent with this rule or an individual family support plan consistent with Rule 6A-6.03029, FAC., must be developed and implemented.

(b) For the purpose of implementing the requirement of paragraph (4)(a) of this rule, each school district will participate in transition planning conferences arranged by the state lead agency for infants and toddlers early intervention programs.

(5)(3) Timelines. Timelines for IEP meetings for students with disabilities shall include the following:

(a) An IEP which has been reviewed and revised if appropriate, within the past year, must be in effect at the beginning of each school year for each student with a disability who is continuing in a special program.

(b) An IEP must be developed prior to assignment in special programs and within thirty (30) calendar days following the determination of eligibility for new students with a disability assigned to a special program.

(c) Meetings shall be held to develop, review and revise the IEP. A meeting shall be held at least once every twelve (12) months a year to review each IEP and, as appropriate, revise its provisions in accordance with all aspects of this rule.

(6) Review and revision of the IEP. The school district will ensure that the IEP team:

(a) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

(b) Revise the IEP as appropriate to address:

1. Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate.

2. The results of any reevaluation conducted.

3. Information about the student provided to, or by, the parents, and

4. The student's anticipated needs or other matters.

(4) Participants. IEP meetings for students with disabilities shall include the following participants:

(a) ~~A representative of the district school system, other than the student's teacher, who is qualified to provide or supervise the provision of special education;~~

(b) ~~The student's teacher;~~

(c) ~~One (1) or both of the student's parents as provided in subsection (7) of this rule;~~

(d) ~~The student, when appropriate;~~

(e) ~~Other individuals at the discretion of the parent or district school system;~~

(f) ~~In addition, for an exceptional student who has been evaluated for the first time, a member of the evaluation team or some other person who is knowledgeable about the evaluation procedures used with the student and is familiar with the results of the evaluation; and~~

~~(g) If the purpose of the IEP meeting is to consider transition services for a student, the school district shall invite the student and a representative of any other agency that may be responsible for providing or paying for transition services. If the student does not attend, the school district shall take other steps to ensure that the student's preferences and interests are considered. If an agency invited to send a representative to a meeting does not do so, the school district shall take other steps to obtain the participation of the other agency in the planning of any transition services.~~

~~(5) Agency responsibilities for transition for students with disabilities.~~

~~(a) If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the school district shall, as soon as possible initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and revise the student's IEP, if necessary.~~

~~(b) Nothing in subsection (5) relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.~~

~~(7) IEP implementation. An IEP is in effect before special education and related services are provided to an eligible student and is implemented as soon as possible following the IEP meeting.~~

~~(a) The student's IEP shall be accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.~~

~~(b) Each teacher and provider described in paragraph (7)(a) of this rule shall be informed of specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.~~

~~(8) IEP team participants. The IEP team shall include the following participants:~~

~~(a) The parents of the student in accordance with subsection (10) of this rule;~~

~~(b) At least one regular education teacher of the student (if the student is or may be participating in the regular education environment), to the extent appropriate;~~

~~(c) At least one special education teacher of the student;~~

~~(d) A representative of the school district who is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the school district;~~

~~(e) An individual who can interpret the instructional implications of evaluation results who may be a member of the team as described in paragraphs (8)(b)-(d) of this rule;~~

(f) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and

(g) If appropriate, the student.

(h) The determination of knowledge or special expertise of any individual described in paragraph (8)(f) of this rule shall be made by the party who invites the individual to be a member of the IEP team.

(i) If the purpose of the IEP meeting is to consider transition services for a student, the school district shall invite the student. If the student does not attend, the school district shall take other steps to ensure that the student's preferences and interests are considered.

(i) If the purpose of the IEP meeting is to consider transition services, the school district shall invite a representative of any other agency that may be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the school district shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(9)(6) Nonpublic schools for students with disabilities.

(a) If through a contractual arrangement with a nonpublic school, meetings are initiated and conducted by the nonpublic school, the district school system representative and the parents shall be involved in decisions about the IEP and shall agree to proposed changes in the plan prior to those changes being implemented.

(b) If a student with a disability is enrolled in a nonpublic school and receives special education from a school district, the school district shall:

1. Initiate and conduct meetings to develop, review and revise an IEP for the student, in accordance with subsections (1) through (4) of this rule; and

2. Ensure the attendance of a representative of the nonpublic school at each meeting. If the representative cannot attend, the school district shall use other methods to ensure participation by the nonpublic school including individual or conference telephone calls.

(10)(7) Parent participation for students with disabilities. Each school board shall establish procedures which shall provide for parents, guardians, surrogate parents or persons acting in loco parentis to participate in decisions concerning the IEP. Such procedures shall include the following:

(a) Each district shall take the following steps to ensure that one (1) or both of the parents of a student with a disability is present at each meeting or is afforded the opportunity to participate at each meeting:

1. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

2. Scheduling the meeting at a mutually agreed on time and place.

(b) A written notice to the parent must indicate the purpose, time, and location of the meeting, and who will be in attendance and must include a statement informing the parents that they have the right to invite an individual with special knowledge or expertise about their child. If a purpose of the meeting is to consider transition services, the notice must also indicate this purpose, identify any other agency that will be invited to send a representative, and note that the district will invite the student.

(c) For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student required in paragraph (2)(i) of this rule and indicate that the school district will invite the student.

(d) For a student with a disability beginning at age 16, or younger, if appropriate, the notice must indicate that a purpose of the meeting is the consideration of needed transition services for the student as required in paragraph (2)(j) of this rule, indicate that the school district will invite the student, and indicate any other agency that will be invited to send a representative.

~~(e)~~(e) If neither parent can attend, the school district shall use other methods to ensure parent participation, including individual or conference telephone calls.

~~(f)~~(d) A meeting may be conducted without a parent in attendance if the school district is unable to obtain the attendance of the parents. In this case, the district must have a record of its attempts to arrange a mutually agreed on time and place such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parents and any responses received; or and
3. Detailed records of visits made to the parents home or place of employment and the results of those visits.

~~(g)~~(e) The district shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, which may include arranging for an interpreter for parents who are deaf or whose native language is a language other than English.

~~(h)~~(f) The district shall give the parent, ~~on request,~~ a copy of the IEP at no cost to the parent.

~~(8) Procedure for parental involvement in alternative assignment. When appropriate school district personnel determine that a student's exceptionality is so profound or complex, or otherwise unique, and the school district cannot provide an appropriate educational program for the student, the parent shall have an opportunity to be involved in the decision concerning possible alternative assignment.~~

~~(9) Integration of the IEP or family support plan developed by the school district and the family support plan or support plan developed by the local Health and Rehabilitation Services (HRS) district for students with disabilities.~~

~~(a) The IEP or family support plan developed by the school district and the family support plan or support plan developed by HRS shall be developed in a joint meeting with local school district personnel, in accordance with subsections (3) and (4) of this rule. A copy of the IEP or family support plan shall be provided to the HRS district with the permission of the parent or guardian. The joint meeting shall include representatives of the HRS district serving the following students:~~

- ~~1. Students entering the school district for the first time;~~
- ~~2. Students exiting the school district at age sixteen (16) or older prior to graduation; and~~
- ~~3. Students in residential care who are receiving or are eligible for services from the school district.~~

~~(b) In the event that a representative from HRS cannot attend the IEP or family support plan meeting, other methods to obtain participation, such as telephone calls or correspondence, shall be used.~~

~~(c) For students entering the school district, the meeting shall be initiated by HRS. For students exiting the school district prior to graduation, the meeting shall be initiated by the school district. For students entering or exiting the school district, the joint meeting will address the transition of the student between programs provided by the school district and HRS.~~

~~(11)(4) Individual Educational Plans or educational Educational plans for gifted students who are gifted. Districts shall be responsible for developing individual educational plans or educational plans for students who are identified solely as gifted. Each district's Special Programs and Procedures for Exceptional Students document shall specify the contents of the plans, timelines, and required participants for development and review. These procedures shall ensure parental participation.~~

~~(a) Individual Educational Plans for students who are gifted must be consistent with the following requirements:~~

- ~~1. The IEP must include:

 - ~~a. A statement of the student's present levels of educational performance;~~
 - ~~b. A statement of annual goals, including short term objectives;~~
 - ~~c. A statement of the specific special education and related services to be provided to the student;~~
 - ~~d. The projected dates for initiation of services and the anticipated duration of the services; and~~
 - ~~e. Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis whether the short term instructional objectives are being achieved.~~~~

2. Timelines for development of the IEP shall be in accordance with paragraph (5) of this rule;

3. IEP team participation shall be in accordance with paragraphs (8)(a),(c),(d),(e),(f), and (g) of this rule; and

4. Parent notification and participation shall be in accordance with paragraph (10) of this rule.

(b) Educational plans for students who are gifted must:

1. include present level for educational performance, goals, and objectives, and services to be provided;

2. be reviewed at least every three years or at transition periods (elementary to middle to high school);

3. include parent participation in its development; and

4. include other participants as outlined in the district's Special Programs and Procedures for Exceptional Students document.

Specific Authority 229.053(1),(2)(i), 230.23(4)(m), 236.081(1)(c) FS. Law Implemented 120.53(1)(b), 228.041(18),(19), 229.053(2)(i), 230.23(4)(m), 236.081(1)(c) FS., PL 105-17 (20 USC 1415). History--New 7-13-93, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: John Stewart, Deputy Commissioner of Educational Programs, Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Tom Gallagher, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 13, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 18, 2000

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: Development of Family Support Plans for Children with Disabilities Ages Birth through Five Years

RULE NO.:

6A-6.03029

PURPOSE AND EFFECT: The purpose of this revision is to conform the content and procedures for the development of Family Support Plans for children with disabilities ages birth through five years, in accordance with P.L. 105-17 (20 USC 1436) – Individuals with Disabilities Education Act (IDEA 1997).

SUMMARY: The proposed rule revision specifies that, at the option of the school district, a family support plan may only be utilized for children ages 3 through 5 years of age in lieu of an Individual Education Plan (IEP) if the parent has provided written consent, and is informed of the differences between the family support plan and the IEP; and, that the content of the family support plan must include a justification of the extent, if any, to which the services will not be provided in a natural environment.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of the notice.

SPECIFIC AUTHORITY: 229.053(1),(2)(i), 230.23(4)(m), 236.081(1)(c) FS.

LAW IMPLEMENTED: 228.041(18),(19), 229.053(2)(i), 230.23(4)(m), 236.081(1)(c) FS., P.L. 105-17 (20 USC 1436).

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., June 26, 2000

PLACE: Room LL03, The Capitol, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Betty Coxe, Director, Division of Public Schools and Community Services, 325 West Gaines Street, Room 514, Tallahassee, Florida 32399-0400, (850)488-2601

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-6.03029 Development of Family Support Plans for Children with Disabilities Ages Birth through Five Years.

Procedures for developing family support plans shall be set forth in each district's Special Programs and Procedures for Exceptional Students document consistent with the following requirements:

(2) Use of family support plans. For children with disabilities ages birth through two (2) years, a family support plan consistent with the requirements of Subsections (3),(4),(6),(8), and (9) of this rule shall be used. For children with disabilities ages three (3) through five (5) years, school districts may utilize at the option of the school district, a family support plan in lieu of an IEP, consistent with the requirements of Subsections (3),(5),(7), and (9) of this rule, with written parental consent and with the provision of a detailed explanation to the parents of the differences between a Family Support Plan and an IEP, in lieu of an individual educational plan.

(3) Contents. The family support plan shall be in writing and include:

(e) A statement of the natural environments in which early intervention services are to be provided and a justification of the extent, if any, to which the services will not be provided in a natural environment;

Specific Authority 229.053(1),(2)(i), 230.23(4)(m), 236.081(1)(c) FS. Law Implemented 228.041(18),(19), 229.053(2)(i), 230.23(4)(m), 236.081(1)(c) FS., P.L. 105-17 20 USC 1436. History--New 7-13-93, Amended 1-4-94, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
John Stewart, Deputy Commissioner of Educational Programs,
Department of Education
NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: Tom Gallagher, Commissioner of
Education
DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: May 13, 2000
DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: February 18, 2000

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: RULE NO.:

Procedural Safeguards for Children Ages
Birth through Two Years with Disabilities 6A-6.03032

PURPOSE AND EFFECT: The purpose of this revision is to outline procedural safeguards afforded to parents of children ages birth through two years with disabilities, in accordance with P.L. 105-17 (20 USC Section 1439) – Individuals with Disabilities Education Act (IDEA 1997).

SUMMARY: The proposed rule revision institutes the following changes: clarifies when prior written notice must be provided to parents; stipulates the requirements for the content of written notices; clarifies requirements to provide notice in language understandable to the general public, or in the native language of the parents, unless not feasible to do so; specifies when parent consent must be obtained; and, references procedures for mediation, due process hearings, and examination of records.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of the notice.

SPECIFIC AUTHORITY: 120.53(1)(b), 228.041(18),(19), 230.23(4)(m), 232.01(1)(e) FS.

LAW IMPLEMENTED: 120.531(b),228.041(18),(19), 230.23(4)(m), 232.01(1)(e) FS., P.L. 105-17, (20 USC Section 1439).

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., June 26, 2000

PLACE: Room LL03, The Capitol, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Betty Coxe, Director, Division of Public Schools and Community Services, 325 West Gaines Street, Room 514, Tallahassee, Florida 32399-0400, (850)488-2601

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-6.03032 Procedural Safeguards for Children Ages Birth through Two Years with Disabilities.

The school board policy and procedures for procedural safeguards shall be set forth in the district's Special Programs and Procedures for Exceptional Students document and shall include adequate provisions for the following:

(1) Prior notice. Written prior notice must be given to the parents of a child a reasonable time before a school district proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. The procedures described in Rule 6A-6.03311(1), FAC., shall be followed.

(2) Content of notice. The procedures described in Rule 6A-6.03311(2)(a)-(b), FAC., shall be followed. The content of the notice must be in sufficient detail to inform the parents about shall include:

(a) The A full explanation of all the procedural safeguards available to the parents as provided in this rule Rules 6A-6.0333 and 6A-6.03032, FAC., and Section 230.23(4)(m)5., Florida Statutes.

(b) The A description of the action proposed or refused by the district and the reasons for taking the action.

(c) The state complaint procedures including how to file a complaint with the Department of Health, Children's Medical Services, the lead agency for this program, and the timelines under those procedures.

(3) Native language.

(a) The notice described in subsection (2) of this rule must be:

1. Written in language understandable to the general public.

2. Provided in the native language of the parents, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parents is not a written language, the school district shall take steps to ensure that:

1. The notice is translated orally or by other means to the parents in the parents' native language or other mode of communication;

2. The parents understand the notice, and;

3. There is written evidence that the requirements of subsection (3) of this rule have been met.

(d) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).

(4)(3) Parent consent. The procedures described in Rule 6A-6.03311(3)(a)-(c), FAC., shall be followed except that the procedures described in Rule 6A-6.03311(3)(e)1., 2., FAC., may be initiated by the school district only if the parent has refused to consent to the initial evaluation.

(a) Written parental consent must be obtained before:

1. Conducting the initial evaluation and assessment of a child; and

2. Initiating the provision of early intervention services.

(b) If consent is not given, the school district shall make reasonable efforts to ensure that the parent:

1. Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

2. Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(c) The school district may initiate procedures to challenge a parent's refusal or consent to the initial evaluation of their child by requesting a hearing as provided in subsection (5) of Rule 6A-6.03311, FAC. If the administrative law judge upholds the school district, the district may evaluate the child without the parent's consent.

(5) Mediation. The procedures described in subsection (4) of Rule 6A-6.03311, FAC., shall be followed.

(6)(4) Due process hearings. The procedures described in Rule 6A-6.03311(5), FAC., shall be followed with the exception that such hearings may only be initiated by the parent regarding any proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of appropriate early intervention services to the child and the child's family.

(7)(5) Examination of records. The procedures described in Rule 6A-6.03311(7), FAC., shall be followed.

Specific Authority 120.53(1)(b), 228.041(18),(19), 230.23(4)(m), 232.01(1)(e) FS. Law Implemented 120.53(1)(b), 228.041(18),(19), 230.23(4)(m), 232.01(1)(e) FS., P.L. 105-17, 20 USC Section 1439. History—New 1-4-94, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
John Stewart, Deputy Commissioner of Educational Programs,
Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: Tom Gallagher, Commissioner of
Education

DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: May 13, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: February 18, 2000

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: Identification and Determination of Eligibility
of Exceptional Students

RULE NO.: 6A-6.0331

PURPOSE AND EFFECT: The purpose of this rule revision is to outline procedures for identification and determination of eligibility for exceptional students as outlined in PL105-17 (20 USC 1415) – Individuals with Disabilities Education Act, 1997.

SUMMARY: This rule revision clarifies that procedures and criteria for diagnosis, evaluation, eligibility, and placement shall be set forth in the special programs and procedures of each school district. Specific requirements are included for student evaluation, reevaluation, determination of needed evaluation data, determination of eligibility for a student with a disability, and determination of eligibility for a student who is gifted.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of the notice.

SPECIFIC AUTHORITY: 120.53(1)(b), 229.053(1),(2)(h), 230.23(4)(m) FS.

LAW IMPLEMENTED: 120.53(1)(b), 228.041(18),(19), 229.053(2)(i), 230.23(4)(m)4. FS.; PL 105-17 (20 USC 1412(a)(1),(4),(11); 1413; 1414(a)-(c).

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., June 26, 2000

PLACE: Room LL03, The Capitol, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Betty Coxe, Director, Division of Public Schools and Community Services, 325 West Gaines Street, Room 514, Tallahassee, Florida 32399-0400, (850)488-2601

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-6.0331 Identification and Determination of Eligibility Assignment of Exceptional Students to Special Programs.

Procedures and criteria for diagnosis, evaluation, and determination of eligibility and placement assignment, and discipline of exceptional students shall be set forth in the school district's special programs and procedures document for the exceptional student program consistent with the following requirements.

(1) Student evaluation.

(a) The school board shall be responsible for the medical, physical, psychological, social and educational evaluations of students, who are suspected of being exceptional students, by competent evaluation specialists. Evaluation specialists shall include, but not be limited to, persons such as physicians, psychologists, speech/language pathologists, audiologists, and social workers with each such person licensed in the professional's field as evidenced by a valid license or certificate to practice such profession in Florida. Educational evaluators not covered by a license or certificate to practice a profession in Florida shall either hold a valid Florida teacher's certificate or be employed under the provisions of Rule 6A-1.0502, FAC. Tests of intellectual functioning shall be

administered and interpreted by a professional person qualified in accordance with Rule 6A-4.0311, FAC., or licensed under Chapter 490, Florida Statutes. School boards shall ensure that the student is evaluated within a reasonable period of time after receipt of a parental consent for an initial evaluation.

(b) Tests and other evaluation materials used to assess a student are selected and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in a student's native language or other mode of communication, unless it is clearly not feasible to do so. The district's evaluation procedures shall provide for the use of valid tests and evaluation materials, administered and interpreted by trained personnel, in conformance with instructions provided by the producer of the tests or evaluation materials. For children and students not proficient in the English language, the district's evaluation procedures shall provide for the use of the language or other mode of communication commonly used by the child or student.

(c) Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure they measure the extent to which the student has an exceptionality and needs special education and related services rather than measuring the student's English language skills. The district shall provide a reevaluation of each student with a disability at least every three (3) years, in accordance with the requirements prescribed in subsection (1) of this rule, or more frequently if conditions warrant or if required by Rules 6A-6.03011 through 6A-6.03025, FAC.

(d) For a student with a suspected disability, a variety of assessment tools and strategies are used to gather functional and developmental information about the student, including information provided by the parent, and information related to enabling the student to be involved in and progress in the general curriculum (or for a prekindergarten child to participate in appropriate activities), that may assist in determining whether the student is a student with a disability and the content of the individual educational plan (IEP).

(e) Any standardized tests that are given have been validated for the specific purpose for which they are used and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

(f) If an assessment tool is not conducted under standard conditions, a description of the extent to which it varied from standard conditions shall be included in the evaluation report.

(g) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(h) For a student with a suspected disability, tests are selected and administered so as to best ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's

aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's sensory, manual, or speaking skills unless those are the factors the test purports to measure.

(i) No single procedure is used as the sole criterion for determining whether a student is a student with an exceptionality and for determining an appropriate educational program for the student.

(j) In evaluating a student with a suspected disability, the student is assessed in all areas of the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(k) In evaluating a student with a suspected disability, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student is identified.

(l) The school district uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(m) The school district uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

(2) Reevaluation. The reevaluation of each student with a disability is conducted at least once every three (3) years or more frequently if conditions warrant a reevaluation, in accordance with Rules 6A-6.03011 through 6A-6.03027, FAC, or if the student's parent or teacher requests a reevaluation.

(a) The results of any testing administered during the reevaluation process are addressed by the IEP team in reviewing and, as appropriate, revising the student's IEP.

(b) The school district shall evaluate a student with a disability in accordance with subsections (1) and (3) of this rule before determining that the student is no longer a student with a disability. The IEP team and other qualified professionals, as appropriate, shall determine that the student is no longer a student with a disability.

(c) Reevaluation is not required for a student before the termination of eligibility due to graduation with a standard diploma or exiting upon reaching the student's twenty-second birthday.

(3) Determination of needed evaluation data for a student with a suspected disability. As part of an initial evaluation, if appropriate, and as part of any reevaluation, a group that includes persons described in accordance with Rule 6A-6.03028(6), FAC, and other qualified professionals, as appropriate, shall:

(a) Review existing evaluation data on the student, including:

1. Evaluations and information provided by the student's parents;

2. Current classroom-based assessments and observations; and

3. Observations by teachers and related services providers.

(b) On the basis of that review and input from the student's parents, identify what additional data, if any, are needed to determine the following:

1. Whether the student has a particular disability, or in the case of reevaluation, whether the student continues to have a disability;

2. The present levels of performance and educational needs of the student;

3. Whether the student needs special education and related services, or in the case of reevaluation, whether the student continues to need special education and related services; and

4. Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general curriculum.

(c) The group described in Rule 6A-6.03028(6), FAC., may conduct its review without a meeting.

(d) The school district shall administer tests and other evaluation materials as may be needed to produce the data identified in subsection (3) of this rule.

(e) If the determination under paragraph (3)(a)(b) of this rule is that no additional data are needed to determine whether the student continues to be a student with a disability, the school district shall notify the student's parents of:

1. That determination and the reasons for the determination; and

2. The right to request an assessment to determine whether the student continues to be an eligible student with a disability.

(f) The school district is not required to conduct the assessment described in subparagraph (3)(e)2. of this rule unless requested to do so by the student's parents.

(2) Staffing committees.

(4) Determination of eligibility for a student with a disability.

(a) In interpreting evaluation data for the purpose of determining if a student is a student with a disability and identifying the educational needs of the student, the staffing committee shall: A staffing committee utilizing the process of reviewing student data including but not limited to diagnostic, evaluation, educational or social data shall recommend student eligibility for special programs.

1. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

2. Ensure that information obtained from all of these sources is documented and carefully considered; and

3. Determine eligibility in accordance with criteria required in Rules 6A-6.03011 through 6A-6.03018, FAC, Rules 6A-6.03020 through 6A-6.03027, FAC., and Rules 6A-6.03030 through 6A-6.03031, FAC., and procedures in Rule 6A-6.03411(2)(f)1., FAC.

(b) A minimum of three (3) professional personnel, one (1) of whom shall be the district administrator of exceptional student education students or designee, shall meet as a staffing committee. Parents of students with disabilities shall be invited to participate as members of the staffing committee. Additional personnel may be involved in determining eligibility the eligibility recommendation by providing information or by attending staffing meetings. In the case of homebound or hospitalized students, the district administrator may receive recommendations of the staffing committee without a formal meeting.

(c) For a child in transition from an early intervention program to a school district prekindergarten program, the school district shall hold an eligibility staffing by the child's third birthday to determine the child's eligibility for special education and related services. Parents shall be invited to participate in eligibility staffing meetings for children ages birth through five (5) years as provided in Rule 6A-6.03028(7), FAC.

(d) If a determination is made that a student has a disability and needs special education and related services, an IEP shall be developed for the student in accordance with Rule 6A-6.03028, FAC. In lieu of an IEP, a family support plan (FSP) may be developed for a prekindergarten child in accordance with Rule 6A-6.03029, FAC.

(e) The school district shall provide a copy of any evaluation reports and the documentation of eligibility to the parent.

(f) A student may not be determined eligible if the determinant factor for that eligibility determination is lack of instruction in reading or math or limited English proficiency and the student does not otherwise meet eligibility criteria Rules 6A-6.03011 through 6A-6.03018, FAC, and Rules 6A-6.03020 through 6A-6.03027, FAC.

(5) Determination of eligibility for a student who is gifted.

(a) In interpreting evaluation data for the purpose of determining if a student is gifted and identifying the educational needs of the student, the staffing committee shall:

1. Draw upon information from a variety of sources;

2. Ensure that information obtained from all sources is documented and carefully considered; and

3. Determine eligibility in accordance with criteria required in Rule 6A-6.03019, FAC, and procedures in Rule 6A-6.03411(2)(f)2., FAC.

(b) A minimum of three (3) professional personnel, one (1) of whom shall be the district administrator of exceptional student education or designee, shall meet as a staffing

committee. Additional personnel may be involved in determining eligibility by providing information or by attending staffing committee meetings.

~~(6)(3)~~ Each school district shall designate a staff member as a program administrator of special programs for exceptional student education students who shall be responsible for the following:

(a) Coordinating all school district programs for exceptional students;

(b) Reviewing the eligibility determinations of staffing committees for students with disabilities with procedures and criteria outlined in school district procedures developed pursuant to Rule 6A-6.03411, FAC. recommendations of the evaluation specialists and the staffing committee;

~~(c)~~ Determining student eligibility for special programs defined in these rules and in the criteria outlined in the district procedures developed pursuant to Rule 6A-6.03411, FAC.;

~~(c)(d)~~ Assuring that parents have been appropriately informed of the student's eligibility determination and their procedural safeguards in accordance with Rules 6A-6.03311 and 6A-6.03313, FAC. recommended educational assignment and of their due process rights;

~~(d)(e)~~ Informing, in writing, the appropriate school principal of the student's eligibility for a special program; and

~~(e)(f)~~ Implementing the district procedures as required by Rule 6A-6.03411, FAC.

~~(4)~~ The program administrator is authorized to delegate responsibilities in paragraphs (3)(b) through (e) of this rule.

~~(5)~~ Each district shall provide for supervision of instructional personnel in special programs for exceptional students. Such supervision may be from a district, multi-district or other cooperative arrangement.

~~(6)~~ Discipline. The school board shall establish policies and procedures for the discipline of a student with disabilities and for informing a student with disabilities parent or guardian of the policies and procedures for discipline. Such policies and procedures shall include provisions for expulsion, which is a change in placement invoking the procedural safeguards ensured for individual educational plan meetings, staffings, and change of placement provisions in accordance with subsection (2) of this rule, Rules 6A-6.03028 and 6A-6.03311, FAC. Where the student's behavior could warrant expulsion consistent with the district's policies, the following provisions shall apply:

(a) A staffing committee shall meet to determine whether the misconduct is a manifestation of the student's disabilities. The membership of the staffing committee shall be in accordance with requirements of subsection (2) of this rule.

(b) If the misconduct is a manifestation of the student's disability then the student may not be expelled; however, a review of the individual educational plan shall be conducted and other alternatives considered.

~~(e) If the misconduct is not a manifestation of the student's disability then the student may be expelled; however, any change in placement shall not result in a complete cessation of special education and related services.~~

Specific Authority 120.53(1)(b), 229.053(1),(2)(h)(i), 230.23(4)(m), ~~236.081(1)(e)~~ FS. Law Implemented 120.53(1)(b), 228.041(18),(19), 229.053(2)(i), 230.23(4)(m)4., ~~236.081(1)(e)~~ FS. History—New 6-17-74, Repromulgated 12-5-74, Amended 7-1-77, 3-28-78, 7-12-78, 8-31-78, 11-29-78, 10-7-81, 7-13-83, 6-2-85, Formerly 6A-6.331, Amended 7-13-93, 1-2-95, c.f. P.L. 105-17 94-142, 20 USC 1401 (49); 1412(a)(1),(4),(11); 1413; 1414(a),(b),(c)(2)(b),(4),(6); 1413 (a)(4)(A); 1414 (a)(5). Federal Register, Vol. 42, No. 163, Regulations 121a.345 and 121a.348.

NAME OF PERSON ORIGINATING PROPOSED RULE:
John Stewart, Deputy Commissioner of Educational Programs,
Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: Tom Gallagher, Commissioner of
Education

DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: May 13, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: February 18, 2000

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: Procedural Safeguards for Students
with Disabilities

RULE NO.: 6A-6.03311

PURPOSE AND EFFECT: The purpose of this revision is to conform procedural safeguards available for students with disabilities in accordance with P.L. 105-17 (20 USC 1415).

SUMMARY: The proposed rule revision institutes the following changes: deletes references to "exceptional education student." Procedural safeguards for students identified as gifted are now referenced in Rule 6A-6.03313, FAC.; adds additional requirements to the content of prior written notices; includes requirements related to obtaining parent consent for reevaluation; deletes reference to surrogate parents; specifies when parent consent is not required; clarifies requirements related to independent educational evaluations; adds a subsection that specifies procedures related to mediation; changes all references from "hearing officer" to "administrative law judge"; clarifies duties and responsibilities of the administrative law judge, school district, and the Department of Education related to procedures for due process hearings; clarifies hearing rights for all parties; clarifies requirements related to disclosure of information; clarifies rights related to civil action for an aggrieved party following the issuance of the administrative law judge's final order; clarifies requirements related to the awarding of attorney's fees; clarifies the opportunity for parents to participate in meetings; specifies when a copy of the procedural safeguards must be provided to parents; references disciplinary procedures contained in Rule 6A-6.03312, FAC.; clarifies requirements related to private school placement by parents when the

provision of a free and appropriate education is at issue; adds a subsection that specifies the state complaint procedures; and, adds a subsection that specifies procedures related to the transfer of rights at the age of majority.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of the notice.

SPECIFIC AUTHORITY: 120.53(1)(b), 228.041(18),(19), 229.053(1), 230.23(4)(m), 236.081(1)(c) FS.

LAW IMPLEMENTED: 120.53(1)(b), 228.041(18),(19), 229.053(1), 230.23(4)(m) FS., P.L. 105-17 (20 USC 1415).

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., June 26, 2000

PLACE: Room LL03, The Capitol, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Betty Coxe, Director, Division of Public Schools and Community Services, 325 West Gaines Street, Room 514, Tallahassee, Florida 32399-0400, (850)488-2601

THE FULL TEXT OF THE PROPOSED RULE IS:

(Substantial rewording of Rule 6A-6.03311 follows. See Florida Administrative Code for present text.)

6A-6.03311 Procedural Safeguards for Students with Disabilities Exceptional Students.

The school board policy and procedures for procedural safeguards shall be set forth in accordance with Rule 6A-6.03411, FAC., and shall include adequate provisions for the following:

(1) Prior notice. Prior written notice shall be given to the parent a reasonable time before any proposal or refusal to initiate or change the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student.

(a) The prior notice shall be written in language understandable to the general public; and shall be in the language or other mode of communication commonly used by the parent unless such communication is clearly not feasible.

(b) If the mode of communication is not a written language, the school district shall ensure:

1. That the notice is translated to the parent in his or her native language or mode of communication;

2. That the parent understands the content of the notice; and

3. That there is written documentation that the requirements of subparagraphs (1)(b)1. and (1)(b)2. of this rule have occurred.

(c) The notice shall include:

1. A description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take the action, and a description of any options the district considered and the reasons why those options were rejected;

2. A description of each evaluation procedure, test, record, or report the district used as a basis for the proposal or refusal;

3. A description of any other factors relevant to the district's proposal or refusal;

4. A statement that the parents of a child with a disability have protections under the procedural safeguards specified in this rule.

5. The means by which a copy of a description of the procedural safeguards can be obtained.

6. Sources for parents to contact to obtain assistance understanding their procedures safeguards specified in this rule.

(2) Informed parental consent.

(a) Parents shall be fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication.

(b) Written parental consent shall be obtained prior to formal, individual evaluation to determine eligibility for special programs or prior to conducting a reevaluation for students with disabilities.

(c) Parental consent shall be obtained prior to initial placement of the student into a special program for students with disabilities.

(d) Attempts to secure consent from the parent prior to evaluation to determine eligibility for a special program for students with disabilities, or reevaluation, or initial placement shall be documented.

1. If consent is not obtained, school district personnel may request a hearing as provided in subsection (5) of this rule.

2. If the administrative law judge upholds the district, the district may evaluate, reevaluate or initially provide special education and related services to the child without the parent's consent subject to the parent's rights under subsection (5) of this rule.

(e) Parental consent is voluntary and may be revoked at any time before the action occurs.

(f) Parental consent need not be obtained for reevaluation if the school district can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parents have failed to respond.

(g) Except for formal, individual evaluation, reevaluation, and initial placement, consent may not be required as a condition of any benefit to the parent or child. Any proposal or refusal to initiate or change the identification, or educational placement of the student or the provision of a free appropriate public education to the student after the initial placement are not subject to parental consent but are subject to prior notice as defined by subsection (1) of this rule.

(h) Parental consent is not required before:

1. Reviewing existing data as part of an evaluation or reevaluation; or,

2. Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all children.

(3) Independent educational evaluation.

(a) The school district shall notify the parent of a student with a disability of the right to an independent educational evaluation and provide to the parents, on request, information about where an independent educational evaluation may be obtained.

(b) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.

(c) Independent educational evaluation is defined to mean an evaluation conducted by a qualified evaluation specialist as prescribed in Rule 6A-6.0331(1)(a), FAC., who is not an employee of the district school board.

(d) Public expense is defined to mean that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(e) If a parent requests an independent educational evaluation at public expense, the school district must, without unnecessary delay either:

1. Initiate a hearing under subsection (5) of this rule; or

2. Ensure that an independent educational evaluation is provided at public expense, unless the school district can demonstrate in a hearing under subsection (5) of this rule, that the evaluation obtained by the parent did not meet the school district's criteria.

(f) The school district may ask the parent to give a reason why he or she objects to the school district's evaluation. However the explanation by the parent may not be required and the school district may not unreasonably delay either providing the independent educational evaluation at public expense or initiating of a due process hearing to defend the school district's evaluation.

(g) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the school district shall:

1. Consider the results of such evaluation in any decision regarding the student; and,

2. The results of such evaluation may be presented as evidence at any hearing authorized under subsection (5) of these rules.

(h) If the final decision from the hearing is that the district evaluation is appropriate, the independent educational evaluation will be at the parent's expense.

(i) Whenever an independent educational evaluation is conducted, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the evaluation specialist, shall be the same as the criteria prescribed by Rule 6A-6.0331(1), FAC., for use by the school district when it initiates an evaluation to the extent that those criteria are consistent with the parent's right to an independent educational evaluation. The school district may not impose any conditions or timelines for obtaining an independent educational evaluation at public expense other than those related to the location of the evaluation and the qualifications of the examiner.

(j) If an administrative law judge requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(4) Mediation. The Department of Education shall ensure that procedures are established and implemented to allow parties to disputes involving any matter related to a proposal or refusal to initiate or change the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student to resolve the dispute through a mediation process.

(a) Requirements. The procedures must meet the following requirements and must ensure that the mediation process:

1. Is voluntary on the part of both parties;

2. Is not used to deny or delay a parent's right to a due process hearing under subsection (5) of this rule;

3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(b) The Department of Education shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(c) If a mediator is not selected on a random basis from the list described in this subsection of rule, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.

(d) The Department of Education shall bear the cost of the mediation process.

(e) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is agreeable to both parties.

(f) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(g) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(h) Impartiality of the Mediator. An individual who serves as a mediator:

1. May not be an employee of any school district, or any state agency that receives a subgrant of Individuals with Disabilities Education Act funds through the Department of Education.

2. Must not have a personal or professional conflict of interest.

3. A person who otherwise qualifies as a mediator is not an employee of a school district, or State agency solely because he or she is paid by the Department of Education to serve as a mediator.

(5) Due process hearings.

(a) Such hearings may be initiated by a parent or a school district on the proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

(b) A hearing shall be conducted by an administrative law judge from the Division of Administrative Hearings, Department of Management Services.

(c) An administrative law judge shall use subsection (5) of this rule for any such hearings and may also apply any procedural rules which govern Chapter 120, Florida Statutes, proceedings to the extent such rules do not conflict with Section 230.23(4)(m), Florida Statutes, and Chapter 6A-6, FAC.

(d) Duties and responsibilities of an administrative law judge shall be:

1. To determine the date, time, and location of the hearing and any pre-hearing conference calls and motion hearings. Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and their child;

2. To conduct the hearing in a fair and impartial manner;

3. To ensure that all discovery, motion practice, and pre-trial procedures are conducted in an expedited manner, consistent with the deadlines established by this rule concerning the exchange of evidence and the issuance of the final decision established by this rule.

4. To determine if the parent wants an electronic or written copy of the final decision and the administrative record of the hearing;

5. To determine whether the parent wants the hearing open to the public and whether the parent wants their child to attend the hearing;

6. To determine whether an interpreter is required for the proceeding;

7. To determine whether the parent's advisor or counsel is sufficiently knowledgeable about or trained with respect to the problems of students with disabilities;

8. To determine how evidence may be exchanged prior to and during the hearing;

9. To determine how witnesses may be compelled to attend, be cross-examined, and confronted during discovery and at the hearing;

10. To determine how evaluations and recommendations may be disclosed prior to and during a hearing;

11. To summarize the facts and findings of the case and to arrive at an impartial decision based solely on information presented during the hearing;

12. To reach a final decision and mail to all parties copies of the facts, findings and decision regarding the hearing within 45 days of the district's receipt of the parent's request or the filing of the district's request for a hearing, whichever is sooner;

13. To be accountable for all deadlines and procedures established by the statutes and rules for such hearings;

14. To maintain the confidentiality of all information; and

15. To rule on requests for specific extensions of time beyond the periods set forth in subparagraph (5)(d)12. of this rule, at the request of either party.

(e) Hearing rights for all parties.

1. Any party to a hearing conducted pursuant to subsection (5) of this rule and subsection (6) of Rule 6A-6.03312, FAC., has a right:

a. To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to students with disabilities;

b. To present evidence, and to confront, cross-examine, and compel the attendance of witnesses;

c. To prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;

d. To obtain written or electronic verbatim records of the hearing; and

e. To obtain written or electronic findings of fact and decisions.

2. Additional disclosure of information.

a. At least five (5) business days prior to a hearing conducted pursuant to subsection (5) of this rule, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

b. An administrative law judge may bar any party that fails to comply with subparagraph (5)(e)2. of this rule from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(f) Hearing rights of parents. Parents involved in hearings must be given the right:

1. To have their child who is the subject of the hearing present;

2. To open the hearing to the public; and,

3. To receive a copy of the record of the hearing and the findings of fact and decisions described in subparagraphs (5)(d)11.-12. of this rule at no cost to the parent.

(g) Duties and responsibilities of the superintendent or designee shall include:

1. Implementing procedures that require the parent of a child with a disability or the advocate representing the child, to provide notice (which must remain confidential) to the school district. The notice required must include: the name of the child; the address of the residence of the child; the name of the school that the child is attending; a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and, a proposed resolution of the problem to the extent known and available to the parents at the time. However, the school district may not deny or delay a parent's right to a due process hearing for failure to provide this notice.

2. Immediately notifying the Division of Administrative Hearings by both facsimile transmission and mail of the parents' request for a hearing.

3. Notifying all parties regarding their rights and responsibilities before, during, and after the hearing. This notice should include information to the parent of any free or low cost legal and other relevant services, including mediation services, which are available, if the parent requests this information or if the parent or school district initiates a hearing.

4. Making appropriate arrangements for an interpreter, if the administrative law judge determines this to be a need.

5. Complying with the administrative law judge's rulings regarding requests for and exchanges of evidence; discovery; the filing of motions; and, scheduling, so as to meet the requirements of subsection (5) of this rule, and the deadlines established herein.

6. Arranging for clerical assistance, cost of the hearing, availability of facilities, and a verbatim transcript of the hearing;

7. Completing other responsibilities specified by the school board.

(h) Duties and responsibilities of the Department of Education shall include:

1. Maintaining a list of persons who serve as administrative law judges, including a statement of the qualifications of each of these persons; and,

2. Transmitting the findings and decisions, after deleting any personally identifiable information, of any such hearings to the Commissioner of Education for review by the State Advisory Committee for the Education of Exceptional Students.

(i) Status of student during proceedings. During the time that an administrative or judicial proceeding regarding a due process hearing is pending, unless the district and the parent of the student agree otherwise, the student involved in the due

process hearing must remain in the present educational assignment. If the due process hearing involves an application for an initial admission to public school, the student, with the consent of the parent, must be placed in a public school program until the completion of all proceedings. If the administrative law judge agrees with the parent and finds that a change of placement is appropriate, that placement becomes the agreed-upon placement during the pendency of the appeal.

(j) Civil Action. A decision made in a hearing conducted under subsection (5) of this rule is final; unless, within 30 days, a party aggrieved by the final order brings a civil action in federal district or state circuit court, as provided in Section 230.23(4)(m)4. The state circuit or federal court shall: receive the records of the administrative proceedings; may hear additional evidence at the request of a party; and basing its decision on the preponderance of the evidence, shall grant the relief it determines appropriate. In the alternative, any party aggrieved by the administrative law judge's final order shall have the right to request an impartial review by the appropriate district court of appeal as provided by Sections 120.68 and 230.23(4)(m)4., Florida Statutes.

(6) Attorneys' Fees.

(a) Only a district court of the United States or a state circuit court may award reasonable attorneys' fees as part of the costs to the parents of a child with disabilities who is a prevailing party in a due process hearing or in a subsequent judicial proceeding.

(b) A parent of a child with a disability who is a prevailing party in the due process hearing or in a further proceeding may bring an action in a federal district court or a state circuit court for attorneys' fees within the time determined by law.

(c) The court may deny a request for attorneys' fees for services performed after the district has made a written offer of settlement within the appropriate timelines if the court determined that the relief finally obtained by the parents was not more favorable than the settlement offer. However, attorneys' fees may be awarded if the parent was substantially justified in rejecting the offer.

(d) Attorney's fees may not be awarded for:

1. Individual educational plan meetings, unless the meeting is convened as a result of a due process hearing or a judicial action; or,

2. Mediation that is held prior to the filing of a request for a due process hearing.

(e) The court may reduce attorneys' fees:

1. If the court finds that the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the dispute; or,

2. The attorney's hourly rate exceeded the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; or,

3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding;

4. The parent or their attorneys did not provide the district with information in accordance with subsection (5) of this rule.

(f) Attorneys' fees may not be reduced if the court finds that the state or school district unreasonably delayed the resolution of the dispute or violated its obligation in accordance with the provisions of this rule.

(g) Fees awarded under subsection (5) of this rule must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

(7) Opportunity to examine records and participate in meetings.

(a) The parents of a student with a disability shall be afforded, in accordance with Rule 6A-1.0955, FAC., Section 228.093, Florida Statutes, and this rule, an opportunity to inspect and review all educational records with respect to the identification, evaluation, educational placement of the child, and the provision of a free appropriate public education to the child.

(b) The right to inspect and review education records under this rule includes the right to have a representative of the parent inspect and review the records.

(c) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement of their child or the provision of a free appropriate public education to their child.

(d) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's Individual Educational Plan. A meeting also does not include preparatory activities that the school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(8) Provision of Procedural Safeguards to Parents.

(a) The content of the procedural safeguards notice must inform parents of the provisions of subsections (1)-(11) of this rule.

(b) A copy of the procedural safeguards notice must be available to the parents of a child with a disability, but must be given to the parents, at a minimum:

1. Upon initial referral for evaluation;
2. Upon refusal to conduct an initial evaluation;
3. Upon each notification of an IEP meeting;
4. Upon reevaluation of the child; and,
5. Upon receipt of a request for a due process hearing in accordance with subsection (5) of this rule.

(9) Discipline Procedures. Discipline procedures for students with disabilities must be in accordance with the provisions of Rule 6A-6.03312, FAC.

(10) Private School Placements by Parents if Provision of A Free Appropriate Education is at Issue.

(a) A school district is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the school district made a free and appropriate public education available to the parent's child with a disability and the parents elected to place the child in a private school or facility.

(b) Disagreements between a parent and a school district regarding the availability of a program appropriate for the student, and the question of financial responsibility, are subject to the due process procedures described in subsection (5) of this rule.

(c) If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent or referral by the school district, a court or administrative law judge may require the school district to reimburse the parents for the cost of that enrollment; if the court or administrative law judge finds that the school district had not made a free appropriate public education available to the student in a timely manner prior to that enrollment, and that the private placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the state standards that apply to education by the Department of Education and the school district.

(d) The cost of reimbursement described in subsection (10) of this rule may be reduced if:

1. At the most recent IEP meeting that the parents attended prior to removing their child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

2. At least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the school district of the information described in subparagraph (10)(d)1. of this rule;

3. If prior to the parents' removal of their child from the public school, the school district informed the parents, through the notice requirements described in subsection (1) of this rule of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or,

4. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) The cost of reimbursement may not be reduced or denied for failure to provide the notice if:

1. The parent is illiterate and cannot write in English;

2. Compliance with paragraph (10)(d) of this rule would likely result in physical or serious emotional harm to their child;

3. The school prevented the parent from providing the notice; or

4. The parents had not received notice of the requirements of subparagraph (10)(d)1. of this rule.

(11) State Complaint Procedures.

(a) The Department of Education has complaint procedures that establish a time limit of 60 days after a complaint is filed under the provisions of this rule, to do the following:

1. Carry out an independent on-site investigation, if the Department of Education determines that to be necessary;

2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

3. Review all relevant information and make an independent determination as to whether the school district is violating a requirement of state or federal requirements regarding the education of students with disabilities;

4. Issue a written decision on the complaint that addresses each issue presented in the complaint and contains findings of fact, conclusions, and the reason(s) for the Department of Education's final decision; and

5. Extend the time limit established in paragraph (11)(a) of this rule if exceptional circumstances exist with respect to a particular complaint.

(b) Procedures for the effective implementation of the Department of Education's final decision include the following:

1. Technical assistance activities;

2. Negotiations; and,

3. Corrective actions to achieve compliance.

(c) Relationship to due process hearings.

1. If a written complaint is received that is also the subject of a due process hearing requested pursuant to subsection (5) of this rule, or the complaint contains multiple issues, (of which one or more are part of that hearing), the Department of Education is required to set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved in compliance with the procedures described in paragraph (11)(a) of this rule.

2. If an issue is raised in a complaint filed under this subsection that has previously been decided in a due process hearing involving the same parties, the administrative law judge's final order is binding, and the Department of Education is required to inform the complainant to that effect.

3. The Department of Education is required to resolve any complaint which alleges that a school district has failed to implement a due process decision.

(12) Transfer of Rights at the Age of Majority.

(a) The school district shall provide any notice required by Rules 6A-6.03311 and 6A-6.0328, FAC. to both a student who has attained age 18 and the student's parent.

(b) At age 18, all other rights accorded to parents under Part B of the Individuals with Disabilities Education Act transfer to the student, unless the student has been determined to be incompetent under state law.

(c) For students who have attained age 18 and are incarcerated in a juvenile justice facility or local correctional facility, all rights accorded to parents under this rule transfer to the student, including the right to notice as described in paragraph (12)(a) of this rule.

(d) The school district shall notify the student and the parent of the transfer of rights, when the student attains the age of 18.

(e) If a student with a disability has reached the age of majority and does not have the ability to provide informed consent with respect to his or her educational program, procedures established by statute may be used to:

1. Have the student declared incompetent and the appropriate guardianship established;

2. Have the parent appointed to represent the educational interests of the child throughout the student's eligibility for a special program consistent with Rules 6A-6.03011 through 6A-6.03025, FAC.; or,

3. Have another appropriate individual appointed to represent the educational interests of the child through the student's eligibility for a special program consistent with Rules 6A-6.03011 through 6A-6.03025, FAC. if the parent is not available.

Specific Authority 120.53(1)(b), 228.041(18),(19), 229.053(1), 230.23(4)(m), 236.081(1)(c) FS. Law Implemented 120.53(1)(b), 228.041(18),(19), 229.053(1), 230.23(4)(m) FS., P.L. 105-17 ~~94-142~~, 20 USC 1415. History--New 7-13-83, 12-20-83, 4-26-84, Formerly 6A-6.3311, Amended 7-17-90,

NAME OF PERSON ORIGINATING PROPOSED RULE:
John Stewart, Deputy Commissioner of Educational Programs,
Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: Tom Gallagher, Commissioner of
Education

DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: May 13, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 18, 2000

THE FULL TEXT OF THE PROPOSED RULE IS:

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE:

RULE NO.:

Procedural Safeguards for Students who are Gifted

6A-6.03313

PURPOSE AND EFFECT: The rule establishes procedural safeguards for students identified as gifted. Previously, safeguards for students identified as gifted were contained in Rule 6A-6.03311, FAC. However, that rule is being revised to conform to the recent changes in the Individuals with Disabilities Education Act (IDEA) and now only applies to students with disabilities.

SUMMARY: The rule addresses the following procedures and information: establishes when prior written notice must be given; specifies the content of the written notice; specifies procedures related to parent consent; deletes reference to surrogate parents, and deletes all provisions related to independent educational evaluations; changes all references from "hearing officer" to "administrative law judge"; clarifies duties and responsibility of the administrative law judge, school district, and the Department of Education related to procedures for due process hearings; clarifies hearing rights for all parties; clarifies requirements related to disclosure of information; clarifies rights related to civil action for an aggrieved party following the issuance of the administrative law judge's final order; and, specifies when a copy of the procedural safeguards must be provided to parents.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of the notice.

SPECIFIC AUTHORITY: 120.53(1)(b), 228.041(18),(19), 229.053(1), 230.23(4)(m), 236.081(1)(c) FS..

LAW IMPLEMENTED: 120.53(1)(b), 228.041(18),(19), 229.053(1), 230.23(4)(m) FS..

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., June 26, 2000

PLACE: Room LL03, The Capitol, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Betty Coxe, Director, Division of Public Schools and Community Services, 325 West Gaines Street, Room 514, Tallahassee, Florida 32399-0400, (850)488-2601

6A-6.03313 Procedural Safeguards for Students who are Gifted.

The school district policy and procedures for procedural safeguards shall be set forth in accordance with Rule 6A-6.03411, FAC., and shall include adequate provisions for the following:

(1) Prior notice. Prior written notice shall be given to the parent a reasonable time before any proposal or refusal to initiate or change the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student.

(2) Content of notice.

(a) The prior notice shall be written in language understandable to the general public; and shall be in the language or other mode of communication commonly used by the parent unless such communication is clearly not feasible.

(b) If the mode of communication is not a written language, the school district shall ensure:

1. That the notice is translated to the parent in his or her native language or mode of communication;

2. That the parent understands the content of the notice; and

3. That there is written documentation that the requirements of subparagraphs (1)(b)1. and (1)(b)2. of this rule have occurred.

(c) The notice shall include:

1. A description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take the action, and a description of any options the district considered and the reasons why those options were rejected;

2. A description of each evaluation procedure, test, record, or report the district used as a basis for the proposal or refusal; and

3. A description of any other factors relevant to the district's proposal or refusal; and

4. Information on how the parent can obtain a copy of the procedural safeguards.

(3) Parental consent.

(a) Written parental consent shall be obtained prior to formal, individual evaluation to determine eligibility for special programs for students who are gifted.

(b) Parental consent shall be obtained prior to initial placement of the student into a special program for students who are gifted.

(c) Attempts to secure consent from the parent prior to evaluation or initial placement shall be documented.

(d) Parental consent is voluntary and may be revoked before the action occurs.

(e) Parents shall be fully informed of all information relevant to the action for which consent is sought in his or her native language or other mode of communication.

(f) Except for formal, individual evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child. Any proposal or refusal to initiate or change the identification, evaluation, or educational placement or the provision of a free appropriate public education to the student after the initial placement are not subject to parental consent but are subject to prior notice as defined by subsection (1) of this rule.

(g) Parental consent is not required before:

1. Reviewing existing data as part of an evaluation; or,

2. Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all children.

(4) Due process hearings.

(a) Such hearings may be initiated by a parent or a school district on the proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

(b) A hearing shall be conducted by an administrative law judge from the Division of Administrative Hearings, Department of Management Services.

(c) An administrative law judge shall use subsection (4) of this rule for any such hearings and may also apply any procedural rules which govern Chapter 120 proceedings to the extent such rules do not conflict with Chapter 230.23(4)(m), Florida Statutes, and Chapter 6A-6, FAC.

(d) Duties and responsibilities of an administrative law judge shall be:

1. To determine the date, time, and location of the hearing and any pre-hearing conference calls and motion hearings. Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and their child;

2. To conduct the hearing in a fair and impartial manner;

3. To ensure that all discovery, motion practice, and pre-trial procedures are conducted in an expedited manner, consistent with the deadlines established by this rule concerning the exchange of evidence and the issuance of the final decision.

4. To determine if the parent wants an electronic or written copy of the final decision and the administrative record of the hearing;

5. To determine whether the parent wants the hearing open to the public and whether the parent wants their child to attend the hearing;

6. To determine whether an interpreter is required for the proceeding;

7. To determine whether the parent's advisor or counsel is sufficiently knowledgeable about or trained regarding students who are identified as gifted;

8. To determine how evidence may be exchanged prior to and during the hearing;

9. To determine how witnesses may be compelled to attend, be cross-examined, and confronted during discovery and at the hearing;

10. To determine how evaluations and recommendations may be disclosed prior to and during a hearing;

11. To summarize the facts and findings of the case and to arrive at an impartial decision based solely on information presented during the hearing;

12. To reach a final decision and mail to all parties copies of the facts, findings and decision regarding the hearing within 45 days of the district's receipt of the parent's request or the filing of the district's request for a hearing, whichever is sooner;

13. To be accountable for all deadlines and procedures established by the statutes and rules for such hearings;

14. To maintain the confidentiality of all information; and

15. To rule on requests for specific extensions of time beyond the periods set forth in subsection (4) of this rule, at the request of either party.

(e) Hearing rights for all parties.

1. Any party to a hearing conducted pursuant to subsection (4) of this rule or an appeal conducted pursuant to subsection (4) of this rule, has a right:

a. To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to students who are gifted;

b. To present evidence, and to confront, cross-examine, and compel the attendance of witnesses;

c. To prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;

d. To obtain written or electronic verbatim records of the hearing; and

e. To obtain written or electronic findings of fact and decisions.

2. Additional disclosure of information.

a. At least five (5) business days prior to a hearing conducted pursuant to subsection (4) of this rule, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

b. An administrative law judge may bar any party that fails to comply with subparagraph (4)(e)2. of this rule from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(f) Hearing rights of parents. Parents involved in hearings must be given the right:

1. To have their child who is the subject of the hearing present;

2. To open the hearing to the public; and,

3. To receive a copy of the record of the hearing and the findings of fact and decisions described in paragraph (4)(e) of this rule.

(g) Duties and responsibilities of the superintendent or designee shall include:

1. Implementing procedures that require the parent of a child who is gifted or the attorney representing the child, to provide notice (which must remain confidential) to the school district. The notice required must include: the name of the child; the address of the residence of the child; the name of the school the child is attending; a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and, a proposed resolution of the problem to the extent known and available to the parents at the time. However, the school district may not deny or delay a parent's right to a due process hearing for failure to provide this notice.

2. Immediately notifying the Division of Administrative Hearings by both facsimile transmission and mail of the parent's request for a hearing;

3. Notifying all parties regarding their rights and responsibilities before, during, and after the hearing. This notice should include information to the parent of any free or low cost legal and other relevant services, which are available, if the parent requests this information or if the parent or school district initiates a hearing.

4. Making appropriate arrangements for an interpreter, if the administrative law judge determines this to be a need;

5. Complying with the administrative law judge's rulings regarding requests for and exchanges of evidence; discovery; the filing of motions; and, scheduling, so as to meet the requirements of this rule, and the deadlines established herein.

6. Arranging for clerical assistance, cost of the hearing, availability of facilities, and a verbatim transcript of the hearing;

7. Completing other responsibilities specified by the school board.

(h) Duties and responsibilities of the Department of Education shall include:

1. Maintaining a list of persons who serve as administrative law judges including a statement of the qualifications of each of these persons; and,

2. Transmitting the findings and decisions, after deleting any personally identifiable information, of any such hearings to the Commissioner of Education for review by the State Advisory Committee for the Education of Exceptional Students.

(i) Status of student during proceedings.

1. During the time that an administrative or judicial proceeding regarding a due process hearing is pending, unless the district and the parent of the student agree otherwise, the student involved in the due process hearing must remain in the present educational assignment. If the due process hearing involves an application for an initial admission to public school, the student, with the consent of the parent, must be placed in a public school program until the completion of all proceedings.

2. If the administrative law judge agrees with the parent and finds that a change of placement is appropriate, that placement becomes the agreed-upon placement during the pendency of the appeal.

(j) Civil Action. A decision made in a hearing conducted under subsection (4) of this rule is final unless within thirty (30) days a party aggrieved by the final order brings a civil action in a state circuit court as provided by Section 230.23(4)(m), Florida Statutes. The state circuit court shall: receive the records of the administrative proceedings; may hear additional evidence at the request of a party; and, basing its decision on the preponderance of the evidence, grant the relief it determines appropriate. In the alternative, any party aggrieved by the administrative law judge's final order shall have the right to request an impartial review by the appropriate district court of appeal as provided by Sections 120.68 and 230.23(4)(m), Florida Statutes.

(5) Examination of records.

(a) The parents of students who are gifted shall be afforded, in accordance with Rule 6A-1.0955, FAC., Section 228.093, Florida Statutes, and this rule, an opportunity to inspect and review all educational records with respect to the identification, evaluation, and educational placement of the child.

(b) The right to inspect and review education records under this rule includes the right to have a representative of the parent inspect and review the records.

(6) Content and Provision of the Procedural Safeguards Notice to Parents.

(a) The content of the procedural safeguard notice must inform the parent of all provisions included in this rule.

(b) A copy of the procedural safeguards notice must be available to the parents of a child who is gifted, but must be given to the parents, at a minimum:

1. Upon initial referral for evaluation; and,

2. Upon refusal to conduct an initial evaluation; and,

3. Upon receipt of a request for a due process hearing in accordance with subsection (3) of this rule.

Specific Authority 120.53(1)(b), 228.041(18),(19), 229.053(1), 230.23(4)(m), 236.081(1)(c) FS. Law Implemented 120.53(1)(b), 228.041(18),(19), 229.053(1), 230.23(4)(m) FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
John Stewart, Deputy Commissioner of Educational Programs,
Department of Education
NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: Tom Gallagher, Commissioner of
Education
DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: May 13, 2000
DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: February 18, 2000

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: Special Programs and Procedures for
Exceptional Students

RULE NO.: 6A-6.03411

PURPOSE AND EFFECT: The purpose of this rule revision is to outline procedures for the development of special programs and procedures documents for exceptional students as outlined in PL105-17 (20 USC 1415) – Individuals with Disabilities Education Act, 1997.

SUMMARY: This rule revision updates agency names and requirement dates of the document; and describes the provisions that must be included in the Special Programs and Procedures document to include: screening, referral activities, referral, student evaluation, eligibility, individual educational plan, temporary assignment of transferring exceptional students, reevaluation, student participation in statewide assessment, dismissal, procedural safeguards, transfer of rights for students with disabilities, special program procedures, and district assurances.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of the notice.

SPECIFIC AUTHORITY: 229.053(1), 230.23(4)(m)4. FS.

LAW IMPLEMENTED: 228.041(18),(19), 229.565(3)(b)(c), 230.23(4)(m)4., 236.081(1)(c) FS., PL 105-17 (20 USC 1415).

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., June 26, 2000
PLACE: Room LL03, The Capitol, Tallahassee, Florida
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Betty Coxe, Director, Division of Public Schools and Community Services, 325 West Gaines Street, Room 514, Tallahassee, Florida 32399-0400, (850)488-2601

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-6.03411 Special Programs and Procedures for Exceptional Students.

This rule shall apply beginning with the proposed special programs and procedures documents submitted for the 1985-86 school year and thereafter, in accordance with Section 230.23(4)(m)4., Florida Statutes, as referenced in Rule 6A-6.03411(5), FAC. For a school district or agency under contract to the Department to utilize the cost factors for special programs for exceptional students to generate funds it shall: develop a written statement of procedures for providing an appropriate program of special instruction, as required by Section 230.23(4)(m), Florida Statutes; submit its written statement of special programs and procedures to the designated office in the Department of Education; and report Deputy Commissioner for Educational Programs for approval; and report to the Deputy Commissioner for Educational Programs, the total number of ~~students in the district receiving instruction in each special program~~ for exceptional students in the manner prescribed by the Department. State Board Rules relating to special programs for exceptional students shall serve as criteria for the review and approval of special programs and procedures documents. The document shall be submitted in accordance with timelines required by the ~~Department division of public schools~~ for approval ~~prior to the 1985-86 school year and each subsequent year,~~ and shall include the following:

(1) Provision for Special Programs. Special programs are required for each type of exceptional student and may be provided directly, in cooperation with other school districts or agencies, or through contractual arrangements with nonpublic schools.

(2) General Procedures. General procedures shall be implemented in accordance with Rule 6A-6.0331, FAC.

(a) Procedures for placement. Procedures for placement shall include: ~~shall ensure that segregation of exceptional students occurs only when the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily and shall show a continuum of alternative placements consistent with Rule 6A-6.0311, FAC.~~

1. To the maximum extent appropriate, students with disabilities in public or private institutions or other facilities, are educated with students who are not disabled;

2. Special classes, separate schooling or other removal of exceptional students from regular education occurs only if the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily; and

3. A continuum of alternative placements is provided for exceptional students consistent with Rule 6A-6.0311(1), FAC.

(b) Procedures for screening. Screening is that process by which a rapid assessment is made to identify candidates for formal evaluation. Minimum requirements are:

1. Screening for vision and hearing problems shall be in accordance with the school district's school health plan.

2. Speech, language, hearing, and vision screening shall be required prior to considering the eligibility of a student for any special program except gifted, occupational or physical therapy, and homebound or hospitalized.

(c) Procedures for prereferral activities. Prereferral activities are those activities which address student learning problems at the school level prior to referral, whenever appropriate, or as required by Rules 6A-6.03011 through 6A-6.03027, 6A-6.03031, FAC.

(d) Procedures for referral. Referral is the process whereby a written request is made for a formal evaluation of students who are suspected of needing special programs.

(e) Procedures for student evaluation. Student evaluation is the systematic examination of all areas related to the student's suspected exceptionality including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities by evaluation specialists ~~the medical, physical, psychological, social, or educational characteristics of the student by evaluation specialists.~~

(f) Procedures for determining eligibility. Procedures for determining eligibility shall include: Determining eligibility is the process in accordance with Rule 6A-6.0331(2),(3), FAC., whereby professionals review student data to determine whether or not the student meets the criteria for eligibility for a special program.

1. Determining eligibility for students with disabilities, in accordance with Rule 6A-6.0331(4), FAC., is the process whereby the staffing committee determines that the student has a disability, in accordance with eligibility criteria specified in Rules 6A-6.03011 through 6A-6.03018, FAC., Rules 6A-6.03020 through 6A-6.03027, FAC., and Rules 6A-6.03030 through 6A-6.03031, FAC., and needs special education and related services.

2. Determining eligibility for students who are gifted, in accordance with Rule 6A-6.0331(5), FAC., is the process whereby the staffing committee determines that the student is gifted in accordance with eligibility criteria specified in Rule 6A-6.03019, FAC., and needs gifted services.

(g) Procedures for providing an individual educational plan (IEP), educational plan (EP), or family support plan (FSP) ~~or family support plan~~, in accordance with Rules 6A-6.03028 and 6A-6.03029, FAC.

(h) Procedures for temporary assignment of transferring exceptional students, in accordance with Rule 6A-6.0334, FAC.

(i) Procedures for reevaluation. Reevaluation of students with disabilities is the process whereby information about a student is gathered and reviewed to determine whether the student continues to have a disability, the need for continuation in the special program. The following steps are required:

1. ~~An evaluation specialist and an exceptional student teacher shall examine available information in all areas addressed in the initial evaluation or in subsequent re-evaluations of the student and shall make the appropriate referral(s) for one or more formal evaluations based on their examination and the requirements of Rules 6A-6.03011 through 6A-6.03031, FAC. When necessary, another member of the instructional or supervisory staff may substitute for the exceptional student teacher.~~

2. ~~A meeting of the individual educational plan committee or the staffing committee shall be convened to review all available information about the student including reports from the additional evaluations, and to consider the need for continuation in the special program. If the student is to continue in the special program(s), the student's individual educational plan or family support plan shall be reviewed in accordance with Rules 6A-6.03028 and 6A-6.03029, FAC.~~

3. ~~If the re-evaluation indicates that the special program is no longer needed or that program changes may be warranted, the applicable dismissal or eligibility staffing procedures shall be followed.~~

(j) Procedures for student participation in statewide assessment, including alternate assessment, in accordance with Rule 6A-1.0943, FAC.

(k)(j) Procedures for dismissal. Dismissal is the process whereby a student is removed from a special program.

~~(k) Procedures for procedural safeguards for exceptional students, in accordance with Rule 6A-6.03311, FAC.~~

(l) Procedures for procedural safeguards, in accordance with Rules 6A-6.03311, 6A-6.03032, and 6A-6.03313, FAC.

(m) Transfer of rights for students with disabilities, in accordance with Rule 6A-6.03311, FAC.

(n) Procedures for information and services to parents of students with disabilities eligible for opportunity scholarships and participating private schools, in accordance with Section 229.0537, Florida Statutes.

1. School district personnel shall work with private schools to determine the special education and related services that will continue to be available to participating students with disabilities.

2. Parents of students with disabilities eligible for opportunity scholarships shall be provided information on the availability of special education and related services from the local school board.

3. The determination of the location of the special education and related services provided shall be at the discretion of the local school board.

4. Special education services provided by the local school board to students with disabilities placed in private schools by their parents shall be consistent with the student's services plan.

(o)(4) Plan for evaluation of the special programs.

(3) Procedures for each special program, in accordance with Rules 6A-6.03011 through 6A-6.03027, FAC., and Rules 6A-6.03030 through 6A-6.03031, FAC., including:

(a) Criteria for eligibility.

(b) Any procedures for screening, referral, student evaluation, determination of eligibility, development of the individual educational plan, educational plan, or family support plan, reevaluation, or dismissal which are different from or in addition to the procedures in the general section.

(c) Instructional program. Philosophy, curriculum, and instructional support.

(4) Assurances. Assurances of the district school board or agency for meeting requirements for:

(a) Written agreements in accordance with Rule 6A-6.0311(3)(a)-(b), FAC.,

(b) Contractual arrangements with nonpublic schools in accordance with Rule 6A-6.0361, FAC.,

(c) Surrogate parents in accordance with Rule 6A-6.0333, FAC.

(d) Discipline in accordance with Rule 6A-6.03312(6), FAC.

(e) Opportunity scholarships in accordance with Section 229.0537, Florida Statutes.

~~(5) Form ESE 017, Special Programs and Procedures for Exceptional Students, effective September, 1985, is incorporated by reference and made a part of this rule. This form may be obtained from the Administrator of Information Services and Accountability, Division of Public Schools, Department of Education, The Florida Education Center, Tallahassee, Florida 32399.~~

Specific Authority 229.053(1), 230.23(4)(m)4., ~~236.081(1)(e)~~ FS. Law Implemented 228.041(18),(19), 229.0537, 229.565(3)(b),(c), 230.23(4)(m)4., 236.081(1)(c) FS. History—New 11-18-84, Amended 10-1-85, Formerly 6A-6.3411, Amended 12-14-93, ~~_____~~. c.f. PL 105-17 94-142, 20 USC S.1401 et seq., 34 C.F.R. Parts 76 and 300.

NAME OF PERSON ORIGINATING PROPOSED RULE:
John Stewart, Deputy Commissioner of Educational Programs, Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Tom Gallagher, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 13, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 10, 2000

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Housing and Community Development

RULE CHAPTER TITLE: Florida Building Commission –

RULE CHAPTER NO.:

Operational Procedures 9B-3

RULE TITLES: Commission Organization and Operation 9B-3.004

Procedures for Testing Materials, Devices and Method of Construction 9B-3.042

Qualification Program for Special Inspectors of Threshold Buildings 9B-3.043

State Minimum Building Codes Adopted 9B-3.047

PURPOSE, EFFECT AND SUMMARY: The purpose of the amendment of the above-listed rules is to repeal 9B-3.047 as an unnecessary recitation of statute; repeal 9B-3.042, which is not authorized by specific statute, amend 9B-3.004(1) to reflect statutory changes, and amend 9B-3.043(1)(b),(c) clarifying that experience is to be measured in calendar years.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Costs has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 553.73(3), 553.76(1), 553.77(1)(a), 553.79(5)(c) FS.

LAW IMPLEMENTED: 553.73(3), 553.73(9), 553.74, 553.75, 553.79(5)-(8), inclusive FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:00 a.m. – 10:00 a.m., June 19, 2000

PLACE: Randall Kelley Training Center, 3rd Floor, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida

Any person requiring special accommodation at the hearing because of a disability or physical impairment should contact Mo Madani, Planning Manager, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-1824, Suncom 277-1824, at least seven days before the date of the hearing. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-9771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ila Jones, Program Administrator, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-1824, Suncom 277-1824

THE FULL TEXT OF THE PROPOSED RULES IS:

9B-3.004 Commission Organization and Operations.

(1) The Commission is headed by a Chairman who is appointed by the Governor elected by the Commission membership, annually for a one-year term.

(2) through (10) No change.

Specific Authority 553.76(1), 553.77(1)(a) FS. Law Implemented 553.74, 553.75 FS. History--New 5-15-75, Amended 4-18-78, Formerly 9B-3.04, Amended _____.

9B-3.042 Procedures for Testing of Materials, Devices, and Method of Construction.

Specific Authority 553.77(1)(a) FS. Law Implemented Ch. 553, Part VI FS. History--New 4-18-78, Formerly 9B-3.42, Repealed _____.

9B-3.043 Qualification Program for Special Inspectors of Threshold Buildings.

(1) The minimum qualifying criteria for Special Inspectors of Threshold Buildings, also referred to as Threshold Inspectors, established by the Commission shall be as follows:

(a) Proof of current registration in good standing as a registered architect or professional engineer whose principal practice is structural engineering in the State of Florida.

(b) Three calendar years of experience in performing structural field inspections on threshold type buildings.

(c) Two calendar years of experience in the structural design of threshold type buildings. For the purpose of these criteria, structural design shall mean the design of all structural components of the building and shall not be limited to specific structural components only, such as foundations, prestressed or post-tensioned concrete, etc.

(d) and (e) No change.

(2) through (7) No change.

Specific Authority 553.79(5)(c) FS. Law Implemented 553.79(5)-(8) FS. History--New 10-3-84, Amended 2-24-85, Formerly 9B-3.43, Amended 4-9-87, 6-8-94, 2-27-96, _____.

9B-3.047 State Minimum Building Codes Adopted.

(1) No change.

~~(2) Application. The construction provisions contained within these referenced codes shall apply as required by Part VII, Chapter 553, Florida Statutes. Each local government and state agency with building construction regulation responsibilities shall adopt one of the state minimum building codes as its building code, which shall govern the construction, erection, alteration, repair or demolition of any building for which the local government or state agency has responsibility. If the One and Two Family Dwelling Code is adopted for residential construction, then one of the other recognized model codes must be adopted for the regulation of other residential and nonresidential structures.~~

Specific Authority 553.73(3) FS. Law Implemented 553.73(3),(9) FS. History--New 7-18-90, Amended 3-30-93, 10-17-93, 8-28-95, 9-24-96, 12-26-96, 4-27-97, 10-5-97, 10-14-97, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ila Jones, Program Administrator, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-1824

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Tom Pierce, Director, Division of Housing and Community Development, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 23, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 24, 2000

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Housing and Community Development

RULE CHAPTER TITLE: RULE CHAPTER NO.:

Florida Building Commission -

Handicapped Accessibility Standards 9B-7

RULE TITLE: RULE NO.:

Procedures 9B-7.003

PURPOSE, EFFECT AND SUMMARY: The purpose of the amendment of the above-listed rules is to repeal 9B-7.003 pursuant to the decision rendered in Department of Corrections v. Sautler, 24 FLW D1951, (Fla 1st DCA, 1999).

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Costs has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 553.512(1) FS.

LAW IMPLEMENTED: 553.512(1) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:00 a.m. - 10:00 a.m., June 19, 2000

PLACE: Randall Kelley Training Center, 3rd Floor, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida

Any person requiring special accommodation at the hearing because of a disability or physical impairment should contact Mo Madani, Planning Manager, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-1824, Suncom 277-1824, at least seven days before the date of the hearing. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-9771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Ila Jones, Program Administrator, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-1824, Suncom 277-1824

THE FULL TEXT OF THE PROPOSED RULE IS:

9B-7.003 Procedures.

(1) through (7) No change.

~~(8) Any person with a substantial interest in a Final Order may move the Commission for a rehearing of the same in accordance with the requirements of this paragraph.~~

~~(a) A motion for rehearing shall be filed not later than fifteen (15) days from the date of the Final Order to which it is addressed. Only one motion for rehearing by any one party shall be allowed for any Final Order.~~

~~(b) The motion for rehearing shall not reargue matters considered by the Commission, but shall present matters which the Commission may have overlooked, or shall be based on new information which the Commission did not have at the time of its earlier action.~~

~~(c) A timely motion for rehearing shall suspend the rendition of the Final Order for the purpose of appealing the Final Order to a District Court of Appeal. The rendition shall be deemed to have occurred on the date of the Order which determines the last timely motion for rehearing address to any one Final Order. The time for appealing the Final Order to a District Court of Appeal shall commence running from that date.~~

Specific Authority 553.512(1) FS. Law Implemented 553.512(1) FS. History—New 1-31-79, Formerly 9B-7.03, Amended 10-1-96, 9-14-97,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ila Jones, Program Administrator, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Tom Pierce, Director, Division of Housing and Community Development, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 23, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 24, 2000

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Housing and Community Development

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Thermal Efficiency Standards	9B-13
RULE TITLES:	RULE NOS.:
Thermal Efficiency Standards Adopted	9B-13.0041
Effective Date	9B-13.0061

PURPOSE, EFFECT AND SUMMARY: The purpose of the amendment of the above-listed rules is to repeal 9B-13.0061(1) and the language in 9B-13.0041(1) referring to the repealed portion of 9B-13.0061 as unnecessary.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Costs has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 553.901 FS.

LAW IMPLEMENTED: 553.901, 553.903 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:00 a.m. – 10:00 a.m., June 19, 2000

PLACE: Randall Kelley Training Center, 3rd Floor, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida

Any person requiring special accommodation at the hearing because of a disability or physical impairment should contact Mo Madani, Planning Manager, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-1824, Suncom 277-1824, at least seven days before the date of the hearing. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-9771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ila Jones, Program Administrator, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-1824, Suncom 277-1824

THE FULL TEXT OF THE PROPOSED RULES IS:

9B-13.0041 Thermal Efficiency Standards Adopted.

(1) The design and fabrication of all new and renovated buildings, except as exempted herein, shall comply with the requirements of the Florida Energy Efficiency Code For Building Construction (the Code), promulgated by the State of Florida. The Department shall revise, update and maintain the Code. ~~After the effective dates specified in 9B-13.0061~~ All all new and renovated buildings, except as exempted herein, shall comply with the requirements of the 1997 Edition of the Code and the 1998 revisions, Form 600A-97 (Revised 1998), the FLA/RES-97 (Revised 1998) computer program, Form 600B-97 (Revised 1998) and Form 600C-97 (Revised 1998), herein incorporated into this rule by reference.

(2) No change.

Specific Authority 553.901 FS. Law Implemented 553.901, 553.903 FS. History—New 12-10-96, Amended 10-19-97, 1-19-98, 12-27-98,_____.

9B-13.0061 Effective Date.

~~(1) After October 15, 1980, no building except those exempted from the requirements of the Florida Energy Efficiency Code For Building Construction shall be constructed, installed or renovated unless such building complies with the standards and rules adopted in Rule 9B-13.0041.~~

~~(2) Revised pages of the 1997 Edition of the Code, Form 600A-97 (Revised 1998), the FLA/RES-97 (Revised 1998) computer program, Form 600B-97 (Revised 1998), and Form 600C-97 (Revised 1998) shall take effect on the effective date of this rule. Changes to Rule Chapter 9B-13 shall take effect as of the effective date of this rule.~~

Specific Authority 553.901 FS. Law Implemented 553.901 FS. History--New 12-10-96, Amended 10-19-97, 1-19-98, 12-27-98,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ila Jones, Program Administrator, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Tom Pierce, Director, Division of Housing and Community Development, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 23, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 24, 2000

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Housing and Community Development

RULE CHAPTER TITLE: Florida Energy Conservation Standards
RULE CHAPTER NO.: 9B-44

RULE TITLES: Products, Standards and Test Methods
RULE NOS.: 9B-44.003
Certification 9B-44.004

PURPOSE, EFFECT AND SUMMARY: The purpose of the amendment of the above-listed rules is to repeal 9B-44.003(1)(a), 9B-44.003(2)(a), 9B-44.003(3)(a) and portions of 9B-44.004 as unnecessary repetition of statutory provisions; and updating the standards and testing methods in 9B-44.003 and providing for incomplete certification statements in 9B-44.004.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Costs has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 553.954, 553.961 FS.

LAW IMPLEMENTED: 553.955(8)(c), 553.957, 553.961, 553.963, 553.971 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:00 a.m. – 10:00 a.m., June 19, 2000

PLACE: Randall Kelley Training Center, 3rd Floor, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida

Any person requiring special accommodation at the hearing because of a disability or physical impairment should contact Mo Madani, Planning Manager, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-1824, Suncom 277-1824, at least seven days before the date of the hearing. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-9771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ila Jones, Program Administrator, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-1824, Suncom 277-1824

THE FULL TEXT OF THE PROPOSED RULES IS:

9B-44.003 Products, Standards and Test Methods.

The standards and test methods as required herein pertain to specific covered products.

(1) Refrigerators, Refrigerator-Freezers, and Freezers;:

~~(a) Standards. Refrigerators, refrigerator freezers and freezers, except as exempted by sections 553.957(1)(a) and 553.963(1)(b), F.S., manufactured on or after January 1, 1993, shall meet the applicable standards listed in section 553.963(1)(a), F.S.~~

~~(b) Test Methods. Manufacturers of any refrigerator, refrigerator-freezer or freezer to be sold or installed in Florida that is covered by this rule shall cause the testing of one randomly selected sample of each model of covered product by a test laboratory accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) or, where no laboratory accreditation program category exists under this program for a covered product, testing shall be conducted by an independent test laboratory. Testing shall be conducted according to the following test methods.~~

~~(a)1. Fresh food refrigerated volume, freezer refrigerated volume, and total refrigerated volume shall be determined using the standard ANSI/AHAM HRF-1-1988 1979 which is incorporated by reference herein.~~

~~(b)2. The energy consumption shall be determined using the test procedure for refrigerators and freezers in 10 Code of Federal Regulations (CFR), section 430.22(a) and (b) (1999 1986) which is incorporated by reference herein.~~

(2) Fluorescent Lamp Ballasts for Lighting Equipment;:

~~(a) Standards. Fluorescent lamp ballasts and luminaires incorporating ballasts manufactured on or after January 1, 1989, except equipment exempted by section 553.963(2)(b), F.S., or preempted by section 327 of the Energy Policy and Conservation Act (42 U.S.C. 6297), shall meet the applicable standards listed in section 553.963(2)(a), F.S.~~

~~(b) Test Methods. Manufacturers of lamp ballasts for fluorescent lighting equipment to be sold or installed in Florida that is covered by this rule shall cause the testing of samples of each model of fluorescent lamp ballast by a test laboratory accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) or, where no laboratory accreditation category exists under this program for a covered product, testing shall be conducted by an independent test laboratory.~~

1. through 2. renumbered (a) through (b) No change.

(3) Showerheads:-

~~(a) Standards. Showerheads manufactured on or after January 1, 1988, except those exempted by section 553.963(3)(b), F.S., shall meet the standard described in section 553.963(3), F.S.~~

~~(b) Test Method. Manufacturers of showerheads to be sold or installed in Florida that are covered by this rule shall cause the testing of samples of each model. Initial certification of showerheads mandated to occur by January 1, 1988, may contain testing reports developed by the manufacturers' test laboratory and certified by the manufacturer to be true and accurate. Certifications of showerheads made after January 1, 1990, shall contain results of testing reports conducted by a test laboratory accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) or, where no laboratory accreditation category exists under this program for a covered product, testing shall be conducted by an independent test laboratory. The method of testing shall be in accordance with standard ANSI A112.18.1M-1996 1979 which is incorporated by reference herein. Showerheads shall be tested in the assembled configuration in which they are packaged and sold. Showerheads in which a flow restricting mechanism is not mechanically retained, as defined below, when packaged and sold shall be tested with the flow restricting mechanism removed. Mechanically retained shall mean that the insert cannot be shaken out of the showerhead, but would require a force of at least eight pounds to remove the insert. All showerheads with the flow restrictors mechanically retained at the point of manufacture shall be tested with the flow restrictor mechanism in place. Showerheads with a radially drilled hole which is sealed when the flow restricting mechanism is in position, but which sprays water out of the side of the showerhead when the flow restricting mechanism is removed shall also be tested with the flow restricting mechanism in place.~~

Specific Authority 553.954, 553.961 FS. Law Implemented 553.955(8)(c), 553.957, 553.961, 553.963 FS. History--New 12-31-87, Amended 10-12-89,

9B-44.004 Certification.

~~Manufacturers of a covered product that was manufactured on or after the effective date for that product as specified in rule 9B-44.007 shall certify such product to be in compliance with these regulations in accordance with the provisions of section 553.971, F.S.~~

~~(1) Test reports submitted with certification statements by manufacturers shall be based Section 553.971(2), F.S., requires certain information to be included in certification statements. Certification statement submittals to the Department for each model of covered product shall include a test report on testing performed not earlier than two years prior to the certification submittal, except as exempted by section 553.971(3), F.S., and a declaration of compliance with the Florida standards. The test report shall be a copy of the report produced by the testing laboratory and shall be consistent with the presentation of information required by the test standard applicable to the covered product and for showerheads shall indicate whether they are tested with or without inserts where applicable.~~

~~Certification statements for luminaires and showerhead assemblies that contain a ballast or showerhead manufactured and certified by others shall identify both ballast or showerhead and luminaire or assembly model numbers. A list of ballasts or showerheads officially certified in Florida that will be included as part of the product must be contained in the certification package. However, no test report is required where the ballast or showerhead referenced has been certified by its manufacturer. Where a company utilizes one showerhead in a number of assemblies, one showerhead certification submittal may be made that includes a list of that company's assembly models containing that showerhead. The certification statement shall contain the information required by section 553.971(2)(a),(b),(c),(d),(e),(f),(g) and (h), F.S. The certification for showerheads shall certify that the showerhead is packaged and shipped with or without removable inserts as applicable. The declaration of compliance shall be provided on Form 971-87, which is incorporated by reference herein, effective 12/31/87.~~

~~(2) Certification statements not complete and accurate shall be returned to the manufacturer by the Department within 45 days after receipt with a description of incomplete or inaccurate information for correction. The date a corrected certification statement is received shall begin a new 45 day response cycle. Section 553.971(2)(k), F.S., requires the Department to forward to the manufacturer an acknowledgement that the statement has been received and that it is complete and accurate on its face within 45 days after receipt of a certification statement. Where additional information is required, the manufacturer shall be notified. An acknowledgement of certification shall be sent to the manufacturer once all provisions of section 553.971(2), F.S., have been met.~~

(3) through (4) No change.

Specific Authority 553.954 FS. Law Implemented 553.971 FS. History--New 12-31-87, Amended 10-12-89,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ila Jones, Program Administrator, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Tom Pierce, Director, Division of Housing and Community Development, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 23, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 24, 2000

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Housing and Community Development

RULE CHAPTER TITLE: PUBLIC RESTROOMS – RATIO OF FACILITIES FOR MEN AND WOMEN

RULE TITLES: DEFINITIONS, IMPLEMENTATION

PURPOSE, EFFECT AND SUMMARY: The purpose of the amendment of the above-listed rules is to change the reference from the Florida Board of Building Codes and Standards to the Florida Building Commission.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Costs has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 553.141(3), 553.141(4) FS. LAW IMPLEMENTED: 553.141(1), 553.141(2), 553.141(3) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:00 a.m. – 10:00 a.m., June 19, 2000 PLACE: Randall Kelley Training Center, 3rd Floor, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida

Any person requiring special accommodation at the hearing because of a disability or physical impairment should contact Mo Madani, Planning Manager, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-1824, Suncom 277-1824, at least seven days before the date of the hearing. If you are hearing or speech impaired,

please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-9771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ila Jones, Program Administrator, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)487-1824, Suncom 277-1824

THE FULL TEXT OF THE PROPOSED RULES IS:

9B-56.002 Definitions.

For the purpose of this rule chapter, the following, unless the context does not permit such meaning, shall have the meanings indicated:

- (1) No change.
(2) Board – The Florida Building Code Commission Board of Building Codes and Standards.
(3) through (9) No change.

Specific Authority 553.141(4) FS. Law Implemented 553.141(1),(2) FS. History--New 6-8-94, Amended_____.

9B-56.003 Implementation.

(1) The Commission Board may interpret and clarify various aspects of the requirements for a specific ratio of facilities for men and women in public restrooms, and will promulgate such rules and regulations as will from time to time be deemed necessary to carry out its purpose.

- (2) through (5) No change.

Specific Authority 553.141(3),(4) FS. Law Implemented 553.141(1),(2),(3) FS. History--New 6-8-94, Amended_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ila Jones, Program Administrator, Codes and Standards, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Tom Pierce, Director, Division of Housing and Community Development, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 23, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 24, 2000

PUBLIC SERVICE COMMISSION

DOCKET NO. 000533-PU

RULE TITLE: INITIATION OF FORMAL PROCEEDINGS
PURPOSE AND EFFECT: To repeal subsection (3) of Rule 25-22.036, FAC.

SUMMARY: Subsection (3) provides notice that the Commission may initiate a proceeding on its own motion, and states the procedure the Commission may follow in doing so.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Costs was prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.01(7), 350.127(2) FS.

LAW IMPLEMENTED: 120.569, 120.57, 350.123, 364.035, 364.05, 364.057, 364.058, 364.335, 364.337, 366.04, 366.06, 366.071, 366.076, 366.8255, 367.031, 367.045, 367.071, 367.081, 367.0814, 367.0817, 367.082, 367.0822, 367.091, 367.101, 367.171 FS.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING. NO HEARING WILL BE HELD BECAUSE THIS RULE RELATES EXCLUSIVELY TO THE COMMISSION'S ORGANIZATION, PROCEDURE, OR PRACTICE.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850)413-6245

THE FULL TEXT OF THE PROPOSED RULE IS:

25-22.036 Initiation of Formal Proceedings.

(1) through (2) No change.

~~(3) Orders and Notices. Upon its own motion, the Commission may issue an order or notice initiating a proceeding. Such order or notice shall be served upon all persons named therein. The Commission may also transmit notice of its action to other persons requesting such notice, and may publish such notice in appropriate newspapers of general circulation and the Florida Administrative Weekly.~~

~~(3)(4) Form and Content.~~

(a) through (b)4. No change.

Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57, 350.123, 364.035, 364.05, 364.057, 364.058, 364.335, 364.337, 366.04, 366.06, 366.071, 366.076, 366.8255, 367.031, 367.045, 367.071, 367.081, 367.0814, 367.0817, 367.082, 367.0822, 367.091, 367.101, 367.171, FS History—New 12-21-81, Formerly 25-22.36, Amended 5-3-99.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mary Anne Helton

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 16, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 26, No. 15, April 14, 2000

DEPARTMENT OF CORRECTIONS

RULE TITLE: Inmate Drivers
RULE NO.: 33-601.605

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to set forth guidelines for: the selection and utilization of inmates as drivers of work release vehicles; the renewal of licenses; the training of inmates in the commercial vehicle driving vocational program; and the driving restrictions of inmates at various institutions.

SUMMARY: The proposed rule provides definitions of applicable terms, establishes license requirements and selection criteria for inmate drivers, establishes procedures for implementation of the rule, sets forth responsibilities and restrictions of inmates, sets forth procedural duties of staff, and establishes procedures relating to the commercial vehicle driving vocational program.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 944.09, 945.091 FS.

LAW IMPLEMENTED: 20.315, 322.03, 322.04, 322.15, 944.09, 945.091 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:00 a.m., June 22, 2000

PLACE: Law Library Conference Room, Room B-404, 2601 Blair Stone Road, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Giselle Lylen Rivera, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.605 Inmate Drivers.

(1) Definitions.

(a) Approving Authority, where used herein, refers to the Secretary of the Florida Department of Corrections or his or her designee, who will be the warden or assistant warden who has operational responsibility for a specific work release center.

(b) Commercial Motor Vehicle, where used herein, refers to any motor vehicle used on the streets and highways which has a gross vehicle weight rating (declared weight or actual weight) of 26,001 pounds or more, is designed to transport more than 15 persons including the driver, or is utilized to carry hazardous materials.

(c) Commercial Vehicle Driving Vocational Program – a vocational program designed to prepare inmates for employment as tractor trailer or truck drivers. Instruction will include 1000 miles of road driving under the supervision of a qualified commercial vehicle driver prior to completion of the program. Road driving activities will include experience on two-lane, four lane, interstate and city streets and highways. Twenty percent or more of the experience will occur at night on both wet and dry roads.

(d) DMV, where used herein, refers to the Department of Highway Safety and Motor Vehicles.

(e) Work Release Center (WRC), where used herein, refers to a facility where a community based transition program for approved minimum custody inmates prior to release from custody is conducted.

(2) License Requirements for Inmate Drivers.

(a) Any inmate who operates a work release center vehicle must have a valid Florida Driver's License.

(b) No inmate will be authorized to operate a vehicle that qualifies as a commercial motor vehicle without a valid Florida Commercial Driver's License.

(3) Selection Criteria for WRC Inmate Drivers.

(a) The inmate must meet the criteria for the work release program and not have a current or prior conviction in any of the following categories:

1. Any degree of murder or attempted murder.
2. Homicide.
3. Manslaughter.
4. Driving under the influence.
5. Driving while licensed suspended or revoked.
6. Kidnapping.
7. False imprisonment.
8. Escape, or a disciplinary report for escape or attempted escape for which the inmate was found guilty, or
9. Vehicle theft.

(b) The inmate must have demonstrated stability, maturity and satisfactory institutional adjustment for a period of six months.

(c) The inmate must be in minimum custody and have proven his or her trustworthiness by performing in an outside minimum custody assignment ninety days prior to his or her selection.

(d) The inmate must hold a valid Florida Driver's License or be eligible for licensing.

(e) The inmate must have a favorable driving record which does not reflect any moving violations within the last three years prior to incarceration.

(4) The classification officer considering an inmate as a work release center driver shall review the inmate's driving history utilizing the Kirkman Data Center database. Questions

or concerns regarding the Kirkman Data Center database are to be directed to the work release coordinator in the Bureau of Classification and Central Records.

(5) Prior to driving a department vehicle, a WRC inmate driver must be authorized in writing by the approving authority.

(6) Obtaining licenses for non-licensed inmate drivers.

(a) When an inmate who does not have a valid Florida Driver's License on file is assigned as a WRC inmate driver, the classification officer shall contact the nearest DMV Driver's License Office by telephone and arrange for the license examination.

(b) A correctional officer shall escort the inmate to DMV for the scheduled appointment and shall remain with the inmate while he or she completes the license examination.

(c) Routine fees for driver's examinations, licenses and renewals will be paid by the work release center where the inmate is assigned at the time the fee is incurred. Any additional costs to obtain a driver's license will be the financial responsibility of the inmate and will be paid directly to the DMV Driver's License Office.

(d) Once the license is obtained, the correctional officer shall return with the inmate to the work release center, secure the driver's license in the control room and provide the classification officer with any paperwork received from DMV for the inmate's file.

(7) Issuance of WRC Inmate Driver's Licenses. The correctional officer working in the control room shall issue the license and the keys to the inmate upon departure from the work release center, and shall ensure that the license and the keys are returned to the control room upon the inmate's return to the work release center at the end of his or her driving duty shift. The correctional officer in control room shall document on the control room log every time a driver's license and keys are given to and received from an inmate. For security reasons, both items will be stored in the control room when not in use.

(b) The Correctional Officer in the control room will make the appropriate documentation on the Control Room Log, DC6-207, every time a driver's license and keys are given to and received from an inmate. Form DC6-207 is hereby incorporated by reference. A copy of this form is available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. Requests for copies to be mailed must be accompanied by a self-addressed stamped envelope. The effective date of this form is _____.

(7) Supervision of WRC Inmate Drivers. A correctional officer sergeant at the work release center will be assigned to ensure the inmate driver fulfills the driving duties in the prescribed manner:

(a) The responsibilities of the assignment will be thoroughly explained to the inmate and the inmate will be required to sign the Inmate Driver Agreement Form, DC6-116.

Form DC6-116 is hereby incorporated by reference. A copy of this form is available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. Requests for copies to be mailed must be accompanied by a self-addressed stamped envelope. The effective date of this form is _____.

(b) The sergeant shall thoroughly familiarize the inmate with the route(s) he or she is to follow and shall accompany the inmate on his or her first run of the route. If, after one run, the correctional officer sergeant believes the inmate is not familiar enough with the route, the correctional officer sergeant shall continue to accompany the inmate on the route until the inmate is familiar enough with the route to drive it by himself.

(c) The inmate driver is restricted to authorized transportation duties only, shall not be permitted to drive for any non-department business duties, and shall not be required to drive a department vehicle for more than 12 hours per every 24-hour period. Under no circumstances will the inmate be permitted to operate a vehicle outside of the state.

(d) If any inmate is involved in an accident with a department vehicle, the shift supervisor at the work release center will notify the Florida Highway Patrol so that they can investigate the accident. If an inmate driver receives a traffic citation or is involved in an accident, the inmate's driving privileges will be immediately suspended pending a review by the approving authority. Reinstatement as an inmate driver will require written authorization by the approving authority.

(e) The sergeant at the work release center shall review each inmate's driver's license at least quarterly to ensure that the license is still valid and no traffic infractions (citations) have occurred since the inmate was authorized to drive. Should the license be invalid or any new traffic infractions (citations) discovered, notice shall be given to the approving authority who shall reassess the inmate's authorization to drive. The approving authority shall, in writing, advise the correctional officer major or classification officer at the work release center whether the inmate is to remain an inmate driver.

(f) A department vehicle will be assigned to only one inmate at a time. The vehicle will be searched and inspected at the beginning and conclusion of the assigned inmate's driving duty shift and at each intermittent stop at the work release center for contraband and any excess mileage driven by the inmate. The correctional officer searching the vehicle shall document the search on the control room log, Form DC6-207. Any contraband or mileage infractions will be handled through the disciplinary process.

(g) Each time an inmate driver returns to the work release center a correctional officer shall conduct a physical search of the inmate for the detection of contraband and shall document the search on the control room log. An inmate found with contraband will have his or her driving privileges immediately suspended pending review by the approving authority and shall be subject to the disciplinary process.

(8) Driving privileges and restrictions for inmates at major institutions.

(a) Inmates housed at major institutions will not be permitted to operate state vehicles other than farm equipment or other off-highway equipment which does not require a driver's license.

(b) Operation of a farm vehicle or other off-highway equipment must be approved in advance by the warden.

(c) Inmates shall be properly trained prior to using any of the above-listed equipment.

(d) Inmates shall not be authorized to operate farm equipment or other off-highway equipment off institution grounds.

(e) The inmate will only be permitted to have custody of the equipment keys when he or she is operating the machinery and must return the keys to the correctional officer for safe storage upon completion of the job assignment. Under no circumstances will equipment keys be left in the vehicle when not in use or when the vehicle is unattended.

(9) Commercial Vehicle Driving Vocational Program.

(a) In order to qualify for the Commercial Vehicle Driving Vocational Program designed to prepare an inmate for employment as a tractor trailer or truck driver, an inmate must exhibit a safe driving record, be at least 21 years of age, comply with State and Federal licensing requirements, and be otherwise eligible pursuant to paragraph (3) of this rule.

(b) An inmate who does not have a valid Florida Driver's License on file shall be permitted to obtain his driver's license in order to participate in the Commercial Vehicle Driving Vocational Program. The license will be obtained as described in paragraph (6) of this rule. The inmate will be required to purchase the license and Commercial Driver's License (CDL) at his own expense and pay such fees to the DMV Driver's License Office.

(c) Under no circumstances will an inmate be permitted to operate the tractor trailer or truck outside of the state.

(d) An inmate will be authorized to retain his driver's license and CDL on his person only when necessary for that specific part of the program which requires driving. When not in use, the driver's license and the keys to the vehicle shall be returned to the instructor for safe storage. Under no circumstances will an inmate be permitted to complete the field training part of the program that occurs outside the parameters of an institution without proper supervision and the accompaniment of a skilled professional.

Specific Authority 944.09, 945.091 FS. Law Implemented 20.315, 322.03, 322.04, 322.15, 944.09, 945.091 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Stan Czarina

NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: Michael W. Moore, Secretary
Department of Corrections

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 8, 2000
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 7, 2000

DEPARTMENT OF CORRECTIONS

RULE TITLE: Special Management Meal
 RULE NO.: 33-602.223

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to correct titles of staff responsible for implementing special management meal procedures, to correct addresses, and update forms associated with the rule.

SUMMARY: The proposed rule revises the titles of department staff responsible for implementing procedures relating to special management meals, corrects the address of the Department's central office, corrects reference to Chapter 33, Florida Administrative Code, and provides revised forms used in associated procedures.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 20.315, 944.09 FS.

LAW IMPLEMENTED: 20.315, 944.09 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:00 a.m., June 20, 2000

PLACE: Law Library Conference Room, Room B-404, 2601 Blair Stone Road, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Giselle Lysten Rivera, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-602.223 Special Management Meal.

(1) through (3) No change.

(4) Placement on the Special Management Meal.

(a) When any employee observes inmate behavior that he believes meets the criteria for application of the special management meal, the employee shall prepare Form DC6-218 ~~DC3-013~~, Special Management Meal Report, and forward the report to the Chief of security ~~Correctional Officer~~ for review. Form DC6-218 ~~DC3-013~~, Special Management Meal Report, is hereby incorporated by reference. A copy of this form may be obtained from the Forms Control Administrator, Office of the General Counsel ~~Operations~~, Department of Corrections, 2601 Blair Stone Road ~~1311 Winewood Boulevard~~,

Tallahassee, Florida 32399-2500. If forms are to be mailed, ~~the request must be accompanied by~~ a self-addressed stamped envelope must accompany the request. The effective date of this form is _____ ~~the same as the effective date of this rule~~.

(b) If the Chief of security ~~Correctional Officer~~ determines that the behavior cannot be corrected through routine counseling or by established disciplinary procedures, a discussion shall take place at the inmate's cell between the inmate, the Officer in cCharge, and the reporting officer, if needed. The Officer in cCharge shall complete the discussion section of the report. The Special Management Meal Report shall document the reasons for recommending the special management meal and shall include a summary of the inmate's comments or objections. When an inmate has been recommended for placement on the special management meal, the Chief hHealth oOfficer or other designated health care medical staff member shall indicate on the Special Management Meal Report whether there is any medical reason that would prohibit placing the inmate on special management meal status. When there is a medical problem, the Chief hHealth oOfficer or other designated medical staff member shall ~~then~~ determine whether the inmate can be placed on the special management meal or whether an alternative special meal can be prescribed. No inmate shall be placed on special management meal status without medical approval. The Chief of security ~~Correctional Officer~~ shall then forward the report to the warden for approval.

(c) The warden or duty warden ~~his designee~~ shall approve or disapprove all recommendations for placement on the special management meal based on the criteria set forth in subsection (2) above.

(5) Canteen privileges authorized by 33-602.220(8)(n) ~~(9)(m)~~, 33-602.221(9)(j), and 33-601.803(3)(f) for inmates in administrative confinement, ~~protective confinement~~, and close management status shall be suspended for the duration of the period that an inmate is on special management meal status.

(6) The Chief of security ~~Correctional Officer~~ and a clinical health care person ~~representative of the medical staff~~ shall visit each inmate on special management meal status on a daily basis, except in case of riot or other institutional emergency. The shift supervisor shall act as the chief of security's ~~correctional officer's~~ designee and shall conduct the daily visit in the chief's absence. The purpose of the daily visit is to follow the inmate's progress while on the special management meal and to determine when the inmate should be removed from the special management meal status.

(7) An inmate may be removed from special management meal status at any time based on:

(a) The recommendation of the Chief of security ~~Correctional Officer~~ and the approval of the warden or duty warden; or

(b) Medical reasons as determined by the ~~c~~Chief ~~h~~Health ~~o~~fficer or other designated health care ~~medical~~ staff.

(8) No change.

Specific Authority 20.315, 944.09 FS. Law Implemented 20.315, 944.09 FS. History—New 1-11-88, Amended 3-4-92, 5-27-97, 11-25-98, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:

Stan Czerniak

NAME OF SUPERVISOR OR PERSON WHO APPROVED

THE PROPOSED RULE: Michael W. Moore, Secretary, Department of Corrections

DATE PROPOSED RULE APPROVED BY AGENCY

HEAD: May 9, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT

PUBLISHED IN FAW: May 26, 2000

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DOCKET NO.: 00-09R

RULE CHAPTER TITLE:

Surface Water Quality Standards

RULE CHAPTER NO.:

62-302

RULE TITLE:

Classification of Surface Waters, Usage,

RULE NO.:

62-302.400

Reclassification, Classified Waters

PURPOSE AND EFFECT: The proposed rule revisions would reclassify Prospect Lake in Broward County from Class I waters to Class III waters. Class III waters have a designated use of “recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife” (Rule 62-302.400(1), Florida Administrative Code). If the proposed rule revisions are approved, Class III surface water quality criteria would apply in Prospect Lake.

SUMMARY: On December 29, 1997, the Department received a rulemaking petition from the City of Fort Lauderdale to reclassify Prospect Lake in Broward County from Class I waters to Class III waters. The City seeks reclassification so that Prospect Lake can be connected with an existing canal system in order to enhance ground water recharge in an adjacent wellfield. Reclassification is necessary since water quality in Prospect Lake is not expected to meet Class I water quality criteria (particularly the Total Dissolved Solids criterion) due to the inflow of Class III canal water. Some of the benefits of reclassification include: enhancement of raw water availability, increased wellfield protection from saltwater intrusion and contamination from offsite sources, and support of regional water management strategies of the South Florida Water Management District Lower East Coast Regional Water Supply Plan. A public workshop was held on May 3, 2000 in Fort Lauderdale. Representatives of the City of Fort Lauderdale, Montgomery Watson, Inc. (City of Fort Lauderdale’s consultant), and the South Florida Water Management District were the only attendees. No opposition to the proposed reclassification has been expressed to the Department.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The Economic Analysis Section of the Florida Department of Environmental Protection (DEP) is preparing a Statement of Estimated Regulatory Cost for Rule 62-302.400, Florida Administrative Code, proposing reclassification of Prospect Lake in Broward County. As of May 10, 2000, DEP has found no regulatory cost being imposed on either the Department, City of Fort Lauderdale, Broward County, the South Florida Water Management District, or any other state, county, or municipal government entity, as a result of the reclassification of Prospect Lake from Class I (Potable Water Supplies) to Class III (Recreation, Propagation of a Healthy, Well-Balanced Population of Fish and Wildlife). The city, which has requested the reclassification, has not used Prospect Lake for potable water since 1973, and has no intention of doing so in the future. Instead, Prospect Lake would be connected to a nearby canal as part of an Aquifer Recharge Facility, as proposed in water supply plans of the South Florida Water Management District. The proposed revision will impose no equipment, administrative, or operating costs on governments, businesses, individuals, or other entities.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 403.061, 403.062, 403.087, 403.088, 403.504, 403.704, 403.804 FS.

LAW IMPLEMENTED: 403.021, 403.061, 403.087, 403.088, 403.141, 403.161, 403.182, 403.502, 403.504, 403.702, 403.708 FS.

A HEARING WILL BE HELD BEFORE THE ENVIRONMENTAL REGULATION COMMISSION AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., Thursday, June 29, 2000

PLACE: Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Room 609, Tallahassee, Florida

If an Americans With Disabilities Act accommodation is needed to participate in this activity, please contact Linda Harvey at (850)488-2996 or (800)955-8771 (TDD), at least seven days before the meeting.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Eric Shaw, Division of Water Resource Management, Mail Station 3570, Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, telephone (850)921-9929

THE FULL TEXT OF THE PROPOSED RULE IS:

62-302.400 Classification of Surface Waters, Usage, Reclassification, Classified Waters.

(1) through (11) No change.

(12) Exceptions to Class III:

(a) No change.

(b) The following listed water bodies are classified as Class I, Class II, or Class V:

1. through 5. No change.

6. Broward County - none.

~~Class I Abandoned Rock Pit - Northeast corner of SR 7 and Prospect Field Road in the S. W. Quarter of Section 7, T49S, R42E.~~

7. through 67. No change.

Specific Authority 403.061, 403.062, 403.087, 403.088, 403.504, 403.704, 403.804 FS. Law Implemented 403.021, 403.061, 403.087, 403.088, 403.141, 403.161, 403.182, 403.502, 403.504, 403.702, 403.708 FS. History-Formerly 28-5.06, 17-3.06, Amended and Renumbered 3-1-79, Amended 1-1-83, 2-1-83, Formerly 17-3.081, Amended 4-25-93, Formerly 17-302.400, Amended 12-26-96.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mimi Drew, Director, Division of Water Resource Management

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kirby Green, Deputy Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 8, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 14, 2000

DEPARTMENT OF HEALTH

Board of Acupuncture

RULE TITLE: Supervised Clinical Experience Defined
RULE NO.: 64B1-4.0015

PURPOSE AND EFFECT: The proposed amendments to the current Rule will clarify the definition of supervised clinical experience.

SUMMARY: The proposed amendments to the current Rule will clarify that the requirements specified in subparagraph (4) and (5) of the Rule apply to all remaining hours of supervised clinical experience after the requirements of subparagraphs (2) and (3) have been completed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 457.104 FS.

LAW IMPLEMENTED: 457.105 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., June 2, 2000

PLACE: Embassy Suites Hotel, 555 North Westshore Boulevard, Tampa, Florida 33609

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: William Buckhalt, Executive Director, Board of Acupuncture, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B1-4.0015 Supervised Clinical Experience Defined.

For the purposes of Rule 64B1-4.001, the Board defines "supervised clinical experience" as follows:

(1) through (3) No change.

(4) During the remaining ~~final~~ 200 hours of supervised clinical experience, the student must be under the direct or indirect supervision of the supervisor/instructor. Indirect supervision shall mean that the supervisor/instructor is physically present on the premises, so that the supervisor/instructor is immediately available to the student when needed.

(5) During the remaining ~~final~~ 200 hours of supervised clinical experience, the student must diagnose and treat a minimum of 30 different patients.

Specific Authority 457.104, 457.105 FS. Law Implemented 457.105 FS. History-New 11-21-95, Amended 2-19-96, Formerly 59M-4.0015, Amended

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Acupuncture

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Acupuncture

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 29, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 28, 2000

DEPARTMENT OF HEALTH

Board of Acupuncture

RULE TITLE: Laboratory Testing
RULE NO.: 64B1-8.006

PURPOSE AND EFFECT: The proposed rule will authorize licensed acupuncturists to order laboratory testing to prevent disease.

SUMMARY: The proposed rule will specify that as a modern oriental medical technique which contributes to disease prevention, licensed acupuncturists may order laboratory testing to prevent disease.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 457.102(1), 457.104, 457.1085 FS.

LAW IMPLEMENTED: 457.102(1), 457.1085 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., June 2, 2000

PLACE: Embassy Suites Hotel, 555 North Westshore Boulevard, Tampa, Florida 33609

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: William Buckhalt, Executive Director, Board of Acupuncture, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B1-8.006 Laboratory Testing.

As a modern oriental medical technique which contributes to disease prevention, laboratory testing may be ordered by licensees under this chapter.

Specific Authority 457.102(1), 457.104, 457.1085 FS. Law Implemented 457.102(1), 457.1085 FS. History—New.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Acupuncture

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Acupuncture

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 29, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 28, 2000

DEPARTMENT OF HEALTH

Board of Acupuncture

RULE TITLE: Disciplinary Guidelines

RULE NO.: 64B1-9.001

PURPOSE AND EFFECT: The proposed changes to the current Rule will establish disciplinary guidelines for violation of certain parts of Chapters 457 and 455, Part II.

SUMMARY: The proposed amendments to the current Rule will clarify the potential disciplinary punishments which licensees might expect to receive if they are found to have committed any of the violations set forth in the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 455.627(1), 457.104 FS.

LAW IMPLEMENTED: 455.627(2),(3), 457.109 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., June 2, 2000

PLACE: Embassy Suites Hotel, 555 North Westshore Boulevard, Tampa, Florida 33609

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: William Buckhalt, Executive Director, Board of Acupuncture, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B1-9.001 Disciplinary Guidelines.

(1) When the Board finds any person has committed any of the acts set forth in 455.624(1) or Section 457.109(1), Florida Statutes, it shall issue a final order imposing appropriate penalties as recommended in the following disciplinary guidelines.

(a) Attempting to obtain, obtaining, or renewing a license to practice acupuncture by bribery, or fraudulent misrepresentations, or through an error of the Department or Board. The usual recommended penalty shall be revocation of the license certificate to practice acupuncture.

(b) No change.

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, ~~in any jurisdiction~~ of a crime in any jurisdiction which ~~directly~~ relates to the practice of acupuncture or to the ability to practice acupuncture. ~~Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.~~ The usual recommended penalty shall be suspension of the license certificate to practice acupuncture until such time as the licensee certificateholder can, to the Board's satisfaction, demonstrate rehabilitation.

(d) False, deceptive, or misleading advertising or advertising which claims that acupuncture is useful in curing any disease. The usual recommended penalty shall be a reprimand and an administrative fine of up to \$500.00.

(e) Advertising, practicing, or attempting to practice under a name other than one's own. The usual recommended penalty shall be a reprimand and an administrative fine of up to \$500.00.

(f) Failing to report to the Department any person who the licensee knows is in violation of this chapter or of the rules of the Department or Board. The usual recommended penalty shall be a reprimand and an administrative fine of up to \$500.00.

(g) Aiding, assisting, procuring, employing, or advising any unlicensed person to practice acupuncture contrary to Chapter 457 or Chapter 455 Part II this chapter or to a rule of the Department or Board. The usual recommended penalty shall be a six (6) month suspension immediately followed by a six (6) month probation with such terms and conditions as set forth by the Board.

(h) Failing to perform any statutory or legal obligation placed upon a licensed acupuncturist. The usual recommended penalty shall be a reprimand and an administrative fine of up to \$500.00.

(i) Making or filing a report, signed in the capacity of a licensed acupuncturist, which the licensee certificateholder knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. ~~Such reports or records shall include only those which are signed in the capacity as a licensed acupuncturist.~~ The usual recommended penalty shall be a reprimand and an administrative fine of up to \$500.00.

(j) Exercising influence within a patient-acupuncturist relationship for purposes of engaging a patient in sexual activity, or engaging or attempting to engage a patient in verbal or physical sexual activity. ~~A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his or her acupuncturist.~~ The usual recommended penalty shall be an administrative fine of up to \$1000.00 and a six (6) month suspension immediately followed by a two (2) year probation with such terms and conditions as set forth by the Board.

(k) Making misleading, deceptive, untrue, or fraudulent representations in or related to the practice of acupuncture or employing a trick or scheme in the practice of acupuncture when such scheme or trick fails to conform to the generally prevailing standards of treatment in the community. The usual recommended penalty shall be a reprimand and an administrative fine of up to \$500.00.

(l) Soliciting patients, either personally or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct. ~~A solicitation is any communication which directly or indirectly requests an immediate oral response from the recipient.~~ The usual recommended penalty shall be reprimand and an administrative fine of up to \$500.00.

(m) Failing to keep written medical records which are consistent with the practitioner's style of acupuncture justifying the course of treatment of the patient. The usual recommended penalty shall be an administrative fine of up to \$800.00 and a six (6) month probation with such terms and conditions as set forth by the Board.

(n) Exercising influence on the patient to exploit the patient for the financial gain of the licensee or of a third party. The usual recommended penalty shall be an administrative fine of up to \$800.00 and a six (6) month probation with such terms and conditions as set forth by the Board.

(o) Being unable to practice acupuncture with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. The usual recommended penalty shall be suspension of the license to

practice acupuncture until such time as the licensee can, to the Board's satisfaction, demonstrate rehabilitation. ~~Failure of the licensee to demonstrate rehabilitation within four years of the institution of suspension shall result in automatic revocation of the license to practice acupuncture.~~

(p) Gross or repeated malpractice or the failure to practice acupuncture with that level of care, skill, and treatment which is recognized by a reasonably prudent, similar acupuncturist as being acceptable under similar conditions and circumstances. The usual recommended penalty shall be a reprimand and an administrative fine of up to \$800.00.

(q) No change.

(r) Delegating or contracting for professional responsibilities ~~by~~ to a person when the licensee delegating or contracting for such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensee ~~license~~ to perform them. The usual recommended penalty shall be an administrative fine of up to \$500.00 and a six (6) month suspension immediately followed by a six (6) month probation with such terms and conditions as set forth by the Board.

(s) Violating any provision of Chapter 457 or Chapter 455 Part II this chapter, a rule of the Board or Department, or a lawful order of the Board Department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the Department. The usual recommended penalty shall be an administrative fine of up to \$1000.00 and a six (6) month probation with such terms and conditions as set forth by the Board.

(t) Conspiring with another to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude another licensee from lawfully advertising his or her services. The usual recommended penalty shall be an administrative fine of up to \$500.00 and a one year probation with such terms and conditions as set forth by the Board.

(u) Fraud or deceit or gross negligence, incompetence, or misconduct in the operation of a tutorial program or a course of study. The usual recommended penalty shall be an administrative fine of up to \$1000.00 and a two year prohibition against the licensee's certificateholder's operation of tutorial programs or courses of study.

(v) Failing to comply with state, county, or municipal regulations or reporting requirements, relating to public health and the control of contagious and infectious diseases. The usual recommended penalty shall be an administrative fine of up to \$1000.00 and a one year probation with such terms and conditions as set forth by the Board.

(w) Failing to comply with any rule of the Board relating to health and safety, including, but not limited to, the sterilization of needles and equipment and the disposal of potentially infectious materials. The usual recommended

penalty shall be an administrative fine of up to \$1000.00 and a one year probation with terms and conditions as set forth by the Board.

(x) Failing to comply with continuing education requirements, including requirements for HIV/AIDS education. The usual recommended penalty shall be an administrative fine of up to \$500.00 and making up all uncompleted continuing education requirements.

(y) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee. The usual recommended penalty shall be an administrative fine of up to \$1000.00.

(z) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding. The usual recommended penalty shall be an administrative fine of up to \$500.00 and a reprimand.

(aa) Failing to report to the Board in writing with 30 days after the licensee has been convicted or found guilty of, or entered a pleas of nolo contendere to, regardless of adjudication, a crime in any jurisdiction. The usual recommended penalty shall be an administrative fine of up to \$500.00.

(bb) Using information about people involved in a motor vehicle accident which has been derived from accident reports made by law enforcement officers or persons involved in accidents pursuant to Section 316.066, or using information published in a newspaper or other news publication or through a radio or television broadcast that has used information gained from such reports, for the purposes of solicitation of the people involved in such accidents. The usual recommended penalty shall include from a fine of up to \$500.00 to and including suspension of the licensee's license to practice acupuncture.

(2) through (4) No change.

Specific Authority 455.627(1), 457.104 FS. Law Implemented 455.627(2),(3), 457.109 FS. History—New 12-8-86, Amended 8-6-89, Formerly 21AA-9.001, 61F1-9.001, Amended 11-21-95, Formerly 59M-9.001, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Acupuncture

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Acupuncture

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 10, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 28, 2000

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.:	RULE TITLE:
6A-14.0302	Community College Concurrent-Use Articulation Agreements

NOTICE OF CONTINUATION

Notice is hereby given that consideration of Rule 6A-14.0302, Community College Concurrent-Use Articulation Agreements, is continued to June 13, 2000, at 9:00 a.m. in Room LL-03, The Capitol, Tallahassee, Florida. The rule was originally published in Vol. 26, No. 14 of the April 7, 2000, Florida Administrative Weekly. In addition to the community colleges and state universities, the independent colleges in Florida are impacted by this proposed rule. The State Association of Independent Colleges and Universities of Florida (ICUF) requested additional time to discuss the rule prior to final action. This was acceptable to the State Board of Community Colleges and the rule is continued at their request.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mr. Sydney H. McKenzie, III, General Counsel, State Board of Community Colleges, Division of Community Colleges, 325 W. Gaines St., Tallahassee, FL 32399-0400

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE NO.:	RULE TITLE:
40D-8.011	Policy and Purpose

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to subsection 40D-8.011(1) published in Vol. 24, No. 48, November 25, 1998, issue of the Florida Administrative Weekly on page 6475 through 6476, in accordance with subparagraph 120.54(3)(d)1., F.S.:

40D-8.011 Policy and Purpose.

(1) The purpose of Chapter 40D-8, FAC., is to establish Minimum Flows and Levels at specific locations throughout the District pursuant to Sections 373.042 and 373.0421, F.S., to describe Guidance Levels for lakes, and to describe how the Minimum Flows and Levels will be used by the District.