

Section I

Notices of Development of Proposed Rules and Negotiated Rulemaking

DEPARTMENT OF BANKING AND FINANCE

Division of Accounting and Auditing

RULE TITLES:	RULE NOS.:
Payroll Preparation Manual	3A-31.108
Wage Payments from Revolving Funds	3A-31.226
Retirement Code Use	3A-31.231

PURPOSE AND EFFECT: The purpose is to update the rules of the Bureau of State Payrolls and to implement the on demand payroll process.

SUBJECT AREA TO BE ADDRESSED: State payroll rules.

SPECIFIC AUTHORITY: 17.03, 17.14, 17.29, 216.271 FS.

LAW IMPLEMENTED: 17.03, 17.04, 17.06, 17.075, 17.08, 17.09, 17.14, 17.20, 17.27, 17.28, 110.116, 121.051, 121.061, 121.071, 121.081, 122.04, 216.271 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., October 22, 2001

PLACE: Room 364, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Cynthia Langley, Bureau of State Payrolls, Room 364, Fletcher Building, Tallahassee, Florida 32399-0350, (850)410-9416

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

3A-31.108 Payroll Preparation Manual.

The Bureau of State Payrolls maintains a Payroll Preparation Manual for the use by State agencies. This manual contains general information, schedules, tables and codes used in the payroll system, and instructions for preparing and submitting payroll and employee data in accordance with these rules. In the absence of specific rules to the contrary, the procedures and instructions in the Payroll Manual are to be used by state agencies. Copies of the Manual can be obtained on-line at the Department's website on the Internet at http://www.dbf.state.fl.us/bosp/BOSP_MANUAL.pdf. Copies of the manual are available free of charge to personnel having payroll responsibilities for State agencies whose employees' wages are processed by the Bureau, upon written request to the Bureau of State Payrolls, Department of Banking and Finance, Room 364, Fletcher Building, Tallahassee, Florida 32399-0350.

Specific Authority 17.14, 17.29 FS. Law Implemented 17.03, 17.04, 17.06, 17.075, 17.08, 17.09, 17.14, 17.20, 17.27, 17.28, 110.116 FS. History--New 4-22-83, Amended 2-4-98, _____.

3A-31.226 Wage Payments from Revolving Funds.

(1) An agency may disburse wage payments from a revolving fund only after receipt of written approval from the Bureau. The written request must be accompanied by:

(a) A copy of the revolving fund approval document from the Bureau of Accounting, Office of the Comptroller.

(b) A copy of the agency's policy regarding wage payments from a revolving fund.

(2) Policy. The criteria applied by the Bureau in reviewing an agency's policy will be:

(a) That use of the revolving fund for wage payments is limited to emergencies caused by administrative error. Except in emergencies, caused by administrative error, the revolving fund should not be used to:

1. Pay overtime or other supplemental compensation.
2. Pay wages in advance of the regularly scheduled payroll date.
3. Pay an additional amount due an employee as part of a regular wage payment which has been made unless the amount is greater than twenty percent of the total wages which were due.
4. Pay an employee when a regular salary warrant has been issued but is in error because the employee was on leave without pay which caused the amount of the warrant to be in excess of the actual wages due.

~~(b) Balances owing the employee should be kept at a minimum, however, consideration of tax issues should be a factor when paying from revolving funds. Therefore, the amount which may be paid through the revolving fund shall not leave a balance owing to the employee of less than ten percent (up to fifty dollars) or ten dollars, whichever is greater.~~

~~(b)(e)~~ Revolving fund wage payments must not include Criminal Justice Incentive Pay.

~~(c)(d)~~ Revolving fund wage payments to an employee must not be recurring in nature.

~~(d)(e)~~ Each payroll record submitted for the purpose of recording the payment and reimbursing the revolving fund must be submitted through the On-Demand Payroll process as a separate record and must not be combined with other payments.

~~(f) The revolving fund reimbursement record must be submitted to the Bureau in time for the reimbursement warrant to be issued in the same calendar year as the payment to the employee from the revolving fund. For example: A revolving fund wage payment must not be made on December 27th of one year if the revolving fund reimbursement warrant is to be dated January 3rd of the next year.~~

(3) An agency may not change the purpose and uses of a revolving fund without the prior approval of the Office of the Comptroller.

(4) No fund may be established or increased in amount unless approved by the Bureau of Accounting.

(5) The agency should report revolving funds that are no longer needed to the Office of Comptroller.

Specific Authority 17.03, 17.14, 17.29, 216.271(5) FS. Law Implemented 216.271 FS. History–New 4-22-83, Amended 1-25-96, 6-1-97, 2-4-98, _____. Cf. Department of Banking and Finance Rule Chapter 3A-23, F.A.C.

3A-31.231 Retirement Code Use.

(1) The Bureau maintains the Retirement Code Table. The Table contains each authorized retirement contribution code. The Bureau and the Department of Management Services, Division of Retirement, are responsible for assignment of a code to each type of retirement contribution in the Table.

(2) Florida Statutes require that each State employee filling an authorized, established position be a member of one of the State retirement systems (generally the Florida Retirement System). The Bureau is authorized to deduct the employee’s retirement contribution, if any, from the employee’s gross wage and to disburse the employer’s retirement contribution according to the rates established by the appropriate retirement plan administrator. Employee and/or employer retirement contributions are computed for all wage payments except:

- (a) Acts of the legislature.
- (b) Rules of the Department of Management Services, Division of Retirement.

(3) Every employee must have a retirement contribution code which corresponds to the code assigned to the employee’s Department of Management Service, Division of Retirement, Form M-10 filed with the Division of Retirement. Codes indicating no membership are available in cases where the employee is ineligible to participate in a retirement plan.

(4) Refund of Erroneous Deductions. If an erroneous deduction has been made or an amount in excess of the required contribution has been disbursed, ~~either the appropriate agency Department of Management Services, Division of Retirement, or the Bureau~~ will make the necessary corrections and refunds utilizing the on-line Retirement System to the appropriate agency.

(5) Any change in the retirement contribution rate must be in the form of a written notification to the Bureau from the retirement plan administrator. The written notification must cite the administrator’s authority to make the rate change.

Specific Authority 17.14, 17.29 FS. Law Implemented 121.051, 121.061, 121.071, 121.081, 122.04, 123.02 FS. History–New 4-22-83, Amended 1-25-96, _____.

DEPARTMENT OF INSURANCE

RULE TITLE:	RULE NO.:
Notification of Insured’s Rights; Personal Injury Protection Benefits	4-176.013

PURPOSE AND EFFECT: The rule adopts updated form DI4-1149, “Notification of Personal Injury Protection Benefits”, which insurers are required to send to PIP claimants. SB 1092 revised the term, “medically necessary” and changed time frames for the submission of bills by medical providers, and made other minor revisions.

SUBJECT AREA TO BE ADDRESSED: Adoption of updated form.

SPECIFIC AUTHORITY: 624.308(1), 627.7401(1) FS.

LAW IMPLEMENTED: 624.307(1), 627.736, 627.7401 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., Wednesday, October 24, 2001

PLACE: Room 143, Larson Building, 200 East Gaines Street, Tallahassee, Florida

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 the person listed above.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Shirley Kerns, Chief, Bureau of Property and Casualty Forms and Rates, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0330, (850)413-5310

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

4-176.013 Notification of Insured’s Rights; Personal Injury Protection Benefits.

Each insurer issuing a policy in this state providing personal injury protection benefits shall mail or deliver form DI4-1149 10/01/01 (4/1/00) “Notification of Personal Injury Protection Benefits” which is hereby incorporated herein by reference, to an insured within 21 days after receiving from the insured notice of an automobile accident or claim involving personal injury to an insured who is covered under the policy. Form DI4-1149 is available from the Bureau of Property and Casualty Forms and Rates, 200 E. Gaines St., Tallahassee, FL 32399-0330.

Specific Authority 624.308(1), 627.7401(1) FS. Law Implemented 624.307(1), 627.736, 627.7401 FS. History–New 10-1-94, Amended 12-6-00, _____.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services	
RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Entomology – Pest Control Regulations	5E-14

RULE TITLES:	RULE NOS.:
Fumigation Requirements – Final	
Post-fumigation Clearance Inspection	5E-14.113
Application for Examination for Pest Control Operator’s Certificate and Special Identification Card	5E-14.117
Examinations	5E-14.123
Certificate Issuance and Renewal Fees	5E-14.132
Special Identification Card Issuance, Renewal fees, Forms and Duties	5E-14.136
Responsibilities and Duties – Records, Reports, Advertising, Applications	5E-14.142

PURPOSE AND EFFECT: The purpose and effect of the rule development is to amend Chapter 5E-14, F.A.C., to increase fees paid by pest control operators in order to improve enforcement efforts by funding additional field inspector positions. Also, to make some technical corrections to the rule.

SUBJECT AREA TO BE ADDRESSED: The subject area to be addressed is increasing the fees for examinations, certificate issuance and renewal as well as business license issuance and renewal.

SPECIFIC AUTHORITY: 482.051, 482.071, 482.111, 482.141, 482.155, 482.156 FS.

LAW IMPLEMENTED: 482.051, 482.071, 482.111, 482.141, 482.151, 482.155, 482.156 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., October 26, 2001

PLACE: Training Room, 3125 Conner Blvd., Tallahassee, Florida 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT: Steven Rutz, Director, Department of Agriculture and Consumer Services, Room 130, 3125 Conner Blvd., Tallahassee, FL 32399-1650

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

5E-14.113 Fumigation Requirements – Final Post-fumigation Clearance Inspection.

(1) The certified operator in charge ~~or~~ of his designated special fumigation identification card holder shall personally determine by using label-recommended gas-detecting or monitoring devices or materials that the entire structure or enclosed space fumigated, and also including beds and bedding therein, has been monitored and safely ventilated sufficiently to permit safe human entry and occupancy or re-occupancy. All warning agent containers shall be removed from the structure. In no instance shall ventilation or aeration time be less than that recommended by manufacturer of fumigant on the registered label.

Specific Authority 482.051 FS. Law Implemented 482.051(1), 482.152, 482.241 FS.; ~~Section 1, Chapter 92-203, Laws of Florida. History–New 1-1-77, Formerly 10D-55.113, Amended~~.

5E-14.117 Application for Examination for Pest Control Operator’s Certificate and Special Identification Card.

- (1) through (8) No change.
- (9) Applicants may be examined for certification in one or more of the following ~~four~~ categories of pest control:
 - (a) Fumigation;
 - (b) General household pest control, which includes rodent control;
 - (c) Termite or other wood-infesting organism control; ~~and~~
 - (d) Lawn and ornamental pest control.

Specific Authority 482.051 FS. Law Implemented 482.111, 482.132, 482.141(2), ~~482.151~~, 482.155, 482.156 FS. History–New 1-1-77, Amended 6-27-79, 6-22-83, 10-25-90, Formerly 10D-55.117, Amended 8-11-93, 7-5-95, 5-28-98,_____.

5E-14.123 Examinations.

- (1) through (7) No change.
- (8) All examinations shall consist of theoretical sections, practical sections, and practical demonstrations. All applicants for examination for certification or special identification card will be examined on or required to demonstrate satisfactory knowledge of the following:
 - (a) Pest Control Act, Chapter 482, Florida Statutes.
 - (b) Rules of the Department, Chapter 5E-14, Pest Control Regulations, Parts No. 1 through 6.
 - (c) Precautions necessary and required by law, rules and good industry practice for the safeguard of life, health and property in the conduct of pest control.
 - (d) Pests, their habits, recognition of damage caused, and identification by accepted common names.
 - (e) Building construction terminology.
 - (f) Accepted good industry methods and practices founded upon recognized publications of the industry.
 - (9) through (10) No change.

(11) Any applicant who fails to pass one or more particular examination(s) shall be permitted to review such examination(s) upon making written application to the Department within fifteen (15) days from date of written notice of examination results.

Specific Authority 482.051 FS. Law Implemented 482.141(2), 482.151(4) FS. History–New 1-1-77, Formerly 10D-55.123, Amended 8-11-93, 7-5-95, 5-28-98,_____.

5E-14.132 Certificate Issuance and Renewal Fees.

(1) Each certified pest control operator shall be certified as provided by this rule. Application shall be made and the issuance fee paid to the ~~D~~Department for the original certificate within 60 days from the date of written notification of passing examination. During a period of 30 calendar days following expiration of the 60-day period, an original certificate may be issued; however, a late issuance charge of \$50 shall be

assessed and paid in addition to the issuance fee. No original certificate shall be issued after expiration of the 30-day period without reexamination.

(2) Each individual issued a pest control operator's certificate shall apply to the ~~D~~department for renewal of his certificate on or before June 1 of each year on Department of Agriculture and Consumer Services Form DACS 13638 ~~1290, Dec. 92~~, entitled "Renewal Notice", which is incorporated by reference, and mailed by the ~~D~~department. After a grace period of 30 calendar days following the anniversary date of each year, there shall be a late renewal charge of \$50 which shall be assessed and paid in addition to the renewal fee. Unless renewed as provided by this section, each certificate shall automatically expire 180 calendar days after the renewal date. Subsequent to such expiration, a certificate may be issued only upon successful reexamination and upon payment of examination and issuance fees due as provided by this rule.

(3) The fee for issuance of each original certificate, and the fee for renewal thereof, shall be \$150 ~~\$100~~.

(4) No change.

(5) On or before April 1 of each year the Department shall mail to each certified operator, at his last known address of record, a renewal form, DACS 13638 ~~No. 130638 12/92~~, incorporated by reference for use in applying for renewal of his certificate. Not less than 60 days prior to the expiration of a certificate a final renewal notice shall be mailed to each certified operator who has not renewed his certificate. Mailing of these forms shall be the only notice of renewal issued by the Department. Copies may be obtained from the Bureau of Entomology and Pest Control, 1203 Governor's Square Boulevard, Suite 300, Tallahassee, Florida 32301-2961 ~~644 Cesery Boulevard, Suite 200, Jacksonville, Florida 32211~~.

Specific Authority 482.051 FS. Law Implemented 482.051(1), 482.111(1),(3),(7),(10), 482.132(1) FS. History--New 1-1-77, Amended 6-27-79, 6-22-83, 1-20-87, Formerly 10D-55.132, Amended 8-11-93, 7-5-95, 5-28-98,_____.

5E-14.136 Special Identification Card Issuance, Renewal Fees, Forms and Duties.

(1) No change.

(2) Application shall be made and the issuance fee paid to the ~~D~~department for the original special identification card within 60 days from the date of written notification of passing examination. During a period of 30 days following the expiration of the 60 ~~480~~ day period, an original special identification card may be issued, however, a late issuance charge of \$25 shall be assessed and paid in addition to the issuance fee. Further, no original special identification card shall be issued after expiration of the 30 day period without reexamination.

(3) Application to the Department for renewal of each special identification card shall be made on or before June 1 of each year. The issuance fee for each special identification card and for each renewal thereof shall be \$100 ~~\$75~~. After a grace

period of 30 calendar days following the anniversary date of each year, there shall be a late renewal charge of \$25, which shall be assessed and paid in addition to the renewal fee. Unless timely renewed, each special identification card shall automatically expire 180 ~~60~~ calendar days after the renewal date. Subsequent to such expiration, a special identification card may be issued ~~reinstated~~ only upon successful reexamination and upon payment of examination and issuance fees due, as provided by this rule.

(4) On or before April 1 of each year the Department shall mail to each special identification cardholder at his last known address of record, a renewal form, DACS 13641 ~~No. 130641 (12/92)~~, incorporated by reference, for use in applying for renewal of his special identification card. Copies may be obtained from the Bureau of Entomology and Pest Control, 1203 Governor's Square Boulevard, Suite 300, Tallahassee, Florida 32301-2961 ~~644 Cesery Boulevard, Suite 200, Jacksonville, Florida 32211~~.

Specific Authority 482.051(1) FS. Law Implemented 482.151 FS. History--New 1-1-77, Formerly 10D-55.136, Amended 7-5-95, 5-28-98,_____.

5E-14.142 Responsibilities and Duties – Records, Reports, Advertising, Applications.

(1) through (4) No change.

(5) Business license application: In accordance with Chapter 482.071(1), F.S., the following information shall be submitted on, attached to and made a part of the Department's pest control business license application form, Form DACS 13605 ~~130605 (606), effective July, 1992~~, incorporated by reference.

(a) through (g) No change.

(h) The issuance fee for each original license shall be \$300 ~~\$150~~. An applicant may request his application to be immediately expedited and processed by paying a specific handling fee in the amount of \$50.

(i) The renewal fee for each original license shall be \$300 ~~\$150~~.

Specific Authority 482.051(1) FS. Law Implemented 482.051(1), 482.061, 482.091, 482.111(5),(9), 482.161(1)(g),(h), 482.226(1),(6) FS. History--New 1-1-77, Amended 6-27-79, 6-22-83, 1-20-87, 10-25-90, Formerly 10D-55.142, Amended 8-11-93, 5-28-98,_____.

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: RULE NO.:

Florida Comprehensive Assessment 6A-1.09422
 Test Requirements

PURPOSE AND EFFECT: The purpose of this rule development will be to review existing achievement levels for the Florida Comprehensive Assessment Test and to consider achievement levels for the grades and subject areas for which no achievement levels currently exist.

SUBJECT AREA TO BE ADDRESSED: Achievement levels for the Florida Comprehensive Assessment Test.

SPECIFIC AUTHORITY: 229.053, 229.0535, 229.57 FS.
 LAW IMPLEMENTED: 229.57 FS.
 RULE DEVELOPMENT WORKSHOPS WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW:
 TIME AND DATE: 4:00 p.m. – 6:00 p.m., EST, October 22, 2001
 PLACE: Broward County School District, School Board Meeting Room, 600 S. E. 3rd Avenue, Ft. Lauderdale, Florida
 TIME AND DATE: 4:00 p.m. – 6:00 p.m., EST, October 22, 2001
 PLACE: Duval County School District, School Board Meeting Room, 1701 Prudential Drive, Jacksonville, Florida
 TIME AND DATE: 4:00 p.m. – 6:00 p.m., CST, October 23, 2001
 PLACE: Bay County School District, School Board Meeting Room, 1311 Balboa Avenue, Panama City, Florida
 TIME AND DATE: 4:00 p.m. – 6:00 p.m., EST, October 23, 2001
 PLACE: Sarasota County School District, School Board Meeting Room, 1980 Landings Boulevard, Sarasota, Florida
 TIME AND DATE: 4:00 p.m. – 6:00 p.m., EST, October 24 2001
 PLACE: Orange County School District, School Board Meeting Room, 445 West Amelia Avenue, Orlando, Florida
 TIME AND DATE: 4:00 p.m. – 6:00 p.m., EST, October 24, 2001
 PLACE: Department of Education, 325 West Gaines Street, Room 1703/07, Tallahassee, Florida
 THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Betty Coxe, Deputy Commissioner for Educational Programs, Department of Education, 400 South Monroe Street, PL 08, Capitol, Tallahassee, Florida 32399-0400, (850)413-0555
 THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: Implementation of Florida’s System of School Improvement and Accountability
 RULE NO.: 6A-1.09981
 PURPOSE AND EFFECT: The purpose of this rule development will be to review the current grading standards to determine what amendments should be made to ensure the rule continues to implement legislative intent.
 SUBJECT AREA TO BE ADDRESSED: School performance grades and implementing law.
 SPECIFIC AUTHORITY: 229.053, 229.0535, 229.582, 229.57 FS.
 LAW IMPLEMENTED: 228.0565, 229.053, 229.0535, 229.57, 229.591, 229.592, 230.23, 231.2905 FS.

RULE DEVELOPMENT WORKSHOPS WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW:
 TIME AND DATE: 4:00 p.m. – 6:00 p.m., EST, October 22, 2001
 PLACE: Broward County School District, School Board Meeting Room, 600 S. E. 3rd Avenue, Ft. Lauderdale, Florida
 TIME AND DATE: 4:00 p.m. – 6:00 p.m., EST, October 22, 2001
 PLACE: Duval County School District, School Board Meeting Room, 1701 Prudential Drive, Jacksonville, Florida
 TIME AND DATE: 4:00 p.m. – 6:00 p.m., CST, October 23, 2001
 PLACE: Bay County School District, School Board Meeting Room, 1311 Balboa Avenue, Panama City, Florida
 TIME AND DATE: 4:00 p.m. – 6:00 p.m., EST, October 23, 2001
 PLACE: Sarasota County School District, School Board Meeting Room, 1980 Landings Boulevard, Sarasota, Florida
 TIME AND DATE: 4:00 p.m. – 6:00 p.m., EST, October 24 2001
 PLACE: Orange County School District, School Board Meeting Room, 445 West Amelia Avenue, Orlando, Florida
 TIME AND DATE: 4:00 p.m. – 6:00 p.m., EST, October 24, 2001
 PLACE: Department of Education, 325 West Gaines Street, Room 1703/07, Tallahassee, Florida
 THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Betty Coxe, Deputy Commissioner for Educational Programs, Department of Education, 400 South Monroe Street, PL 08, Capitol, Tallahassee, Florida 32399-0400, (850)413-0555
 THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLES:	RULE NOS.:
Specialization Requirements for the Prekindergarten Disabilities Endorsement – Academic Class	6A-4.01792
Specialization Requirements for Endorsement in Severe or Profound Disabilities	6A-4.01793
Requirements for Certification in Exceptional Student Education (Grades K-12) – Academic Class	6A-4.01795
Specialization Requirements for Endorsement in Autism – Academic Class	6A-4.01796

PURPOSE AND EFFECT: The purpose of the rule development is to implement legislation which requires collapsing some certification coverages and addressing endorsement areas of specific need in exceptional student education. Specifically, a new rule is proposed to combine

current coverages of mentally handicapped, emotionally handicapped, physically impaired, specific learning disabilities, and varying exceptionalities into one coverage of exceptional student education K-12. An endorsement area of autism is new and endorsement areas of profoundly handicapped and prekindergarten disabilities address specific needs for teaching children with these exceptionalities.

SUBJECT AREA TO BE ADDRESSED: Teacher certification and endorsement to certification for teachers of exceptional student education.

SPECIFIC AUTHORITY: 229.053(1), 231.15(1), 231.17(1) FS.

LAW IMPLEMENTED: 229.053, 231.145, 231.15, 231.17 FS.
RULE DEVELOPMENT WORKSHOPS WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW:

TIMES AND DATE: 12:00 noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m. October 30, 2001

PLACE: Duval County School Board Meeting Room, 1701 Prudential Drive, Jacksonville, FL.

TIMES AND DATE: 12:00 noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m., October 30, 2001

PLACE: Professional Development Academy of Collier County, 615 3rd Ave, South, Naples, Florida

TIMES AND DATE: 12:00 noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m. November 5, 2001

PLACE: Nova Southeastern, East Campus, Alumni Hall, 3100 S.W. 9th Avenue, Ft. Lauderdale, Florida

TIMES AND DATE: 12:00 noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m., November 6, 2001

PLACE: Nova Southeastern, 9503 Princess Palm Ave., Classroom 112, Tampa, Florida

TIMES AND DATE: 12:00 noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m., November 9, 2001

PLACE: PAEC Conference Room, 753 West Boulevard, Chipley, FL

Any person requiring special accommodations to participate in any of the rule development workshops is asked to advise the Department of Education at least five working days prior to the workshop by contacting Shan Goff, Chief, Bureau of Instructional Support and Community Services, Department of Education, 325 West Gaines Street, Room 614, Tallahassee, Florida 32399-0400, (850)488-1570.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Shan Goff, Chief, Bureau of Instructional Support and Community Services, Department of Education, 325 West Gaines Street, Room 614, Tallahassee, Florida 32399-0400, (850)488-1570

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

6A-4.01792 Specialization Requirements for the Prekindergarten ~~Disabilities Handicapped~~ Endorsement – Academic Class.

(1) A bachelor's or higher degree with certification in any exceptional student education area, preschool education, primary education, prekindergarten students with disabilities/primary education, or early childhood education, and

(2) Twelve (12) semester hours in prekindergarten ~~disabilities handicapped~~ education (~~age three (3) through age five (5)~~) to include the areas specified below:

(a) Six (6) semester hours in the development and implementation of individualized educational programs for the prekindergarten child with disabilities handicaps to include formal and informal evaluation techniques; developmentally appropriate curriculum, methods, and intervention strategies; teaming approaches to facilitate inclusion in appropriate learning environments ~~mainstreaming~~; and multidisciplinary approaches and techniques for serving the child and the family;

(b) Three (3) semester hours in child development to include theories of the atypical child, the stages and sequences of development, and the impact of disabilities and biomedical risk factors on learning; and

(c) Three (3) semester hours in family collaboration and support to include family systems theory and interaction; community resources; service coordination; and transition.

Specific Authority 229.053(1), 231.15(1), 231.17(1) FS. Law Implemented 229.053, 231.145, 231.15, 231.17 FS. History—New 10-3-91, Amended

6A-4.01793 Specialization Requirements for Endorsement in Severe or Profound Disabilities ~~the Profoundly Handicapped Endorsement – Academic Class~~.

(1) A bachelor's or higher degree with certification in any area of special education ~~emotionally handicapped, hearing impaired, mentally handicapped, varying exceptionalities, or visually impaired~~; and

(2) Twelve (12) semester hours in the education of students with profound disabilities handicaps to include the areas specified below:

(a) Coursework ~~Three (3) semester hours~~ in a typical child development and assessment of students with profound disabilities handicaps to include use of student assessment for individual educational planning and program planning;

(b) Coursework ~~Three (3) semester hours~~ in interdisciplinary teaming to include available resources; the recognition of the role of parents, teachers, and other professionals; functional community-based curriculum; employability skills; and transition planning; and

(c) Completion of one of the areas as follows:

1. Six (6) semester hours to include:

a. Coursework ~~Three (3) semester hours~~ in nature of autism and intervention strategies for educating students who are autistic to include student characteristics, appropriate learning goals, teaching approaches, and environmental arrangements; and

b. Three (3) semester hours of supervised field-based experience with students who are autistic; or

2. Six (6) semester hours to include:

a. Coursework ~~Three (3) semester hours~~ in nature of profound mental disabilities handicaps and intervention strategies for educating students with profound mental disabilities handicaps to include student characteristics, appropriate learning goals, teaching approaches, and environmental arrangements, and

b. Three (3) semester hours of supervised field-based experience with students with profound mental disabilities handicaps; or

3. Six (6) semester hours to include:

a. Coursework ~~Three (3) semester hours~~ in nature of deaf-blindness dual sensory impairment and intervention strategies for educating students who are deaf-blind dual sensory impaired to include student characteristics, appropriate learning goals, teaching approaches, and environmental arrangements, and

b. Three (3) semester hours of supervised field-based experience with students who are deaf-blind dual sensory impaired.

Specific Authority 229.053(1), 231.15(1), 231.17(1) FS. Law Implemented 229.053, 231.145, 231.15, 231.17 FS. History—New 10-3-91, Amended _____.

6A-4.01795 Requirements for Certification in Exceptional Student Education (Grades K-12) – Academic Class.

(1) Plan One. A bachelor’s or higher degree with a major in special education, mental disabilities, specific learning disabilities, emotional disabilities, physically impaired or varying exceptionalities; or

(2) Plan Two. A bachelor’s or higher degree with thirty (30) semester hours in exceptional student education to include:

(a) Foundations of special education to include educational practices and development and characteristics of children with disabilities;

(b) Assessment and evaluation to include interpretation, analysis, and application of assessment results and alternate assessment strategies;

(c) Evaluation of student progress in acquiring, generalizing, and maintaining skills related to participation in educational settings;

(d) Instructional practices in special education to include selection and implementation of instructional practices and strategies and identification of accommodations and modifications;

(e) Relevant general education and special skills curricula selection;

(f) Assessing, designing, and implementing positive behavioral supports;

(g) Language development and communication skills to include normal sequence of expressive and receptive language development and identification of communication deficits and appropriate interventions;

(h) Skills to teach interpersonal interactions to include criteria for selecting instructional procedures for teaching personal care, interpersonal skills, self-advocacy skills, and adaptive life skills;

(i) Transition process to include development of desired postschool outcomes; and

(j) Effective methods of communication, consultation, and collaboration with students, families, administrators, and other education professionals.

Specific Authority 229.053(1), 231.15(1), 231.17(1) FS. Law Implemented 229.053, 231.145, 231.15, 231.17 FS. History—New _____.

6A-4.01796 Specialization Requirements for Endorsement in Autism – Academic Class.

(1) A bachelor’s or higher degree with certification in any exceptional student education area; and

(2) Twelve semester hours to include:

(a) Nature of autism (to include student characteristics, appropriate learning goals, teaching approaches, environmental arrangements, etc.);

(b) Use of assistive and instructional technology, alternative and augmentative communication systems for students with autism;

(c) Behavior management of students with autism;

(d) Assessment and diagnosis of autism, and

(e) Field-based experience with students with autism.

Specific Authority 229.053(1), 231.15(1), 231.17(1) FS. Law Implemented 229.053, 231.145, 231.15, 231.17 FS. History—New _____.

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLES:	RULE NOS.:
Development of Individual Educational Plans and Educational Plans for Students Who are Gifted	6A-6.030191
Specially Designed Instruction for Students Who are Homebound or Hospitalized	6A-6.03020
Development of Individual Educational Plans for Students with Disabilities	6A-6.03028

Development of Family Support Plans for Children with Disabilities Ages Birth Through Five Years	6A-6.03029
Procedural Safeguards for Children Ages Birth through Two Years with Disabilities	6A-6.03032
Identification and Determination of Eligibility of Exceptional Students for Specially Designed Instruction	6A-6.0331
Procedural Safeguards for Students with Disabilities	6A-6.03311
Discipline Procedures for Students with Disabilities	6A-6.03312
Procedural Safeguards for Students Who are Gifted	6A-6.03313
Policies for the Provision of Specially Designed Instruction and Related Services for Exceptional Students	6A-6.03411

PURPOSE AND EFFECT: The purpose of these revisions is to incorporate the revisions required for programs for students with disabilities by the amendments to the federal law, the Individuals with Disabilities Education Act, and its implementing regulations. The effect of these revisions will be consistency with the federal requirements in a more consumer-friendly manner.

SUBJECT AREA TO BE ADDRESSED: Federal requirements for programs for students with disabilities and state requirements for programs for students who are gifted, including procedures for identification, evaluation, determination of eligibility, development of individual plans, and reevaluation, and the accompanying procedural safeguards.

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

LAW IMPLEMENTED: 228.041(18),(19), 229.0537, 229.565(3)(b)(c), 230.23(4)(m)4., 236.081(1)(c) FS.

RULE DEVELOPMENT WORKSHOPS WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW:

TIMES AND DATE: 12:00 Noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m., October 30, 2001

PLACE: Duval County School Board Meeting Room, 1701 Prudential Drive, Jacksonville, FL

TIMES AND DATE: 12:00 Noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m., October 30, 2001

PLACE: Professional Development Academy of Collier County, 615 3rd Ave., South, Naples, Florida

TIMES AND DATE: 12:00 Noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m., November 5, 2001

PLACE: Nova Southeastern, East Campus, Alumni Hall, 3100 S. W. 9th Avenue, Ft. Lauderdale, Florida

TIMES AND DATE: 12:00 Noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m., November 6, 2001

PLACE: Nova Southeastern, 9503 Princess Palm Ave., Classroom 112, Tampa, Florida

TIMES AND DATE: 12:00 Noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m., November 9, 2001

PLACE: PAEC Conference Room, 753 West Boulevard, Chipley, FL

Any person requiring special accommodations to participate in any of the rule development workshops is asked to advise the Department of Education at least five working days prior to the workshop by contacting Shan Goff, Chief, Bureau of Instructional Support and Community Services, Department of Education, 325 West Gaines Street, Room 614, Tallahassee, Florida 32399-0400, (850)488-1570.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Shan Goff, Chief, Bureau of Instructional Support and Community Services, Department of Education, 325 West Gaines Street, Room 614, Tallahassee, Florida 32399-0400, (850)488-1570

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

6A-6.030191 Development of Individual Educational Plans and Educational Plans for Students Who are Gifted.

Parents are partners with schools and school district personnel in developing, reviewing, and revising the individual educational plan (IEP) or educational plan (EP) for their child. Procedures for the development of the IEPs and EPs for students who are gifted, including procedures for parental involvement, shall be set forth in each district's Procedures for the Provision of Specially Designed Instruction and Related Services to Exceptional Students document and shall be consistent with the following requirements.

(1) Role of parents. The role of parents in developing IEPs or EPs includes:

(a) Providing critical information regarding the strengths of their child;

(b) Expressing their concerns for enhancing the education of their child so that they receive a free appropriate public education;

(c) Participating in discussions about the child's need for specially designed instruction;

(d) Participating in deciding how the child will be involved and progress in the general curriculum; and

(e) Determining what services the school district will provide to the child and in what setting.

(2) Parent participation. Each school board shall establish procedures which shall provide for parents, guardians, or persons acting in loco parentis to participate in decisions concerning the individual educational plan (IEP) or educational plan (EP). 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 who is gifted 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, location of the meeting, and who, by title and or position, will be attending. The notice must also include a statement informing the parents that they have the right to invite an individual with special knowledge or expertise about their child.

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

(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

3. Detailed records of visits made to the parents' home or place of employment and the results of those visits.

(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 and students who are deaf or whose native language is a language other than English.

(f) The district shall give the parent a copy of the IEP or EP at no cost to the parent.

(3) Individual educational plan (IEP) or educational plan (EP) team participants. The IEP or EP team shall include the following participants:

(a) The parents of the student in accordance with subsection (2) of this rule;

(b) At least one regular education teacher of the student.

(c) At least one teacher of gifted program;

(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 who are gifted, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the school district. At the discretion of the school district, one of the student's teacher may be designated to also serve as the representative 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 (3)(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. The determination of knowledge or special expertise of any individual shall be made by the party who invites the individual to be a member of the IEP or EP team.

(4) Contents of individual educational plans (IEPs). The IEPs for students who are gifted must include:

(a) A statement of the student's present levels of performance which may include, but is not limited to, the student's strengths and interests, needs beyond the general curriculum, results of the student's performance on state and district assessments, and evaluation results;

(b) A statement of measurable annual goals, including benchmarks or short term objectives;

(c) A statement of the specially designed instruction to be provided to the student;

(d) An explanation of the extent, if any, to which the student will not participate with other students in the regular class;

(e) The projected date for the beginning of the services, and the anticipated frequency, location, and duration of those services;

(f) 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 of the student's progress.

(5) Timelines for individual educational plans (IEPs). Timelines for IEP meetings for students who are gifted shall include the following:

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

(b) An IEP must be developed within thirty (30) calendar days following the eligibility determination and must be in effect before specially designed instruction is provided.

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

(6) Contents of Educational Plans (EPs). EPs for students who are gifted shall include:

(a) A statement of the student's present levels of Performance which may include, but is not limited to, the student's strengths and interests, needs beyond the general curriculum, results of the student's performance on state and district assessments, and evaluation results;

(b) A statement of goals, including benchmarks or short term objectives;

(c) A statement of the specially designed instruction to be provided to the student;

(d) The projected date for the beginning of services and the anticipated frequency, location, and duration of those services; A statement of how the student's progress towards the goals will be regularly measured.

(7) Timelines for Educational Plans (EPs). EPs for students who are gifted shall be reviewed at least every three years or when the student transitions from elementary to middle school and middle to high school, or more frequently as needed. Timelines for review of EPs must be included in the districts Policies for Specially Designed Instruction and Related Services as required by Rule 6A-6.03411, FAC.

Specific Authority 229.053(1), 230.23(4)(m) FS, Law Implemented 228.041(18),(19), 230.23(4)(m)5., 236.081(1)(c), 229.565(2)(b) FS. History--New

6A-6.03020 Specially Designed Instruction for 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 acute or catastrophic in nature, a chronic illness or 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 as defined in Chapters 458, 459, 460, 461, and 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, who is homebound or hospitalized, is eligible for specially designed instruction special programs for homebound or hospitalized if the following criteria are met:

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

1. Is 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. Is confined to home or hospital; and

3. Will will be able to participate in and benefit from an instructional program; and

4.(b) Is Student is under medical care for illness or injury which is acute, or catastrophic, or chronic in nature; and

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

(b) The student is five (5) years of age or older and Student is enrolled in a public school prior to the referral for the homebound or hospitalized services or 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-6.03027, 6A-03025 FAC., and~~

(c)(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 may 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. This physical examination and medical report shall be at no cost to the parent.

(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. 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

subparagraph (3)(a)1. of this rule. This decision shall be made by the individual educational plan (IEP) team in accordance with the requirements of 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 services program. The following settings and instructional modes, or combination thereof, are acceptable for this program appropriate methods for providing instruction to students determined eligible for these services:

(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 which takes into account the student's medical condition and the requirements of the student's coursework.

(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 or computer devices. When instruction is by telecommunications or computer devices ~~telephone~~, the parent, guardian, or primary caregiver shall provide an open, uninterrupted telecommunication link at no additional cost to the parent, ~~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)(e)~~, 236.081(1)(e) FS. Law Implemented 228.041(18), (19), 229.565(3)(b)(e)(2)(b), 230.23(4)(m) ~~5, 4~~, ~~232.01(1)(e)~~, 236.081(1)(c) FS., PL 105-17, (20 USC 1401, 1412, 1414, 1415). History—New 7-1-77, Amended 7-2-79, 4-27-82, Formerly 6A-6.3020, Amended 5-18-86, _____.

(Substantial rewording of Rule 6A-6.03028 follows. See Florida Administrative Code for present text.)

6A-6.03028 Development of Individual Educational Plans for ~~Exceptional~~ Students with Disabilities.

Parents are partners with schools and school district personnel in developing, reviewing, and revising the individual educational plan (IEP) for their child. Procedures for the development of the individual educational plan, including procedures for parental involvement, shall be set forth in each district's Policies for the Provision of Specially Designed Instruction and Related Services to Exceptional Students document and shall be consistent with the following requirements.

(1) Role of parents. The role of parents in developing IEPs includes:

(a) Providing critical information regarding the strengths of their child;

(b) Expressing their concerns for enhancing the education of their child so that their child can receive a free appropriate public education;

(c) Participating in discussions about the child's need for specially designed instruction and related services;

(d) Participating in deciding how the child will be involved and progress in the general curriculum and participate in the statewide assessment program and in district-wide assessments;

(e) Determining what services the school district will provide to the child and in what setting.

(2) Definitions.

(a) General curriculum. The general curriculum is the curriculum or course of study that addresses the Florida Sunshine State Standards and state and district requirements for a standard diploma.

(b) Assistive technology service. Assistive technology service means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. This term includes:

1. The evaluation of the needs of a student with a disability including, a functional evaluation of the student in the student's customary environment;

2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;

3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4. Coordinating and using other therapies, interventions, or services with assistive devices;

5. Training or technical assistance for a student with a disability or if appropriate, that student's parents;

6. Training or technical assistance for professionals, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the student.

(c) Extended school year. Extended school year means specially designed instruction 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 individual educational plan (IEP), and at no cost to the parents.

Accommodations.

(d) Accommodations are changes that are made in the way the student learns and accesses information and demonstrates performance.

(e) Modifications. Modifications are changes in what a student is expected to learn and may include changes to content, requirements, and expected level of mastery.

(f) Transition services. Transition services means a coordinated set of activities for a student with a disability designed based upon the student's desired post-school outcomes 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.

(3) 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 IP. 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 the student 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, location of the meeting, and who, by title or position, will be attending. The notice must also include a statement informing the parents that they have the right to invite individuals with special knowledge or expertise about their child.

1. For a student with a disability beginning at age 14, or younger if determined appropriate by the IEP team, 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 (7)(i) of this rule and indicate that the school district will invite the student.

2. For a student with a disability, beginning at age 16, or younger if determined appropriate by the IEP team, the notice must indicate that a purpose of the meeting is the consideration

of needed transition services for the student as required in paragraph (7)(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.

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

(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

3. Detailed records of visits made to the parents home or place of employment and the results of those visits.

(e) The district shall take whatever action is necessary to ensure that the parent and the student beginning at age fourteen (14) and understand the proceedings at a meeting, which may include arranging for an interpreter for parents and students who are deaf or whose native language is a language other than English.

(f) The district shall give the parent a copy of the IEP at no cost to the parent.

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

(a) The parents of the student in accordance with subsection (3) 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. The regular education teacher of a student with a disability must, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of:

1. Appropriate positive behavioral interventions and strategies for the student; and

2. Supplementary aids and services, program modifications or supports for school personnel that will be provided for the student consistent with paragraph (7)(d) of this rule.

(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. At the discretion of the school district, the student's special education teacher may be designated to also serve as the representative 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 (4)(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. The determination of knowledge or special expertise of any individual shall be made by the party who invites the individual to be a member of the IEP team; and

(g) The student, beginning by the student's 14th birthday or younger if determined appropriate by the IEP team, when the purpose of the meeting is to consider the student's transition service needs. If the student does not attend, the school district shall take other steps to ensure that the student's preferences and interests are considered.

(h) A representative of any other agency that may be responsible for providing or paying for transition services, when the purpose of the IEP meeting is to consider 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.

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

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

(b) An IEP must be developed within thirty (30) calendar days following the determination of eligibility for specially designed instruction and related services and be in effect prior to the provision of these services.

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

(6) Considerations in IEP development, review, and revision for students with disabilities. The IEP team shall consider the following in IEP development, review, and revision:

(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 student's 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 student 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. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the IEP team determines that the student needs access to those devices in order to receive a free appropriate public education; and

(i) At least annually, 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 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.

(j) If, after consideration of the factors in subparagraphs (6)(a)-(i), the IEP team determines that a student needs a particular device or service, including an intervention, accommodation or other program modification, in order to receive a free appropriate public education, the IEP must include a statement to that effect.

(7) Contents of the IEP for students with disabilities. Each district, in collaboration with the student's parents, shall develop an IEP for each student with a disability. For children with disabilities ages three (3) through five (5) years, districts may develop an IEP or a family support plan in accordance with Rule 6A-6.03029, FAC. The IEP for each student with a disability must include:

(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 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 specially designed instruction and related services and supplementary aids and services to be provided to the student, or on behalf of the student, and 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 (7)(a) of this rule; to participate in extracurricular and other nonacademic activities; and to be educated and participate with other students with disabilities and nondisabled students in the activities described in this paragraph;

(d) 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 (7)(c);

(e) 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 state or district assessments. 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;

(f) The projected date for the beginning of the services, accommodations and modifications described in paragraph (7)(c) and (d) of this rule and the anticipated frequency, location, and duration of those services;

(g) 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;

(h) Beginning by the student's fourteenth birthday or younger, if determined appropriate by the IEP team, including the student and the student's parents, and updated annually:

1. A statement of the student's desired post-school outcome which shall be developed through a student-centered process; and

2. A statement of the student's transition service needs 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;

(i) Beginning by the student's sixteenth birthday or younger, if determined appropriate by the IEP team, including the student and the student's parents, a statement of needed

transition services for the student including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

(j) Beginning at least one year before the student's eighteenth birthday, a statement that the student has been informed of rights under Part B of the Individuals with Disabilities Education Act that will transfer from the parent to the student on reaching the age of majority eighteen (18) years of age. These rights are described in subsection (11) of Rule 6A-6.03311, FAC.

(8) Transition Services.

(a) The coordinated set of activities described in (2) paragraph (7)(i) of this rule must be based on the student's needs, take into account the student's preferences and interests, and focus on the student's desired post-school outcome and shall include needed:

1. Activities in the areas of instruction, related services, community experiences, the development of employment, and other post-school adult living objectives; and

2. Acquisition of daily living skills and functional vocational evaluation, if appropriate, and.

3. Training or information in the area of self-determination to assist the student to be able to actively and effectively participate in IEP meetings and self-advocate, if appropriate.

(b) The IEP team shall designate an IEP team member who will follow-up with agencies, as needed, and verify the provision of services by other agencies to the student and or the student's parents as provided for in the IEP.

(c) If an agency responsible for transition services, 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 Vocational Rehabilitation Services, 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. When a student is provided services by Vocational Rehabilitation Services or another agency, the IEP should be coordinated with the Individual Plan for Employment or other agency plan as appropriate.

(9) Transition of children with disabilities from infants and toddlers early intervention programs to prekindergarten programs that provide specially designed instruction and related services operated by the school district.

(a) By the third birthday of a child participating in the early intervention program for infants and toddlers with disabilities, an IEP consistent with this rule or a 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 (9)(a) of this rule, each school district will participate in transition planning conferences arranged by the state lead agency for infants and toddlers with disabilities early intervention programs.

(c) If the child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or family support plan will begin.

(10) Review and revision of the IEP. The school district shall 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.

5. Consideration of the factors described in subsection (6) of this rule.

(11) IEP implementation. An IEP is in effect before specially designed instruction 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 (11) (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.

(12) Students with disabilities placed in private schools through contractual arrangements by the school district in consultation with the students' parents.

(a) If a student with a disability is placed in a private school by the school district in consultation with the student's parents and consistent with the requirements of Rule 6A-6.0361, FAC., the school district shall:

1. Initiate and conduct meetings to develop, review and revise an IEP for the student, in accordance with subsections (2) through (9) of this rule or for students ages three (3) through five (5), a family support plan in accordance with Rule 6A-6.03029, FAC.; and

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

(b) If a student with a disability is placed in a private school by the school district in consultation with the student's parents and if IEP meetings are initiated and conducted by the private school, the school district 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 by the private school.

Specific Authority 229.053(1)(2)(i), 230.23(4)(m), ~~236.081(1)(e)~~ FS. Law Implemented ~~220.53(1)(b)~~, 228.041(18),(19), ~~229.053(2)(i)~~, 230.23(4)(m)5., 236.081(1)(c), 236.025(2)(a), 229.565(2)(b) FS., PL 105-17 (20 USC 1401, 1412, 1413, 1414, 1415) History-New 7-13-93, Amended.

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

Parents are a child's first teachers and must be partners with school and school district personnel to identify their specific concerns and priorities of the family related to enhancing their child's development. Procedures for developing family support plans shall be set forth in each district's Policies for the Provision of Specially Designed Instruction and Related Services to Special Programs and Procedures for Exceptional Students document consistent with the following requirements:

(1) No change.

(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 and with written parental consent, a family support plan, consistent with the requirements of Subsections (3), (5), (7), and (9) of this rule, in lieu of an individual educational plan (IEP). Parents must be provided with a detailed explanation of the difference between a family support plan and an IEP with parental consent in lieu of an individual educational plan.

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

(a) through (d) No change.

(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)(e)~~ FS. Law Implemented 228.041(18),(19), ~~229.053(2)(i)~~, 230.23(4)(m)5., 236.081(1)(c), ~~229.565(2)(b)~~ FS., P.L. 105-17 (20 USC 1436). History-New 7-13-93, Amended 1-4-94, _____.

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

Providing parents with information regarding their rights under this rule is critical to ensuring that their specific concerns and the priorities of the family related to enhancing their child's development are addressed. The establishment and maintenance of policies and procedures to ensure that children with disabilities, ages birth through two years, and their parents

are provided procedural safeguards is required in order for school boards to receive state funds for the provision of these services. The school board policy and procedures for procedural safeguards shall be set forth in the district's Procedures for the Provision of Specially Designed Instruction and Related Services to Special Programs and Procedures for Exceptional Students document and shall include adequate provisions for the following:

(1) Prior notice. Parents shall be provided prior written notice 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.

(c) 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)-(e), 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.~~

~~(5) Examination of records. The procedures described in paragraph (4)(a) of Rule 6A-6.03311, FAC., shall be followed.~~

~~(6) Mediation. Parents shall be provided the opportunity to resolve disputes involving their child through the mediation procedures described in subsection (5) of Rule 6A-6.03311, FAC.~~

~~(7)(4) Due process hearings. The procedures described in subsection (12) of Rule 6A-6.03311(5), FAC., shall be followed with the exception that the school district may not initiate a hearing to challenge the parent's decision regarding the placement or the provision of early intervention services for their child.~~

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

Specific Authority ~~420.53(1)(b)~~; 228.041(18),(19), 230.23(4)(m), 232.01(1)(e) FS. Law Implemented ~~420.53(1)(b)~~; 228.041(18),(19), 230.23(4)(m)5., 232.01(1)(e), 229.565(2)(b), 236.081(1)(c) FS., P.L. 105-17, 20 USC 1439. History—New 1-4-94, Amended _____.

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

The pProcedures and criteria for identification, diagnosis, evaluation, and determination of eligibility assignment, and discipline of exceptional students by local school boards shall be set forth in the school district's special programs and procedures Policies for the Provision of Specially Designed Instruction and Related Services document for the exceptional students for Exceptional Students document 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. Notwithstanding the provisions of subparagraph (6)(a)2. of Rule 6A-6.03016, F.A.C., and subparagraph (4)(a)1. of Rule 6A-6.03011, F.A.C., tests 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 students are evaluated within a reasonable period of time after receipt of a request for an initial evaluation to determine the students' eligibility for exceptional student education services.

(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) 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) 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 specially designed instruction and related services rather than measuring the student's English language skills.

(e) 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 in the writing of the individual educational plan (IEP).

(f) 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) 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 a disability or a student who is gifted and for determining appropriate educational services 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 specially designed instruction 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) Determination of eligibility for exceptional students. Staffing committees-

(a) 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. Parents of students being considered for eligibility shall be invited to participate as members of the staffing committee. Additional personnel may be involved in determining eligibility by providing information or by attending staffing meetings. 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.

(b) For a child with a disability in transition from an early intervention program for infants and toddlers with disabilities to school district prekindergarten services, the school district shall hold an eligibility staffing by the child's third birthday to determine the child's eligibility for specially designed

instruction and related services. A minimum of three (3) professional personnel, one (1) of whom shall be the district administrator of exceptional students or designee, shall meet as a staffing committee. Additional personnel may be involved in 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) 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 including the student's parents, shall: 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.

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-6.03019, F.A.C., Rules 6A-6.03020 through 6A-6.03027, F.A.C., and Rules 6A-6.03030 through 6A-6.03031, F.A.C., and procedures in subparagraph (3)(f)1., of Rule 6A-6.03411, F.A.C.

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

(e) For students identified as gifted, an IEP or educational plan in accordance with Rule 6A-6.030191, F.A.C., shall be developed.

(f) The school district shall provide a copy of the evaluation reports and the documentation of eligibility to the parent at no cost.

(g) A student may not be determined eligible as a student with a disability if the determinant factor is lack of instruction in reading or math or limited English proficiency or lack of attendance for a student of compulsory school attendance age.

(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 the IEP team participants as described in subsection (4) of Rule 6A-6.03028, F.A.C., 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) Identify, on the basis of that review and input from the student's parents, 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 specially designed instruction and related services, or in the case of reevaluation, whether the student continues to need specially designed instruction and related services; and

4. Whether any additions or changes to the specially designed instruction 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 IEP team described in subsection (3) of this rule 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 paragraphs (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. 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.

(4) 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-6.03018 and 6A-6.03029 through 6A-6.03027, F.A.C., 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 including the parent, 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 in need of specially designed instruction. The individual educational plan (IEP) team, including the parent, 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.

(5)(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 services for exceptional students;

(b) Reviewing the eligibility determinations of staffing committees for exceptional students with procedures and criteria outlined in Policies for the Provision of Specially Designed Instruction and Related Services for Exceptional Students developed pursuant to Rule 6A-6.03411, F.A.C. 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, F.A.C.;

(d) Assuring that parents have been appropriately informed of the student's their child's eligibility determination and their procedural safeguards in accordance with Rules 6A-6.03311, 6A-6.03032 and 6A-6.03313, F.A.C. recommended educational assignment and of their due process rights;

(e) Informing, in writing, the appropriate school principal of the student's eligibility for specially designed instruction and related services for a special program; and

(f) Implementing the district procedures as required by Rule 6A-6.03411, F.A.C.

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

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.

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.

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)(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)5.4., ~~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, 1413, 1414, 1415. (2)(b),(4),(6); 1413(a)(4)(A); 1414(a)(5). Federal Register, Volume 42, Number 163, Regulations 121a.345 and 121a.348.

(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.

Providing parents with information regarding their rights under this rule is critical to ensuring that they have the opportunity to be partners in the decisions regarding their children. It is also critical that local school boards provide information on these rights to appropriate district and school personnel so that the needs of the students with disabilities can be identified and appropriately met. Parents and school district personnel are encouraged to use methods such as mediation or the state complaint process to resolve disagreements regarding the provision of specially designed instruction and related services to students with disabilities. The establishment and maintenance of policies and procedures to ensure that students with disabilities, as defined by Section 228.041(18), Florida Statutes, and their parents are provided procedural safeguards with respect to the provision of a free appropriate public education is required in order for school boards to receive state and federal funds for the provision of specially designed instruction and related services to these 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. Parents shall be provided prior written notice 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 to the parents shall be written in language understandable to the general public and shall be in the native language or other mode of communication commonly used by the parents unless such communication is clearly not feasible to do so.

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

1. That the notice is translated orally to the parents in their native language or mode of communication;

2. That the parents understand 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 been met.

(c) The notice to the parents 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 procedural safeguards specified in this rule.

(2) Provision of Procedural Safeguards to Parents.

(a) Parents must be provided a copy of the notice of their procedural safeguards which provides a full explanation of the provisions of subsections (1)-(13) of this rule.

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

1. Upon initial referral for evaluation;

2. Upon refusal of a parent's request to conduct an initial evaluation;

3. Upon each notification of an IEP meeting;

4. Upon consent for reevaluation of the student; and,

5. Upon receipt of a request for a due process hearing in accordance with subsection (12) of this rule.

(3) 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 unless it is clearly not feasible to do so.

(b) Written parental consent shall be obtained prior to formal, individual evaluation to determine eligibility for specially designed instruction and related services, prior to initial provision of specially designed instruction and related services, and prior to conducting a reevaluation for students with disabilities except as provided in paragraph (3)(e) of this rule.

(c) School districts shall document the attempts to secure consent from the parent as required by paragraphs (3)(a)-(b) of this rule. If consent is not obtained, and the school district maintains that such services are required in order for the student to be provided a free appropriate public education, school district personnel may use the mediation procedures as described in subsection (5) of this rule or may request a hearing as provided in subsection (12) of this rule. The district may evaluate or initially provide specially designed instruction and related services to the student without the parent's consent only if an administrative law judge provides for such in the final decision in a due process hearing held in accordance with subsection (12) of this rule except as provided in paragraph (3)(e) of this rule.

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

(e) Parental consent is required for reevaluation except when the school district can demonstrate that it has taken reasonable measures, consistent with those described in subsection (3) of Rule 6A-6.03028, FAC., to obtain that consent and the student's parents have failed to respond.

(f) A school district can not use the parent's refusal to consent to one service or activity to deny the parent or the student any other service, benefit, or activity except for formal, individual evaluation, reevaluation, and the initial provision of specially designed instruction and related services to the student. Parents must be provided prior written notice, as defined by subsection (1) of this rule prior to 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 provision of specially designed instruction.

(g) 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 students.

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

(a) The parents of a child 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 their child's educational records.

(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.

(5) Mediation. The Department of Education shall provide parents of children with disabilities and school district personnel the opportunity to resolve 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 through a mediation process. To promote the resolution of disputes, both parties should consider limiting the number of participants in a mediation session.

(a) Requirements. 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 (12) of this rule or any other rights under 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 the parent and the school district 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 the parent and the school district.

(f) An agreement reached by the parent and the school district 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 both the parent and the school district 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.

(6) State Complaint Procedures. The Department of Education shall provide parents and other interested persons the opportunity to resolve allegations that a school district has violated state or federal requirements regarding the education of students with disabilities through the establishment of state complaint procedures.

(a) The Department of Education's complaint procedures shall establish a time limit of sixty (60) calendar 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 (6)(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 (12) 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 (6)(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 hearing decision.

(7) Independent educational evaluation.

(a) The parents of a child with a disability shall be notified by the school district of their right to an independent educational evaluation and be provided upon request for an independent evaluation information about where an independent educational evaluation may be obtained and of the agency's qualifications of the evaluation specialist in accordance with paragraph (1)(a) of Rule 6A-6.0331, FAC.

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

(c) 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.

(d) 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.

(e) 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.

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

1. Ensure that an independent educational evaluation is provided at public expense; or

2. Initiate a hearing under subsection (12) of this rule to show that its evaluation is appropriate or that the evaluation obtained by the parent did not meet the school district's criteria. If the final decision from the hearing is that the district evaluation is appropriate and the parent obtains an independent educational evaluation, it will be at the parent's expense.

(g) 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 as described in paragraph (12)(a) of this rule.

(h) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense:

1. The school district shall 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 (12) of these rules.

(i) 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.

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

(9) Placement of students with disabilities in private schools by their parents through participation in the Opportunity Scholarship Program.

(a) Funding for the scholarship shall be consistent with Section 229.0537, Florida Statutes.

(b) Specially designed instruction and related services provided to students participating in the Opportunity Scholarship Program shall be consistent with the requirements of 300.450-300.457 of Chapter 34 of the Code of Federal Regulations, and paragraph (3)(o) of Rule 6A-6.03411, FAC.

(10) Placement of students with disabilities in private schools by their parents when the provision of a free appropriate public education by the school district is at issue.

(a) Notwithstanding the provisions of subsection (9) of this rule, if the school district has made a free and appropriate public education available to a student with a disability and the parents elect to place the child in a private school or facility, the school district is not required to pay for the cost of education, including specially designed instruction and related services.

(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 (12) of this rule.

(c) Notwithstanding the provisions of subsection (9) of this rule, if the parents of a child with a disability, who previously received specially designed instruction and related services under the authority of a public agency, enroll the student 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 paragraph (10)(c) of this rule may be reduced or denied in accordance with the requirements of 300.403(d) of Chapter 34 of the Code of Federal Regulations.

(11) Transfer of Rights of Students with Disabilities at the Age of Majority. The purpose of this section is to establish procedures for school districts to inform parents and students of the long standing provisions of state law regarding the rights and responsibilities that transfer to an individual upon attaining the age of eighteen (18). The right to notice under this rule is retained as a shared right of the parent and the student except as provided in paragraph (11)(d) of this rule.

(a) At age eighteen (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 as established by Chapter 744, Florida Statutes, or a guardian advocate has been appointed to make decisions affecting educational services as provided by Section 393.12, Florida Statutes.

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

(c) The school district shall provide any notice required by Rules 6A-6.03311 and 6A-6.03028, FAC., to both the student who has attained age eighteen (18) and the student's parent.

(d) For students who have attained age eighteen (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 (11)(a) of this rule.

(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 student throughout the student's eligibility for a specially designed instruction and related services consistent with Rules 6A-6.03011 through 6A-6.03018, and Rules 6A-6.03020-6A-6.03023, FAC.; or,

3. Have another appropriate individual appointed to represent the educational interests of the student through the student's eligibility for specially designed instruction and

related services consistent with Rules 6A-6.03011 through 6A-6.03018, and Rules 6A-6.03020-6A-6.03023, FAC., if the parent is not available.

(12) Due process hearings. While use of mediation and the state complaint procedure may be preferable and less litigious, due process hearings are required to be available to parents of students with disabilities and to school districts to resolve matters related to the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education.

(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 (ALJ) shall use subsection (12) of this rule for any such hearings and shall conduct such hearings in accordance with the Uniform Rules for Administrative Proceedings, Chapter 28-106, FAC., as deemed appropriate by the ALJ including, but not limited to: the authority of a party to request a pre-hearing conference, the authority of the ALJ to issue subpoenas to compel the attendance of witnesses and the production of records, and the authority of the administrative law judge to issue summary rulings in absence of a disputed issue of material fact.

(d) Status of student during proceedings. Except as provided in Rule 6A-6.03312(9), FAC., during the time that an administrative or judicial proceeding regarding a due process hearing is pending, unless the parent of the student and the district agree otherwise, the student involved in the due process hearing must remain in the present educational placement. 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.

(e) 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 (12)(i)11.-12., of this rule at no cost to the parent.

(f) Hearing rights for all parties.

1. Any party to a hearing conducted pursuant to subsection (12) of this rule has a right:

a. To be accompanied and advised by counsel, or a qualified representative under the rules of the Department of Administrative Hearings, or by an individuals with special knowledge or training with respect to students with disabilities, or any combination of the above;

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 (12) 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 (12)(f)2. of this rule from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(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 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 (12) 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;

2. Maintaining a listing of the final orders of such hearings and providing this information to the public upon request; and,

3. 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) 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 forty-five (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 (12)(i)12. of this rule, at the request of either party.

(j) Civil Action. A decision made in a hearing conducted under subsection (12) of this rule is final; unless, within thirty (30) days, a party aggrieved by the final order brings a civil action in federal district or state circuit court without regard to the amount in controversy, as provided in Section 230.23(4)(m)5., Florida Statutes. The state circuit or federal court shall: receive the records of the administrative proceedings; hear, as appropriate, 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)5., Florida Statutes.

(13) Attorneys' Fees.

(a) 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 determination of the amount of attorneys' fees by the court shall be consistent with the provisions of 300.513(c) of Chapter 34 of the Code of Federal Regulations. However, 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.

Specific Authority 229.053(1), 230.23(4) FS. Law Implemented 228.041(18),(19), 229.565(2)(b), 236.081(1)(c), 230.23(4)(m)5. FS., P.L. 105-17, 20 USC 1414 and 1415. History—New 7-13-83, Amended 12-20-83, 4-26-84, Formerly 6A-6.3311, Amended 7-17-90,_____.

6A-6.03312 Discipline Procedures for Students with Disabilities.

For students whose behavior impedes their learning or the learning of others, strategies, including positive behavioral interventions and supports to address that behavior must be considered in the development of the student's individual educational plan (IEP). Procedures for providing discipline for students with disabilities must be consistent with the requirements of this rule.

(1) Definitions.

(a) Change of placement. For the purpose of removing a student with a disability from the student's current educational placement as specified by the student's individual educational plan (IEP) under this rule, a change of placement occurs when:

1. The removal is for more than ten (10) consecutive school days, or

2. A series of removals constitutes a pattern because the removals cumulate to more than ten (10) school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

(b) Positive behavioral supports. Positive behavioral support is a process for designing individualized behavioral intervention plans based on understanding relationships between the student's behavior and his or her environment as determined through a functional behavioral assessment.

(c) Controlled substance. A controlled substance is a drug or other substance identified through the Controlled Substances Act, 21 U.S.C. 812(c), and Section 893.02(4), Florida Statutes.

(d) Weapon. A weapon is defined in Section 790.001(13), Florida Statutes, and includes a dangerous weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury.

(e) Firearm. A firearm is defined in Section 790.001(6), Florida Statutes.

(f) Individual Educational Plan (IEP) Team. An IEP team must meet the requirements specified in subsection (4) of Rule 6A-6.03028, FAC.

(g) Manifestation Determination. A manifestation determination examines the relationship between the student's disability and a specific behavior that may result in disciplinary action.

(h) Interim Alternative Educational Setting. An interim alternative educational setting (IAES) is a different location where educational services are provided for a specific time period due to disciplinary reasons that meet the requirements of paragraph (6)(a) of this rule.

(i) Expedited Due Process Hearings. Expedited due process hearings shall be conducted by an administrative law judge for the Division of Administrative Hearings, Department of Management Services, and shall be held at the request of

either the parent or the school district regarding disciplinary actions. These hearings must meet the requirements prescribed in subsection (12) of Rule 6A-6.03311, FAC., except that the written decision must be mailed to the parties within forty-five (45) calendar days of the school district's receipt of the parent's request or the filing of the district's request for the hearing without exceptions or extensions.

(j) Short Term Removals. A short term removal is the removal of a student with a disability for a total of ten (10) school days or less in a school year that does not constitute a change in placement as defined in paragraph (1)(a) of this rule.

(k) Long Term Removals. A long term removal is the removal of a student with a disability for more than ten (10) school days in a school year which may or may not constitute a change in placement as defined in paragraph (1)(a) of this rule.

(l) Substantial evidence. Substantial evidence shall be defined to mean beyond a preponderance of the evidence.

(2) Authority of School Personnel. Consistent with the district's Code of Student Conduct and to the extent removal would be applied to students without disabilities, school personnel may order:

(a) The removal of a student with a disability from the student's current placement for not more than ten (10) consecutive school days.

(b) Additional removals of a student with a disability of not more than ten (10) consecutive days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change in placement as defined in paragraph (1)(a) of this rule.

(3) Manifestation Determination. A manifestation determination, consistent with the following requirements, must be made any time disciplinary procedures result in a change of placement.

(a) The IEP team and other qualified personnel:

1. Consider all relevant evaluation and diagnostic information including information supplied by the parents of the student, observations of the student, the student's current IEP and placement, and any other relevant information, then

2. Determine, in relationship to the behavior subject to disciplinary action:

a. Whether the student's IEP and placement were appropriate and the special education services, supplementary aids and services, accommodations and modifications as defined in paragraphs (2)(d)-(e) of Rule 6A-6.03028, FAC., and positive behavior intervention strategies were provided consistent with the student's IEP and placement;

b. Whether the student's disability impaired the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and

c. Whether the student's disability impaired the student's ability to control the behavior subject to disciplinary action.

(b) If the IEP team and other qualified personnel determine that the student's behavior was not related to the disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities. However, services consistent with subsection (5) of this rule must be provided.

(c) With the exception of placement in an interim alternative educational setting, as described in paragraphs (1)(g) and (6)(b) of this rule, if the IEP team determines that the student's behavior was related to the disability, the student cannot be placed by school personnel in another setting unless the IEP team determines that it is the most appropriate placement.

(d) If the IEP team and other qualified personnel determine that any of the requirements of subparagraph (3)(a)2. of this rule were not met, the behavior must be considered a manifestation of the student's disability.

(e) The review described in paragraph (3)(a) of this rule may be conducted at the same IEP meeting that is required by paragraph (4)(d) of this rule.

(f) Immediate steps must be taken to remedy any deficiencies in the student's IEP or placement or in their implementation identified during the manifestation determination.

(g) If a parent disagrees with the manifestation determination decision made by the IEP team pursuant to this rule, the parent may request an expedited due process hearing as described in subsection (7) of this rule.

(4) Long Term Removals. For all such removals:

(a) The school district must notify the parent of the removal decision and provide the parent with a copy of the notice of procedural safeguards as required in Rule 6A-6.03311, FAC., on the same day as the date of the removal decision;

(b) An IEP meeting must be held immediately if possible but in no case later than ten (10) school days after the removal decision to perform a manifestation determination review as described in subsection (3) of this rule;

(c) Services consistent with subsection (5) of this rule must be provided;

(d) Either before or not later than ten (10) business days after either first removing the student for more than ten (10) school days in a school year or beginning with a removal that constitutes a change in placement:

1. If the school district did not conduct a functional behavioral assessment (FBA) and implement a positive behavior intervention plan (PBIP) before the behavior that resulted in the removal, the IEP team must meet to develop an assessment plan.

2. If the student has a PBIP, the IEP team shall meet to review the plan and its implementation and revise the plan and its implementation as necessary to address the behavior.

(e) As soon as practicable after developing the assessment plan and completing the FBA, as prescribed in paragraph (4)(d) of this rule, the IEP team must meet to develop appropriate behavioral interventions to address the behavior and shall implement those interventions.

(f) If subsequently, a student with a disability who has a PBIP and who has been removed from the student's current placement for more than ten (10) school days in a school year is subjected to a removal that does not constitute a change in placement as described in paragraph (1)(a) of this rule:

1. The IEP team members shall review the PBIP and its implementation to determine if changes are necessary.

2. If one or more of the IEP team members believe that revisions are needed, the IEP team shall revise the plan and its implementation to the extent the IEP team determines necessary.

(5) Free Appropriate Public Education for Students with Disabilities who are Suspended or Expelled.

(a) A school district is not required to provide services to a student with a disability during short-term removals totaling ten (10) school days or less in a school year if services are not provided to students without disabilities during such removals.

(b) A school district must provide a free appropriate public education (FAPE) to a student with a disability, consistent with the requirements of this rule, beginning on the eleventh cumulative school day of removal in a school year.

(c) A school district must provide services to a student with a disability who has been removed for more than ten (10) school days in a school year to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the student's IEP.

(d) If the removal is for not more than ten (10) consecutive school days in a school year and is not considered a change in placement, consistent with paragraph (1)(a) of this rule, school personnel, in consultation with the student's special education teacher, shall determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the student's IEP goals. If the removal is due to behavior that was determined not to be a manifestation of the student's disability, the IEP team shall determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the student's IEP goals.

(6) Interim Alternative Educational Setting (IAES).

(a) The IEP team determines the IAES, unless it is determined by an administrative law judge in accordance with paragraph (8)(a) of this rule.

1. The IAES must be selected so as to enable the student to continue to progress in the general curriculum and to continue to receive services, accommodations, and modifications, including those described in the student's current IEP, that will enable the student to meet IEP goals.

2. The IAES must include services, accommodations, and modifications to address the behavior that resulted in the change of placement and that are designed to prevent the misconduct from recurring.

(b) School personnel may place a student in an IAES without the consent of the parent for the same amount of time a student without a disability would be placed, but for not more than forty-five (45) calendar days. Such a placement can only occur if the student:

1. Carries a weapon or firearm to school or to a school function, or

2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.

(c) School personnel must notify the parent of an IAES placement decision and provide the parent with a copy of the notice of procedural safeguards, consistent with Rule 6A-6.03311, FAC., on the day the placement decision is made.

(7) Expedited Hearing.

(a) An expedited hearing may be requested:

1. By the student's parent if the parent disagrees with a manifestation determination or with any decision not made by an administrative law judge regarding a change in placement under this rule.

2. By the school district if the school district demonstrates by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others (prior to removal to an interim alternative education setting) during the pendency of a due process hearing or an appeal as prescribed in subsection (12) of Rule 6A-6.03311, FAC.

(b) School district personnel may seek subsequent expedited hearings for alternative placements if after the initial forty-five (45) day term has expired, the district maintains the student's behavior is dangerous and still likely to result in injury to the student or others.

(c) The decision of the administrative law judge rendered in an expedited hearing may be appealed by bringing a civil action in federal district or state circuit court, as provided in Section 230.23(4)(m)5., Florida Statutes or by requesting an impartial review by the appropriate district court of appeal as provided by Sections 120.68 and 230.23(4)(m)5., Florida Statutes.

(8) Authority of an administrative law judge.

(a) An administrative law judge may order a change in the placement of a student with a disability to an appropriate interim alternative or another educational setting for not more than forty-five (45) calendar days if the administrative law judge, in an expedited due process hearing:

1. Determines that the school district has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or others;

2. Considers the appropriateness of the student's current placement;

3. Considers whether the school district has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

4. Determines that the interim alternative educational setting (IAES) that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements of subparagraphs (6)(a)1.-2. of this rule.

(b) In reviewing a decision with respect to the manifestation determination, the administrative law judge shall determine whether the school district has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of subsection (3) of this rule.

(c) In reviewing a decision to place a student in an IAES, the administrative law judge shall apply the requirements of subsection (6) of this rule.

(9) Student's Placement During Proceedings.

(a) If a parent requests a hearing or an appeal to challenge an IAES placement, the manifestation determination or disciplinary action resulting from the student's involvement with a weapon, illegal drug, controlled substance, or dangerous behavior, the student must remain in the IAES pending the decision of the administrative law judge or until the expiration of the forty-five (45) day time period, whichever occurs first, unless the parent and the school district agree otherwise.

(b) If the school district proposes to change the student's placement after expiration of the forty-five day period of the IAES placement, and the parent challenges that proposed change of placement, the student must return to his or her placement prior to the IAES, except as provided in paragraph (7)(b) of this rule.

(c) In accordance with Rule 6A-6.03311(12)(d), FAC., and Section 230.23(4)(m)5, Florida Statutes, except as specified in paragraphs (9)(a)-(b) of this rule, if the parent's request for a hearing is to challenge a manifestation determination, the student must remain in the present educational placement, unless the parent of the student and the district agree otherwise.

(10) Protections for Students not Yet Eligible for Specially Designed Instruction and Related Services. A regular education student who is the subject of disciplinary actions

may assert any of the protections afforded to a student with a disability if the school district had knowledge of his or her disability before the misbehavior occurred for which the disciplinary action is being taken.

(a) Basis of knowledge. A school district is determined to have knowledge that a student may have a disability if:

1. The parent has expressed concerns in writing or orally if unable to write, to school district personnel that the student needs special education and related services;

2. The behavior or performance of the student demonstrates the need for special education;

3. The parent has requested an evaluation to determine a need for possible specially designed instruction; or

4. The teacher of the student or other school district personnel have expressed concern about the student's behavior or performance to the special education director or to other appropriate school district personnel in accordance with the district's child find or special education referral system.

(b) Exception. A school district would not be deemed to have knowledge if, as a result of receiving the information specified in paragraph (10)(a) of this rule, the school district:

1. Conducted an evaluation and determined that the student was not a student with a disability; or

2. Determined that an evaluation was not necessary; and

3. Provided notice to the student's parents of the determination that the student was not a student with a disability as required by Rule 6A-6.03311, FAC.

(c) Conditions that Apply if No Basis of Knowledge.

1. If there is no basis of knowledge that the student is a student with a disability prior to disciplinary action, the student may be disciplined in the same manner as a student without a disability.

2. If an evaluation request is made for the student during the time period of the disciplinary action, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. After considering the evaluation results and information provided by the parents, if the student is determined to be a student with a disability, the school district shall provide special education and related services consistent with the requirements of subsection (5) of this rule.

(11) Student Records in Disciplinary Procedures. School districts shall ensure that the special education and disciplinary records of students with disabilities are transmitted, consistent with the provisions of Section 228.093, Florida Statutes, and Rule 6A-1.0955, FAC.;

(a) For consideration by the person making the final determination regarding the disciplinary action, and

(b) For consideration by the appropriate authorities to whom school districts report crimes.

(12) Disciplinary Records of Students with Disabilities. School districts shall include in the records of students with disabilities a statement of any current or previous disciplinary action that has been taken against the student and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with the student records of nondisabled students.

(a) The statement may be a description of any behavior engaged in by the student that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the student and other individuals involved with the student.

(b) If the student transfers from one school to another, the transmission of any of the student's records must include both the student's current individualized educational plan (IEP) and any statement of current or previous disciplinary action that has been taken against the student.

Specific Authority 229.053(1), 230.23(4)(m)5., 232.26(1)-(4) FS, Law Implemented 232.26(1),(4), 228.041(18),(19), 230.23(4)(m)5., 229.565(2)(b) FS., P.L. 105-17, 20 USC 1401, 1414, and 1415. History—New

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

Providing parents with information regarding their rights under this rule is critical to ensuring that they have the opportunity to be partners in the decisions regarding their children. It is also critical that local school boards provide information on these rights to appropriate district and school personnel so that the needs of the student can be identified and appropriately met. 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. Parents shall be provided prior written notice 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 to the parents 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 parents' mode of communication is not a written language, the school district shall ensure:

1. That the notice is translated to the parents in their native language or mode of communication;

2. That the parents understand the content of the notice; and

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

(c) The notice to the parents 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.

(2) 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 of a parent's request to conduct an initial evaluation; and

3. Upon receipt of a request for a due process hearing in accordance with subsection (7) of this rule.

(3) Informed parental consent.

(a) Parents shall be fully informed of all information relevant to the action for which consent is sought in their native language or other mode of communication unless such communication is clearly not feasible.

(b) Written parental consent shall be obtained prior to formal, individual evaluation to determine eligibility for special programs for students who are gifted and prior to initial provision of services to students who are gifted.

(c) School districts shall document the attempts to secure consent from the parent as required by paragraph (3)(b) of this rule.

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

(e) Except for formal, individual evaluation and the initial provision of services to the student, 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 is not subject to parental consent but is subject to prior notice as defined by subsection (1) of this rule.

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

(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 their child's educational records.

(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 student who is gifted must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement of their children or the provision of a free appropriate public education to their child.

(5) Parent initiated evaluations. If the parent obtains an independent evaluation at private expense which meets the requirements of Rule 6A-6.0331(1), FAC., the results of the evaluation must be considered by the school district in any decision made with the respect to the determination of eligibility for exceptional student education services.

(6) State Complaint Procedures. The Department of Education shall provide parents and other interested persons the opportunity to resolve allegations that a school district has violated state requirements regarding the education of students who are gifted through the establishment of state complaint procedures.

(a) The Department of Education's complaint procedures shall establish a time limit of ninety (90) calendar 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 state requirement regarding the education of students who are gifted;

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 (6)(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 (7) 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 (6)(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 hearing decision.

(7) 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 (ALJ) shall use subsection (7) of this rule for any such hearings and shall conduct such hearings in accordance with the Uniform Rules for Administrative Proceedings, Chapter 28-106, FAC., as deemed appropriate by the ALJ including, but not limited to: the authority of a party to request a pre-hearing conference, the authority of the ALJ to issue subpoenas to compel the attendance of witnesses and the production of records, and the authority of the ALJ to issue summary rulings in absence of a disputed issue of material fact.

(d) 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.

(e) 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 (7)(i)11.-12. of this rule at no cost to the parent.

(f) Hearing rights for all parties.

1. Any party to a hearing conducted pursuant to subsection (7) of this 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 (7) 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 (7)(f)2. of this rule from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(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. Maintaining a listing of the final orders of such hearings and providing this information to the public upon request.

(i) 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 forty-five (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 (7) of this rule, at the request of either party.

(j) Review of Final Order. 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)5., Florida Statutes.

Specific Authority 229.053(1), 230.23(4)(m)5., FS. Law Implemented 228.041(18),(19), 230.23(4)(m)5., 229.565 FS. History—New

6A-6.03411 Policies for the Provision of Specially Designed Instruction and Related Services for Exceptional Students ~~Special Programs and Procedures for Exceptional Students.~~

This rule shall apply beginning with the ~~proposed special programs and procedures documents submitted for the 2001-02 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 to be eligible to receive state or federal funding for specially designed instruction and related services for exceptional students 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 policies ~~procedures~~ for providing an appropriate program of specially designed special instruction and related services, 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. Applicable state statutes, State Board Rules, and federal laws and regulations relating to the provision of specially designed instruction and related services

~~to exceptional students special programs for exceptional students shall serve as criteria for the review and approval of the special programs and procedures documents. This document is intended to provide district and school-based personnel, parents of exceptional students, and other interested persons information regarding the implementation of the state's and local school board's policies regarding exceptional student education programs. 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, but not be limited to, the requirements of subsections (2) and (3) of this rule, following:~~

(1) Definitions.

(a) Exceptional Student Education (ESE). ESE refers to the specially designed instruction to meet the unique needs of exceptional students.

(b) Special education. Special education refers to the specially designed instruction and related services provided, at no cost to the parents, to meet the unique needs of students with disabilities. Special education includes instruction in the classroom, the home, in hospitals and institutions, and in other settings.

(c) Free Appropriate Public Education (FAPE). FAPE refers to special education and related services that:

1. Are provided at public expense under the supervision and direction of the local school board without charge;

2. Meet the standards of the Department of Education;

3. Include preschool, elementary, or secondary programs in the state; and

4. Are provided in conformity with an individual educational plan (IEP) for students with disabilities that meet the requirements of Rule 6A-6.03028, FAC., or an educational plan (EP) for students who are gifted that meet the requirements of Rule 6A-6.030191, FAC.

(d) Screening is the process by which a rapid assessment is made to identify students who may need a formal evaluation.

(e) Prereferral activities. Prereferral activities are those activities which address students' academic, social or emotional needs in the regular education classroom environment prior to referral for a formal evaluation to determine eligibility for specially designed instruction or as required by Rules 6A-6.03011 through 6A-6.03027, FAC.

(f) Referral. Referral is the process whereby a written request is made for a formal evaluation of students who are suspected of needed specially designed instruction and related services.

(g) Student evaluation. Student evaluation is the systematic examination of all areas related to the student's needs, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic and classroom performance, communicative status, and motor abilities.

(h) Dismissal. Dismissal is the process whereby a student is determined to no longer be in need of exceptional student education.

(2)(4) Provision for Specially Designed Instruction and Related Services Special Programs. Specially designed instruction is 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 private nonpublic schools.

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

(a) Procedures for placement in the least restrictive environment. Procedures for placement determination 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 subsection (1) of Rule 6A-6.0311, 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 special education any special program except gifted, occupational or physical therapy, and homebound or hospitalized.

(c) Procedures for prereferral activities. Prereferral activities may include the use of an academic improvement plan as required by Section 232.245(3), Florida Statutes 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-6.03031, 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 shall be implemented in accordance with the requirements of subsections (1) and (3) of Rule 6A-6.0331, FAC. Student evaluation is the systematic

examination of 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 subsection (2) of Rule 6A-6.0331, FAC., 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-03020 through 6A-6.03027, FAC., and Rules 6A-6.03030 through 6A-6.03031, FAC., and needs specially designed instruction and related services.

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

3. Establishing a timeline for the completion of activities from the date the student was referred for evaluation to the date of determination of the student's eligibility for exceptional student education programs.

(g) Procedures for providing an individual educational plan (IEP), educational plan (EP), or family support plan family support plan, in accordance with Rules 6A-6.03028, 6A-6.030191, 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 of students with disabilities in accordance with the requirements of subsection (4) of Rule 6A-6.0331, FAC. Reevaluation is the process whereby information about a student is gathered and reviewed to 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 participation of students with disabilities in statewide assessment, as required by Section 229.57(3), Florida Statutes, 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) Procedures for the transfer of rights for students with disabilities, in accordance with subsection (11) of Rule 6A-6.03311, FAC.

(n) Procedures for the provision of specially designed instruction and related services to students with disabilities enrolled in private schools by their parents.

1. School districts shall provide parents of students with disabilities enrolled in private schools information regarding the availability of specially designed instruction and related services from the local school board consistent with the provisions of 300.450-300.455 of Chapter 34 of the Code of Federal Regulations.

2. The location of any specially designed instruction and related services provided to these students shall be consistent with the requirements of 300.456 of Chapter 34 of the Code of Federal Regulations, determined as a component of the service plan, and made in consultation with the parents and the participating private school. The determination of location shall be made after consideration of the needs of the student, the scheduling of the services to minimize disruption of instruction and the associated costs to the school board.

3. Specially designed instruction provided by the local school board to these students shall be consistent with the student's service plan, as required by Rule 6A-6.03191, FAC., and Chapter 6A-6, FAC.

(o) 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. The Department of Education shall provide information and assistance to private schools regarding the identification and provision of special services to participating students and the creation of a fee schedule for these services. The Department of Education shall also provide parents of students with disabilities eligible for opportunity

scholarships information on the availability of specially designed instruction and related services from the local school board. School districts shall:

1. Include representatives from participating private schools in determining the specially designed instruction and related services that will continue to be available to participating students with disabilities.

2. Provide parents of students with disabilities eligible for opportunity scholarships information on the availability of special education and related services from the local school board.

3. Determine the location of the special education and related services consistent with subparagraph (2)(n)2. of this rule. Special education services provided by the local school board to students with disabilities participating in the opportunity scholarship program shall be consistent with the student's services plan and Rule 6A-6.030191, FAC.

4. Expenditure of federal funds for services provided to these students shall be made in accordance with 300.453 of Chapter 34 of the Code of Federal Regulations.

(p)(j) Plan for evaluation of the special exceptional student education programs- which shall include those areas identified by the Department of Education's monitoring activities.

(q) Provision of training to district and school-based administrators regarding the provision of specially designed instruction and related services to exceptional students.

(r) Discipline procedures for students with disabilities in accordance with Rule 6A-6.03312, FAC.

(s) Provision of extended school year services to eligible students with disabilities.

(4)(3) Procedures for each special program, the delivery of specially designed instruction and related services to eligible exceptional students 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 to include philosophy, curriculum, and instructional support.

(5)(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) Child find activities to include the identification, location, and evaluation of all children residing in the state, including children with disabilities attending private schools, regardless of the severity of their disability, who are in need of specially designed instruction and related services. These procedures apply to highly mobile children with disabilities (such as migrant or homeless children) and children suspected of having a disability and in need of specially designed instruction even though they are advancing from grade to grade. Discipline in accordance with Rule 6A-6.0331(6), FAC.

(e) Confidentiality of student records in accordance with Section 228.093, Florida Statutes and Rule 6A-1.0955, FAC.

(f) Transition of children with disabilities from an early intervention program for infants and toddlers with disabilities to specially designed instruction and related services provided by the school district.

(g) Specially designed instruction and related services provided to students with disabilities enrolled in private schools by the school board in consultation with the students' parents and consistent with the requirements of Rule 6A-6.0361, FAC.

(h) Opportunity scholarships in accordance with Section 229.0537, Florida Statutes. The local school board or the private school who provides the special education and related services to participating students with disabilities shall receive the funding for these services as provided by Sections 236.025 and 229.0537(6), 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.

DEPARTMENT OF EDUCATION

State Board of Education

<p>RULE TITLES:</p> <p>Procedural Safeguards for Students with Disabilities Enrolled in Private Schools by Their Parents</p> <p>Development of Service Plans for Students with Disabilities Enrolled in Private School by their Parents and Provided with Specially Designed Instruction and Related Services by the Local School Board</p>	<p>RULE NOS.:</p> <p>6A-6.030192</p> <p>6A-6.030193</p>
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PURPOSE AND EFFECT: The purpose of these new rules is to incorporate the revisions required for programs for students with disabilities by the amendments to the federal law, the Individuals with Disabilities Education Act, and its implementing regulations. The effect of these revisions will be consistency with the federal requirements in a more consumer-friendly manner.

SUBJECT AREA TO BE ADDRESSED: Federal requirements for programs for students with disabilities and state requirements for programs for students with disabilities enrolled in private schools by their parents.

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

LAW IMPLEMENTED: 228.041(18)(19), 229.0537, 229.565(3)(b)(c), 230.23(4)(m)4., 236.081(1)(c) FS.

RULE DEVELOPMENT WORKSHOPS WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW:

TIMES AND DATE: 12:00 Noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m., October 30, 2001

PLACE: Duval County School Board Meeting Room, 1701 Prudential Drive, Jacksonville, FL

TIMES AND DATE: 12:00 Noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m., October 30, 2001

PLACE: Professional Development Academy of Collier County, 615 3rd Ave., South, Naples, Florida

TIMES AND DATE: 12:00 Noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m., November 5, 2001

PLACE: Nova Southeastern, East Campus, Alumni Hall, 3100 S. W. 9th Avenue, Ft. Lauderdale, Florida

TIMES AND DATE: 12:00 Noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m., November 6, 2001

PLACE: Nova Southeastern, 9503 Princess Palm Ave., Classroom 112, Tampa, Florida

TIMES AND DATE: 12:00 Noon – 3:00 p.m. and 4:00 p.m. – 7:00 p.m., November 9, 2001

PLACE: PAEC Conference Room, 753 West Boulevard, Chipley, FL

Any person requiring special accommodations to participate in any of the rule development workshops is asked to advise the Department of Education at least five working days prior to the workshop by contacting: Shan Goff, Chief, Bureau of Instructional Support and Community Services, Department of Education, 325 West Gaines Street, Room 614, Tallahassee, Florida 32399-0400, (850)488-1570.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Shan Goff, Chief, Bureau of Instructional Support and Community Services, Department of Education, 325 West Gaines Street, Room 614, Tallahassee, Florida 32399-0400, (850)488-1570

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

6A-6.030192 Procedural Safeguards for Students with Disabilities Enrolled in Private Schools by Their Parents.

Providing parents, who have enrolled their children in private schools, and private school personnel with information regarding parents' rights under this rule is necessary so that that they have information regarding the school district services that continue to be available to their children.

(1) Prior notice. Parents shall be provided prior written notice a reasonable time before a school district proposes or refuses to initiate or change the identification, evaluation or educational placement of the student.

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

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

1. That the notice is translated orally to the parents in their native language or mode of communication;

2. That the parents understand 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 been met.

(c) The notice to the parents 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 procedural 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 unless it is clearly not feasible to do so.

(b) Written parental consent shall be obtained prior to the school district conducting a formal, individual evaluation to determine eligibility for specially designed instruction and

related services, prior to initial provision of specially designed instruction and related services, and prior to conducting a reevaluation for students with disabilities except as provided in paragraph (2)(e) of this rule.

(c) School districts shall document the attempts to secure consent from the parent as required by paragraphs (2)(a)-(b) of this rule.

(d) Parental consent is voluntary and may be revoked at any time before the school district's action occurs.

(e) Parental consent is required for reevaluation except when the school district can demonstrate that it has taken reasonable measures, consistent with those described in subparagraph (3)(d) of Rule 6A-6.03028, FAC., to obtain that consent and the student's parents have failed to respond.

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

(a) The parents of a child 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 their child's educational records maintained by the local school district.

(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 school district personnel with respect to the identification, evaluation, educational placement of their child.

(4) Mediation. The Department of Education provides parents of children with disabilities and school district personnel the opportunity to resolve disputes involving any matter related to a proposal or refusal to initiate or change the identification, evaluation or educational placement of the student through a mediation process. This mediation process is described in subsection (5) of Rule 6A-6.03311, FAC.

(5) State Complaint Procedures. The Department of Education shall provide parents of a child with a disability, enrolled in a private school by their parents, and other interested persons, the opportunity to resolve allegations that a school district has failed to meet the requirements of Sections 300.451 through 300.462 of Title 34 of the Code of Federal Regulations. The Department of Education's complaint procedures are described at subsection (6) of Rule 6A-6.03311, FAC.

(6) Independent educational evaluation. The parents of a child with a disability, enrolled in a private school by their parents, has the right to an independent educational evaluation as described in subsection (7) of Rule 6A-6.03311, FAC.

(7) Due Process Hearings. Administrative due process hearings, as described in section (12) of Rule 6A-6.03311, FAC., are applicable if the parent of a child with a disability, enrolled in a private school by their parents, that the school district failed to comply with the requirements for the

identification and evaluation of students with disabilities as described in Sections 300.504 through 300.515 and 300.530 through 300.543 of Title 34 of the Code of Federal Regulations.

Specific Authority 229.053(1), 230.23(4)(m) FS., Law Implemented 228.041(18)(19), 230.23(4)(m)5, FS., P.L. 105-17, 20 USC 1414 and 1415. History—New.

6A-6.030193 Development of Service Plans for Students with Disabilities Enrolled in Private School by their Parents and Provided with Specially Designed Instruction and Related Services by the Local School Board.

The provision of specially designed instruction and related services to eligible students with disabilities enrolled in private schools by their parents shall be consistent with the requirements of Rule 6A-6.03411(3)(n), Florida Administrative Code and as described in the district's Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students document. The provision of these services shall be consistent, to the extent appropriate, with the following requirements:

(1) 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 services plan. 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 the student is present at each service plan 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, location of the meeting, and who, by title or position, will be attending. The notice must also include a statement informing the parents that they have the right to invite an individual with special knowledge or expertise about their child.

1. If transition services are provided to a student with a disability beginning at age 14, or younger, if determined appropriate by the service plan team, 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 and indicate that the school district will invite the student.

2. If transition services are provided to a student with a disability, beginning at age 16, or younger, if determined appropriate by the service plan team, the notice must indicate that a purpose of the meeting is the consideration of needed transition services for the student, indicate that the school district will invite the student, and indicate any other agency that will be invited to send a representative.

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

(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

3. Detailed records of visits made to the parents home or place of employment and the results of those visits.

(e) The district shall take whatever action is necessary to ensure that the parent and the student beginning at age 14, understand the proceedings at a meeting, which may include arranging for an interpreter for parents and students who are deaf or whose native language is a language other than English.

(f) The district shall give the parent a copy of the service plan at no cost to the parent.

(g) The district shall ensure that a representative of the private school attends each service plan meeting. If the private school representative cannot attend, the district shall use other methods to ensure participation, including individual or conference calls.

(2) Service plan team participants. The service plan team shall include the following participants:

(a) The parents of the student in accordance with subsection (1) of this rule;

(b) At least one regular education teacher of the student from the private school;

(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. At the discretion of the school district, the student's special education teacher may be designated to also serve as the representative 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 (2)(b)-(d) of this rule;

(f) At the discretion of the parent, the private school, or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate. The determination of knowledge or special expertise of any individual shall be made by the party who invites the individual to be a member of the services plan team; and

(g) If transition services are to be provided, the student, beginning by the student's 14th birthday or younger if determined appropriate by the service plan team, when the purpose of the meeting is to consider the student's transition service needs. If the student does not attend, the school district and the private school shall take other steps to ensure that the student's preferences and interests are considered.

(h) If transition services are to be provided, a representative of any other agency that may be responsible for providing or paying for transition services, when the purpose of the service plan meeting is to consider 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.

(3) Timelines. Timelines for service plans shall include the following:

(a) Each private school student with a disability who has been designated to receive specially designed instruction and related services from the school district shall have a service plan that describes the services to be provided. This service plan, which has been reviewed and, if appropriate, within the past year, must be in effect at the beginning of each school year for each eligible private school student with a disability.

(b) A service plan must developed within thirty (30) calendar days following the determination of eligibility and must be in effect before specially designed instruction and related services are provided.

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

(4) Considerations in service plan development, review, and revision for private school students with disabilities. The services plan team shall consider the following in development, review, and revision:

(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 student's 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, and supports to address that behavior;

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

(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 service plan 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. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the service plan team determines that the student needs access to those devices in order to receive a free appropriate public education; and

(5) Contents of the service plans for students with disabilities. Each district, in collaboration with the student's parents and private school personnel, shall develop a service plan for each student with a disability. The service plan for each student with a disability that is provided services from the school district must include:

(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 objectives related to meeting the student's needs that result from the student's disability to enable the student to be involved 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 specially designed instruction and related services and supplementary aids and services to be provided to the student, or on behalf of the student, and 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 (5)(a) of this rule; to participate in extracurricular and other nonacademic activities; and to be educated and participate with other students with disabilities and nondisabled students in the activities described in this paragraph;

(d) An explanation of the extent, if any, to which the student will participate with nondisabled students in the regular class and in the activities described in paragraph (5)(c) of this rule;

(e) The projected date for the beginning of the services, accommodations and modifications described in paragraph (5)(c) of this rule and the anticipated frequency, location, and duration of those services;

(f) 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;

(g) If transition services are provided, the requirements of section (8) of Rule 6A-6.03028, FAC., regarding transition services must be met.

(h) Beginning at least one year before the student's eighteenth birthday, a statement that the student has been informed of rights under Part B of the Individual with Disabilities Education Act that will transfer from the parent to the student on reaching the age of majority (eighteen years of age). These rights are described in subsection (11) of Rule 6A-6.03311, FAC.

(6) Review and revision of the service plan. The school district shall ensure that the service plan team:

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

(b) Revise the service plan 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.

5. Consideration of the factors described in subsection (4) of this rule.

(7) Service plan implementation. A service plan is in effect before specially designed instruction and related services are provided by the local school district to an eligible student and is implemented as soon as possible following the service plan meeting.

(a) The student's service plan 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 subsection (2) of this rule shall be informed of specific responsibilities related to implementing the student's service plan and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the service plan.

Specific Authority 229.053(1), 230.23(4)(m) FS, Law Implemented 228.041(18)(19), 230.23(4)(m)5, 236.081(1)(c), 229.565(2)(b) FS., PL 105-17 (20 USC 1401, 1412, 1413, 1414, 1415). History-New

DEPARTMENT OF CORRECTIONS

RULE TITLE: Hobbycraft Programs

RULE NO.: 33-508.101

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to provide procedures for the operation of hobbycraft programs for inmates.

SUBJECT AREA TO BE ADDRESSED: Institutional mail.

SPECIFIC AUTHORITY: 944.09, 946.25 FS.

LAW IMPLEMENTED: 944.09, 946.25 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Perri King Dale, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-508.101 Hobbycraft Programs.

(1) Definitions.

(a) Chief of Security – refers to the highest ranking correctional officer at a facility who is responsible for overseeing and coordinating the security operations of the unit.

(b) Education Supervisor – refers to the staff member at an institution who is responsible for oversight of all inmate programs therein.

(c) Hobbycraft – refers to a program which allows inmates to create arts and crafts by hand.

(d) Inmate Wellness Program – refers to the physical and passive activities designed to facilitate changes in behavior to improve health and quality of life for the inmate population.

(e) Inmate Welfare Trust Fund – refers to the fund held by the department for the benefit and welfare of inmates as provided by s. 945.21502, F.S.

(f) Program Center – refers to the administrative office of the program manager for education and transition.

(g) Program Manager – refers to the staff member responsible for education and transition programs in a department service center area.

(h) Wellness Education Specialist – refers to the institutional staff member responsible for the administration of the institution's inmate wellness program.

(i) Wellness Program Administrator – refers to the Office of Program Services staff member responsible for the overall administration of the department's inmate wellness program.

(2) Specific Procedures.

(a) Hobbycraft clubs shall be established at all major institutions.

(b) The wellness education specialist shall report directly to the education supervisor at the institution.

(c) The wellness education specialist shall be responsible for hobbycraft operation, to include:

1. Coordinating and supervising the program and ensuring that direct staff supervision is provided during operating hours;

2. Maintaining a list of current participants and inmate sign-in sheets;

3. Maintaining a waiting list of approved requests to participate;

4. Maintaining a project work file on each inmate enrolled in the program, to include the following:

a. Inmate personal property lists,

b. Classification print-out which determined eligibility,

c. Sign-in sheets,

d. Copies of the inmate bank trust fund special withdrawals and hobbycraft supplies orders, and

e. Copies of invoices for supplies received;

5. Reviewing and approving all raw materials or supplies ordered in conjunction with the chief of security and the assistant warden for programs;

6. Coordinating the receipt of tools and equipment with the chief of security;

7. Maintaining an inventory of all items and tool control directly or in conjunction with security staff;

8. Arranging for the donation or disposal of hobbycraft items; and

9. Completing an Inmate Personal Property List, Form DC6-224, when a participating inmate receives hobbycraft supplies or materials. Form DC6-224 is incorporated by reference in Rule 33-602.201, F.A.C.

(d) The wellness education specialist is authorized to designate correctional officers assigned to the wellness program to conduct the duties described in paragraph (2)(b) above.

(3) Criteria For Placement In Program.

(a) Inmates in general population will be allowed to participate in any hobbycraft activity available at the institution.

(b) Participating inmates must have a clear disciplinary record for the prior four month period.

(c) Inmates must have a satisfactory or above-satisfactory job assignment rating for a period of four months. If an inmate is unable to work due to valid reasons, such as medical or mental health appointments, court appearances, or transfers not based on disciplinary reasons, he will be given credit for meeting eligibility criteria.

(d) Any inmate found guilty of a disciplinary infraction will be removed from hobbycraft and will not be eligible for placement in the program or on the waiting list until six months from the time his disciplinary obligation has been met.

(e) Inmates in close management or death row status shall be authorized to participate in the cell-based hobbycraft activity of drawing, to include sketch pads, crayons, water-based markers, chalk pastels, or charcoal.

(f) Inmates in the youthful offender extended day program must be in Phase III of that program in order to participate in hobbycraft activities.

(4) Entrance Requirements.

(a) Inmate participation in the hobbycraft club is considered a privilege.

(b) An inmate desiring to participate in the program must submit an Inmate Request, Form DC6-236, to the wellness education specialist. Form DC6-236 is incorporated by reference in Rule 33-103.019, F.A.C.

(c) The wellness education specialist shall submit the name of the inmate to the classification supervisor.

(d) The classification supervisor shall provide the wellness education specialist with a computer printout for determination of the inmate's eligibility for participation in the hobbycraft club. This printout will contain the eligibility information described in section (3) of this rule.

(e) If approved by the wellness education specialist, the wellness education specialist shall place the inmate's name on the active participation list or on the waiting list, depending on locker space availability, and shall notify the inmate in writing of that action on Form DC6-236.

(f) If disapproved, the wellness education specialist shall notify the inmate in writing, via Form DC6-236, that the inmate has been disapproved and provide the reason why he has been disapproved.

(g) Notification for approval or disapproval in hobbycraft shall be given to the inmate within ten days of the decision.

(h) The name of the inmate placed on the waiting list or approved for participation will be submitted by the wellness education specialist to health services in order to verify that the inmate is medically suitable to participate.

(5) Hobbycraft Clubs/Activities Established At Various Institutions.

(a) Inmates [except those described in paragraph (3)(e)] shall be permitted to participate in the following activities unless an exception is granted in accordance with paragraph (5)(b) below:

1. Sewing activities to include crocheting, knitting, needlepoint, macrame, quilting, doll-making, construction of doll-clothes, puppet-making, weaving, rug latching, hooking, and braiding.

2. Paper activities to include origami, kirigami, paper mache, and the construction of paper flowers/decorations and children's books.

3. Wood activities to include woodcarving, making toys or jewelry boxes, and popsicle/matchsticks/tooth pick projects.

4. Art activities to include drawing and sketching with pen/pencil, pastels, crayons, charcoal, water/oil paint; working with clay, creating sculpture, and calligraphy writing.

5. Horticulture to include the cultivation of bonsai plants and small flower-dishes.

6. Institutions which currently have ceramics, leatherwork, or woodcarving activities, shall be allowed to continue these activities. These institutions shall be authorized to support these activities with donated tools and equipment.

(a) Hobbycraft activities will be conducted in a location(s) designated by the warden.

(b) Participation in hobbycraft activities will not substitute for or conflict with job or program assignments.

(c) An hourly schedule for the hobbycraft program activities shall be established and posted in the close management posting areas and the inmate bulletin boards at each institution.

(6) Suspension/Loss of Hobbycraft Privileges.

(a) An inmate's hobbycraft privileges shall be subject to suspension or revocation due to concerns for the safety and security of the institution. This decision shall be made jointly with the warden and chief of security.

(b) An inmate's hobbycraft privileges shall be revoked due to:

1. Violation of department rules resulting in a finding of guilt at a disciplinary hearing.

2. Failure to actively participate in hobbycraft for at least fourteen days within a three month period determined by sign-in sheets, or

3. Determination that the inmate is operating tools or equipment in an unsafe manner, abusing the hobbycraft privilege, damaging tools or equipment, or misappropriating tools, equipment or supplies.

(c) An inmate's hobbycraft privileges shall be subject to temporary suspension for the following reasons.

1. The inmate is absent from the institution for more than six months for reasons beyond his control such as medical reasons or being out to court. In this case, the inmate will be removed from the program and placed on the top of the waiting list upon his return.

2. Inmates in hobbycraft who are transferred will be placed on the waiting list at the receiving institution. The wellness education specialist at the sending institution shall by e-mail notify the wellness education specialist at the receiving institution of the inmate's participation in hobbycraft.

(d) An inmate shall be allowed to appeal a decision to revoke or suspend hobbycraft privileges through the grievance process outlined in Chapter 33-103, F.A.C.

(7) Purchasing Supplies/Financial Responsibilities

(a) The inmate shall purchase materials, supplies, and kits utilized in the program. All inmates wishing to purchase materials or supplies must submit Form DC2-304, Special Withdrawal, and Form DC5-202, Hobbycraft Supplies Order Form, to the wellness education specialist. Form DC5-202 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of The General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is . Form DC2-304 is incorporated by reference in Rule 33-203.201, F.A.C.

(b) The wellness education specialist, in coordination with the chief of security, shall review the inmate's request against catalogs and vendor manuals to verify the authenticity of the materials and assess any security implications.

(c) The wellness education specialist shall submit for processing the completed DC2-304 and DC5-202 to the centralized inmate banking system section of the Bureau of Finance and Accounting in the financial service center.

(d) All materials and supplies must be purchased from vendors approved by the wellness education specialist and sent directly through the U.S. Mail or other approved commercial shipping services.

(e) An inmate shall not receive materials or hobbycraft supplies from other inmates, visitors, volunteers, employees, or organizations.

(8) Service Center Responsibilities.

(a) Once the service center receives the completed DC2-304 and DC5-202, the inmate bank accounting staff shall review the inmate's account to see if the inmate has sufficient funds to cover the cost.

(b) If there are sufficient funds, the funds will be withdrawn out of the inmate's bank account and the inmate will receive a withdrawal notification receipt from inmate bank system noting that funds were deducted from the inmate's bank account.

(c) In the case of an indigent inmate, if there are insufficient funds in the inmate's account to cover the cost of the materials and supplies, funds available will be withdrawn and a hobbycraft lien will be placed on the account for the difference.

(d) If an inmate has depleted the funds in the account prior to purchasing of the hobbycraft supplies, a hobbycraft lien will be placed on the account for the full amount.

(e) If at any time, an inmate receives sufficient funds to cover any part of the cost of the hobbycraft supplies, the hobbycraft lien will be removed or reduced. The funds will be

withdrawn out of the inmate's bank account and the inmate will receive a withdrawal notification receipt from the inmate bank system.

(9) Possession/Storage of Hobbycraft Materials.

(a) All tools and equipment utilized in hobbycraft will be the property of the Department.

(b) An inmate shall only be allowed to possess hobbycraft materials or supplies in quantities or sizes that can be stored in his assigned hobbycraft locker in the hobbycraft area. Hobbycraft tools or materials shall not be stored elsewhere.

(c) No personal property other than hobbycraft materials or supplies shall be maintained in these lockers.

(d) Inmates shall not store supplies or products for other inmates in hobbycraft lockers or personal housing lockers.

(10) Inventory/Searches.

(a) Tools will be maintained in accordance with current department tool and sensitive item control measures.

(b) The wellness education specialist shall maintain an Inmate Personal Property List, Form DC6-224, of the hobbycraft materials and supplies of each inmate participating in hobbycraft.

(c) Inmate hobbycraft lockers shall be subject to random search by wellness staff and security staff.

(11) Distribution of Completed Hobbycrafts. Inmates participating in hobbycraft will distribute completed hobbycraft projects either by mailing them to persons of their choice, excluding staff or relatives of staff, or by donating them to governmental agencies, schools or non-profit organizations. Completed hobbycraft projects may not be distributed to other inmate families or representatives.

(12) Toxic, Caustic or Flammable Materials.

(a) Toxic, caustic, or flammable materials will not be used by an inmate for any hobby craft program in any institution.

(b) All items used in the hobbycraft program will be maintained in accordance with current department tool and sensitive item control measures.

(13) Disposition.

(a) The Department will not be liable for lost, stolen, or damaged hobbycraft items.

(b) When an inmate is terminated from the program, his hobbycraft products will be disposed of in one of the following manners.

1. Completed items may be mailed home at the expense of the inmate;

2. Completed items may be donated to an agency or non-profit organization;

3. Materials and incomplete projects will be inventoried and boxed in accordance with Rule 33-602.201, F.A.C., and mailed out at the expense of the inmate;

4. The materials and incomplete projects may be donated to the department if the inmate is unable or unwilling to provide postage for mail-out;

5. Items may be discarded if determined by the wellness education specialist to be of no other use.

(c) Upon transfer to another institution, the materials will be inventoried and boxed in accordance with Rule 33-602.201, F.A.C., and either donated to the department or mailed home at the expense of the inmate.

Specific Authority 944.09, 946.25 FS. Law Implemented 944.09, 946.25 FS. History—New _____.

DEPARTMENT OF CORRECTIONS

RULE TITLE Use of Inmates in Public Works RULE NO.: 33-601.202

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to restrict use of inmate labor in public works to those classified as minimum or community custody.

SUBJECT AREA TO BE ADDRESSED: Use of inmates in public works.

SPECIFIC AUTHORITY: 944.09, 946.40(1) FS.

LAW IMPLEMENTED: 944.09, 944.10(7), 946.002, 946.40(1) FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Perri King Dale, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-601.202 Use of Inmates in Public Works.

(1) through (6) No change.

(7) Persons other than Department of Corrections employees may supervise minimum and ~~community medium~~ custody inmates under this rule only upon the approval of the warden or his designee.

(8) No change.

(9) The Department of Corrections is authorized to enter into agreements with any political subdivision to utilize close custody inmates:

(a) When there are unmet labor needs existing for political subdivisions and the institution is not able to provide minimum or ~~community medium~~ custody inmates and the type of work and work location is conducive to armed supervision of inmates;

(b) When there exists an emergency which requires more inmates than available from the minimum or ~~community medium~~ custody inmate institutional complement.

Specific Authority 944.09, 946.40(1) FS. Law Implemented 944.09, 944.10(7), 946.002, 946.40(1) FS. History—New 6-20-84, Formerly 33-3.17, Amended 2-27-86, 10-31-86, 1-28-98, 8-13-98, Formerly 33-3.017, Amended _____.

DEPARTMENT OF CORRECTIONS

RULE TITLE: Use of Force
 RULE NO.: 33-602.210

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to provide for new equipment and forms and to delete obsolete language.

SUBJECT AREA TO BE ADDRESSED: Use of force.

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 20.315, 944.09, 944.35 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Perri King Dale, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-602.210 Use of Force.

(1) No change.

(2) Physical force shall be employed only as a last resort when it reasonably appears that other alternatives are not feasible to control the situation and will not be used solely in response to verbal abuse that does not rise to a level of a disturbance. When the use of force is justified, only that amount and type of force that reasonably appears necessary to accomplish the authorized objective shall be used. All authorized use of force incidents will be videotaped in their entirety, except that videotaping the administration of chemical agents is not required in non-spontaneous use of force incidents, i.e., for use on an inmate creating a disturbance in his or her cell when the officer is attempting to resolve the situation without extracting the inmate from the cell. Videotaping will be initiated after the final exposure to chemical agents if cell extraction or other uses of force are necessary. All spontaneous use of force incidents will be videotaped from the point the video camera operator arrives at the scene.

(3) through (4) No change.

(5) Where circumstances permit, the warden or duty warden will be consulted and give her or his permission prior to use of physical force. If circumstances do not permit prior approval, the warden or duty warden will be notified immediately following any use of force incident. Whenever force is authorized, the employee who was responsible for making the decision to use force pursuant to subsection (1) shall prepare, date and sign the Authorization ~~F~~for Use of Force Report, Form DC6-232 either during, or immediately after, the tour of duty when force was used. Form DC6-232 is

~~hereby incorporated by reference in subsection (18) of this rule. Copies of this form may be obtained from any institution or from the Forms Control Administrator, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. If forms are to be mailed, the request must be accompanied by a self-addressed stamped envelope. The effective date of this form is 2-7-00.~~

(6) Whenever force is used, a detailed written report of force used shall be prepared, dated and signed by the initial employee using force. Form DC6-230, Institutions Report of Force Used, shall be used for this purpose. If more than one employee was involved in the initial use of force, the highest ranking official involved or the most senior employee shall complete the report. Each additional employee involved in the use of force who agrees with the facts and circumstances as reported on Form DC6-230 part I shall prepare an Institutions Report of Force Used Staff Supplement, Form DC6-231. The report shall describe in detail the type and amount of force used by himself or herself. Each employee shall individually write his or her own report, then submit the completed report to the clerical personnel designated by the warden to type all the reports onto one form to be signed by each employee. Any additional employee who does not agree with the facts and circumstances as reported in Form DC6-230 part I shall prepare a separate Form DC6-230, Institutions Report of Force Used. Forms DC6-230 and DC6-231 are ~~hereby incorporated by reference in subsection (18) of this rule. Copies of these forms may be obtained from the Forms Control Administrator, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. If forms are to be mailed, the request must be accompanied by a self-addressed stamped envelope. The effective date of these forms is 2-7-00.~~

(7) The Authorization ~~F~~for Use of Force Report and the Institutions Report of Force Used shall be completed by those staff involved either during or immediately after the tour of duty when force was used. If an emergency arises, the warden may authorize the employee to complete the reports immediately upon his return on the next calendar day. Barring such an emergency, all reports must be typed and submitted to the warden or assistant warden within 1 working day (Monday through Friday) following the incident.

(8) The warden or assistant warden shall immediately conduct a preliminary review of the video tape(s) and all associated reports for signs of excessive force or procedural deviation. If signs of excessive force or procedural deviation are noted by the warden or institutional inspector, she or he will notify the Office of the Inspector General directly, so that there is no undue delay in initiating an investigation. The warden shall then appoint a staff member of equal or higher rank than those involved in the use of force to collect all pertinent information. This information will include statements from all involved staff, inmates and staff and inmate witnesses.

This process will be completed within 5 working days (Monday through Friday). The warden shall review the information and note any inappropriate actions. The warden shall complete the Use of Force File Checklist, Form DC1-813, and shall forward the videotape(s) and associated reports on the use of force and the warden's summary to the institutional inspector within five working days. Form DC1-813 is incorporated by reference in subsection (18) of this rule. The institutional inspector will review the videotape(s) and associated documentation to ensure that all documentation is complete and will forward all materials to the Use of Force Unit within the Office of the Inspector General (OIG) within 5 working days. The OIG, following its review, will either approve the use of force action or disapprove it. If necessary, and refer it will be referred for investigation before final approval or disapproval. Copies of the employee's report, the warden's summary and the inspector general's review and determination shall be kept in the inmate's file. A Use of Force Log, Form DC2-802, shall be placed in every employee's personnel file. This form will be maintained by the servicing personnel office and shall contain a record of every report of use of force and staff supplement completed by the employee. The warden institutional inspector shall be responsible for submitting accurate information to the personnel office in order to maintain the DC2-802. Any use of force reports completed prior to April 15, 1998 shall also remain in the file. Form DC2-802, Use of Force Log, is hereby incorporated by reference in subsection (18) of this rule. Copies of this form can be obtained 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 2-7-00.

(9) Any employee who witnesses, or has reasonable cause to suspect, that an inmate has been unlawfully abused shall immediately prepare, date and sign an Incident Report, Form DC6-210, pursuant to Section 944.35(5), Florida Statutes, specifically describing the nature of the force used, the location and time of the incident and the persons involved. The report shall be delivered to the inspector general of the department with a copy delivered to the warden of the institution. The inspector general shall conduct an appropriate investigation and, if probable cause exists that a crime has been committed, notify the state attorney in the circuit in which the institution is located. Form DC6-210, Incident Report, is hereby incorporated by reference in subsection (18) of this rule. Copies of this form can be obtained 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 2-7-00.

(10) Force or restraint may be used to administer medical treatment when ordered by a physician or doctoral level psychologist, and only when treatment is necessary to protect

the health of other persons, as in the case of contagious and venereal diseases, or when treatment is offered in satisfaction of a duty to protect the inmate against self-inflicted injury or death. The physician or doctoral level psychologist shall prepare a report documenting the reasons that force or restraint was authorized. Form DC6-232, Authorization for Use of Force Report, shall be used for this purpose. The physician's or doctoral level psychologist's report shall be attached to the Institutions Report of Force Used. In each instance a DC4-701C, Emergency Room Record, shall be completed in its entirety with applicable data, or the letters N/A used to indicate not applicable. If an injury is claimed or found to exist, Form DC4-708, Diagram of Injury, shall also be completed in its entirety with applicable data, or the letters N/A used to indicate not applicable. In each case, the examination shall be complete and result in a clear statement by the medical provider that there is or is not an injury, and the record shall provide sufficient documentation to support that conclusion. In all cases where physical force is used to manage an inmate, the inmate and any employee who is involved will be required to receive a medical examination or will sign an Affidavit of Refusal for Health Services, Form DC4-711A, declining the examination. In those cases where an injury is claimed but not substantiated by medical examination, the statement by the medical provider shall indicate this, and the documentation shall be sufficient to support that no injury was found upon examination. Forms DC4-711A, DC4-701C and DC4-708 are incorporated by reference in subsection (18)(45) of this rule.

(11) The use of electronic immobilization restraining devices, batons, or chemical agents, or specialty impact munitions within institutions shall be authorized only by the warden, or duty warden if the warden is not available. For purposes of this rule, the duty warden shall be an assistant warden, colonel, major of a work camp that is attached to a major institution, or a major of a work release center if so designated by the warden and regional director (taking into consideration the proximity of the work release center to the institution) of a rank of correctional officer colonel or higher. The correctional officer major at the main unit can serve as duty warden at those institutions that do not have a correctional officer colonel. Batons shall be used only by trained baton squad members to disarm an inmate or during situations in which the squad has been activated to quell a disturbance. The decision to use chemical agents, specialty impact munitions, or authorized electronic immobilization restraining devices shall be based on which level of force is most likely to resolve the situation with the least amount of injury to all parties involved. Hands-on physical force shall be avoided if injury is less likely to occur by using chemical agents, specialty impact munitions, or electronic immobilization restraining devices.

(12) Use of electronic immobilization restraining devices.

(a) Electronic immobilization restraining devices authorized by the department include: shall be used primarily, but not exclusively, during transporting and supervision of inmates outside the institution.

1. Ultron II, handheld, which shall be issued primarily for the purpose of transportation and supervision of inmates outside the institution;

2. Ultron electronic shield, which shall be primarily used by force cell extraction teams; and,

3. Electronic restraint belt, which is authorized for use for inmate court appearances and other transports of high-risk inmates.

(b) Electronic immobilization restraining devices shall only be used by officers who have successfully completed the Department of Corrections' authorized training for these devices.

(c) Electronic immobilization restraining devices shall be used in accordance with manufacturer's specifications and limitations.

(d) If possible, the shift supervisor shall be present when electronic immobilization restraining devices are used at the institution or facility.

(e) Where time and circumstances permit, medical staff shall be consulted to determine if the inmate has any medical condition that would make the use of an electronic immobilization restraining device dangerous to that inmate's health.

(f) Electronic immobilization restraining devices shall be issued to the unarmed officers on any inmate transport where firearms are issued, or on any outside hospital assignment where firearms are issued. The chief of security, or in his absence, the shift supervisor, shall determine the number of officers who will be issued firearms and electronic immobilization restraining devices during such trips.

(g) As soon as possible following each use of an electronic immobilization restraining device the inmate shall be afforded medical examination and treatment.

(h) In any case where electronic immobilization restraining devices are used, an Institutions Use of Force Report shall be written and shall include:

1. What precipitated the use of the device;
2. To what extent it was used and what results were derived from its use;
3. Color photos of the marks left by the device. If the application of the device occurs during a videotaped use of force incident, the videotape, along with the narration by staff, of the marks is an acceptable alternative.

(i) Electronic immobilization restraining devices shall be stored and maintained in either the main arsenal or the control room mini-arsenal. The warden may authorize, in writing, the storage of one handheld unit and one shield ~~in the officer's~~

~~station~~ in the confinement unit or close management unit. These devices shall be kept secured in a locked cabinet when not in use.

(j) All electronic immobilization restraining devices shall be accounted for in the same manner as firearms.

(k) There shall be no attempt to alter, tamper with, or repair any electronic immobilization restraining device. If a unit malfunctions or needs repair, it shall be sent to an authorized repair station. If a unit requires attention, it shall not be issued until repaired. If any electronic immobilization restraining device is dropped or knocked out of the hand, it shall be immediately tested to determine if it is damaged or is operating properly.

(13) Use of Chemical Agents.

(a) The following chemical agents are authorized for use by the department:

1. OC – Oleoresin Capsicum (pepper spray) – An inflammatory agent that causes tearing and involuntary closing of the eyes, nasal discharge, sneezing, disorientation, and the sensation of respiratory distress.

a. OC is the primary chemical agent to be used for cell extractions and other in-cell, individual, use.

b. OC shall be used only in the manner prescribed in department rules and procedures, consistent with manufacturer directions.

c. Canister weights shall be monitored by the chief of security following use of the chemical agent to ensure the amounts used are consistent with that expected for the number of authorized one second bursts from the canister.

2. CS – Orthochlorobenzal Malononitrile or Orthochlorobenzylidene Malononitrile – An irritant agent that causes eyes to burn and tear, nasal discharge, and skin and upper respiratory irritation.

a. CS shall be used for cell extractions and other in-cell, individual, use only when OC is ineffective and efforts to talk the inmate into cooperating have failed.

b. CS shall be used only in the manner prescribed in department rules and procedures, consistent with manufacturer directions.

c. Canister weights shall be monitored by the chief of security following use of the chemical agent to ensure the amounts used are consistent with that expected for the number of authorized one second bursts from the canister.

3. CN – Chloroacetophene – A lacrimator agent that causes tearing of the eyes, nasal discharge, and skin and upper respiratory irritation.

a. CN projectiles, grenades and foggers shall only be used for disturbances and crowd control.

b. CN shall be authorized for use as set forth in a. above only until the expiration date of current stores, at which time CN is no longer authorized for purchase.

(b) through (f) No change.

(g) No inmate shall be handcuffed solely for the purpose of administering chemical agents. If chemical agents are administered to a handcuffed inmate, an explanation as to why the removal of the handcuffs was not feasible shall be included in Section I of the Institutions Report of Force Used, Form DC6-230.

(h) No change.

(i) Chemical agents shall only be used when a use of force is necessary and when this level of force is the least likely to cause injuries to staff or inmates.

(j) All chemical agents shall be used with caution and in accordance with the manufacturer's instructions. The Material Safety Data Sheet (MSDS) for chemical agents shall be kept where chemical agents are located at the institution.

(k) Chemical agents shall be stored in the main arsenal. A small amount of chemical agents may be stored in secure locations such as the control room mini-arsenal or the officer's station in confinement and close management units until its use is authorized. Shift supervisors, correctional officer sergeants, recreation officers, staff assigned to close management or to escort close management and other designated high security inmates, work squad officers, staff assigned as housing supervisors, and other assigned internal security officers shall be issued one three or four ounce dispenser of MK-4 Defense Technologies 10% non-flammable OC pepper spray or equivalent, with marking dye, after being properly trained in chemical agent utilization. The chemical agent dispenser which shall be securely encased and attached to the officer's belt. Each MK-4 chemical agent dispenser will be secured within a pouch by a numbered, breakable seal. Form DC6-213, Individual Chemical Agent Dispenser, will be utilized to document the name of the officer to whom each dispenser is assigned as well as the seal number on the dispenser she or he received. Upon receiving the dispenser and pouch, the officer will examine the safety seal to ensure that it is intact. If the seal is broken, the Shift Supervisor will be notified immediately and an Incident Report, Form DC6-210, will be written. Form DC6-213 is incorporated by reference in subsection (18) of this rule.

(l) In any case where chemical agents are used, an accurate record shall be maintained as to what type of agent was used, how much was used, method of administration, person authorized to draw chemical agent when issued from a secure location, person administering the chemical agent, location administered, and reason for use. This information shall be included in section I of the Use of Force Report. Individual chemical agent dispensers carried by staff will be weighed by staff as designated by the warden at the beginning and end of each shift. These inspections will be documented on Form DC6-213, Individual Chemical Agent Dispenser Accountability Log, and any discrepancies shall be immediately reported. Form DC6-213 is hereby incorporated by reference. Copies of this form are available from the Forms

~~Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-1500. Requests for copies to be mailed must be accompanied by a self-addressed stamped envelope. The effective date of this form is 2-7-00.~~

(m) Procedure for the use of chemical agents on disruptive inmates under controlled conditions:

1. If an inmate becomes disorderly, disruptive, unruly, and attempts by officers at counseling and ordering the cessation of disruptive behavior fails, the confinement or close management lieutenant or shift supervisor or person of higher rank shall be contacted for further instructions.

2. If the confinement or close management lieutenant or shift supervisor's efforts to control the disorderly inmate have failed and the use of chemical agents is the least level of force that can be expected to successfully gain control of the disruptive inmate while minimizing the risk of injuries to all involved, the shift supervisor shall:

a. Ensure that medical staff are contacted when time and circumstances permit, to determine if the inmate has a medical condition that would prevent the use of chemical agents; and

b. Contact the warden or duty warden and request authorization to utilize chemical agents.

3. Prior to using chemical agents, the inmate again shall be ordered by staff to cease his actions.

a. If these efforts fail, the confinement or close management lieutenant or shift supervisor shall order the disorderly inmate to cease his actions and inform him that chemical agents will be administered if he continues his disruptive behavior.

~~b. Any uninvolved inmates in the cell or immediate area shall be given an opportunity to leave the potentially affected area, if it will not jeopardize the safety of staff or other inmates.~~

~~b.e.~~ Except in cases of emergency, the confinement or close management lieutenant or shift supervisor shall be present during the time of the final counseling period and the administering of chemical agents.

(n) through (o) No change.

(p) Inmates exposed to chemical agents shall be allowed and encouraged to shower and change both inner and outer wear after exposure for decontamination purposes.

1. If an inmate refuses to shower or change, the refusal should be documented:

a. On Form DC6-210, Incident Report, by the shift supervisor, if the inmate is in general population;

b. On Form DC6-229, Daily Record of Segregation, by the confinement lieutenant or shift supervisor, if the inmate is in confinement; or,

c. On Form DC6-229, by the close management lieutenant or shift supervisor, if the inmate is in close management. Form DC6-229 is incorporated by reference in Rule 33-601.800.

2. In the event the inmate refuses to shower or change, staff shall advise the medical staff member who is responsible for examining the inmate following the use of force of this refusal.

(14) Specialty Impact Munitions. Specialty impact munitions shall be used primarily by the department's rapid response teams and correctional emergency response teams during riots and disturbances. They are intended as a less lethal alternative to the use of deadly force. Specialty impact munitions shall only be employed by officers trained in their use and effects.

(a) Definitions:

1. Specialty Impact Munitions – Munitions designed to incapacitate, distract, and control a subject with less likelihood of life-threatening injury.

2. Rubber Ball Rounds – Multiple pellets fired from cartridges at the lower extremities of rioters, designed to inflict pain compliance.

3. Wooden Baton Rounds – Multiple wooden baton rounds fired from a 37-MM weapon, designed to be skip fired into the lower extremities of rioters to inflict pain compliance.

4. Skip Firing – The practice of firing specialty impact munitions 5-7 feet in front of rioters, thereby deflecting the munitions into the legs of the rioters.

5. Direct Firing – The practice of firing specialty munitions directly into a group of rioters, from a distance of greater than 20 feet with a target area of the waist or below.

(b) The following specialty impact munitions have been approved for use by the department:

1. 37-MM rubber ball pellet rounds,

2. 12 gauge rubber ball pellet rounds,

3. 37-MM wooden baton rounds.

(c) Selection and deployment of specialty impact munitions during a riot or disturbance shall be authorized by the ultimate commander and supervised by the rapid response or correctional emergency response team leader. For the purposes of this rule, the ultimate commander is the secretary or his designee at the central office level, the regional director or his designee at the regional level, or the warden or his designee at the institution level.

(d) Specialty impact munitions shall only be used after all other reasonable alternatives to regain control have been exhausted. They are intended to be used as an interim force response between the use of chemical agents and lethal force.

(e) Specialty impact munitions shall not be deployed in the direction of any individual at a distance of less than 10 feet, unless the threat justifies the escalation to deadly force.

(f) Storage of Specialty Impact Munitions.

1. Specialty impact munitions shall be stored and maintained in the main arsenal.

2. Specialty impact munitions shall not be mixed with lethal munitions. Weapons designated to deploy specialty impact munitions shall be marked in a manner to alert staff of their intended use.

3. All specialty impact munitions will be accounted for in the same manner as firearms and ammunition.

(g) After each use of specialty impact munitions, exposed inmates shall be examined by medical personnel.

(h) In any case where specialty impact munitions are deployed, a use of force report shall be filed in accordance with use of force procedures set forth in this rule.

(i) After deployment of specialty impact munitions the discharging officer shall file an incident report, Form DC6-210. Form DC6-210 is incorporated by reference in subsection (18) of this rule. Staff shall collect and secure the empty munitions cartridges for accountability and investigative purposes.

(15)(14) Use of Firearms. In order for all concerned to be aware of their responsibilities, the statewide procedures set forth in this rule shall be included in the appropriate Department of Corrections procedures, post orders and escape emergency plans at each institution.

(a) No change.

(b) Firearms or weapons shall be issued to an employee only upon instructions of the warden, assistant warden, chief of security or shift supervisor by the arsenal officer or the officer designated to issue weapons. Employees shall not intentionally discharge a firearm at or in the direction of another person except under the following circumstances and after all reasonable non-lethal alternatives have been exhausted, and there is no danger to innocent bystanders:

1. ~~Escape or apprehension of an identified escapee for~~ self-defense;

2. Use of vehicle to gain unauthorized entry into or exit from a correctional institution in order to facilitate an escape ~~To prevent escape;~~

3. To prevent injury to a person including self-defense ~~prevent injury to a person;~~ or

4. To quell a riot.

(c) The use of twelve gauge #6 steel turkeyshot is approved for use by the rapid response teams during riots and disturbances. It is intended to be fired from a distance in the direction of the rioters' lower extremities to inflict pain compliance to directions and orders. It is acknowledged that the #6 steel shot has the potential of inflicting a lethal injury, however, its use is considered a less lethal interim munition to be used prior to more lethal loads authorized by the department.

(c) through (g) renumbered (d) through (h) No change.

(i)(~~h~~) Because helicopters or other aircraft may be used during an escape or assault, the following policy shall apply:

1. through 7. No change.

8. If attempts to prevent inmates from boarding the aircraft described in 7. above fail and the aircraft leaves, the aircraft is not to be fired upon, unless the officer is returning fire as described in 7. above. Immediate notification should be made to law enforcement personnel and the Federal Aviation Administration giving departing flight directions and any other information necessary to identify the aircraft. Additional information on the escaped inmates, possible damage to the aircraft, and weapons used by persons in the aircraft should also be reported.

9. through 10. No change.

(i) through (j) renumbered (j) through (k) No change.

~~(16)(15)~~ Medical Attention Following Use of Force. Appropriate medical treatment shall be provided ~~immediately or, in the case of a riot or other man-made or natural disaster, as soon as possible,~~ if an inmate or employee is injured. Any treatment or follow-up action shall be documented in section III of Form DC6-230, Institutions Report of Force Used. A qualified health care provider shall examine any person physically involved in a use of force to determine the extent of injury, if any, and shall prepare a report which shall include, but not be limited to, a statement of whether further examination by a physician is necessary. Any noticeable physical injury shall be examined by a physician and the physician shall prepare a report documenting the extent of the injury and the treatment prescribed. Such report shall be completed within 1 day of the incident and shall be submitted to the warden for initial review. The qualified health provider and physician shall use Form DC4-701C, Emergency Room Record, to document an examination following use of force. Form DC4-708, Diagram of Injury, shall be used along with Form DC4-701C to document obvious physical injuries. A copy of the report, along with the referenced forms, shall be attached to the Institutions Report of Forced Used. The original reports shall be filed in the medical record. ~~Forms DC4-701C and Form DC4-708 are hereby incorporated by reference. Copies of these forms may be obtained from the Forms Control Administrator, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. If forms are to be mailed, the request must be accompanied by a self-addressed stamped envelope. The effective date of these forms is 2-7-00.~~

~~(17)(16)~~ Any violations of provisions of this section shall be subject to the penalties prescribed in Section 944.35, Florida Statutes.

(18) The following forms are hereby incorporated by reference. Copies of these forms are available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

- (a) DC1-813, Use of Force File Checklist, effective _____.
- (b) DC2-802, Use of Force Log, effective 2-7-00.
- (c) DC4-701C, Emergency Room Record, effective _____.
- (d) DC4-708, Diagram of Injury, effective _____.
- (e) DC4-711A, Affidavit of Refusal for Health Services, effective _____.
- (f) DC6-210, Incident Report, effective 2-7-00.
- (g) DC6-213, Individual Chemical Agent Dispenser, effective 2-7-00.
- (h) DC6-230, Institutions Report of Force Used, effective _____.
- (i) DC6-231, Institutions Report of Force Used Staff Supplement, effective 2-7-00.
- (j) DC6-232, Authorization for Use of Force Report, effective 2-7-00.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.35 FS. History—New 4-8-81, Amended 10-10-83, 9-28-85, Formerly 33-3.066, Amended 3-26-86, 11-21-86, 4-21-93, 7-26-93, 11-2-94, 2-12-97, 11-8-98, Formerly 33-3.0066, Amended 10-6-99, 2-7-00, _____.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Building Code Administrators and Inspectors Board

RULE TITLES:	RULE NOS.:
Continuing Education for Biennial Renewal	61G19-9.001
Approval of Proctored Telecourses	61G19-9.0045
Records Required to be Maintained by Course Providers	61G19-9.007

PURPOSE AND EFFECT: The Board proposes to update the above rules.

SUBJECT AREA TO BE ADDRESSED: Continuing Education for Biennial Renewal; Approval of Proctored Telecourses; Records Required to be Maintained by Course Providers.

SPECIFIC AUTHORITY: 455.2124, 468.606, 468.627 FS.

LAW IMPLEMENTED: 455.2124, 468.627 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Anthony Spivey, Executive Director, Building Code Administrators and Inspectors, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DOCKET NO.: 01-48R

RULE CHAPTER TITLE: Water Well Contractors
 RULE CHAPTER NO.: 62-531

PURPOSE AND EFFECT: To modify the Water Well Contractor Disciplinary Guidelines and Procedures Manual, and add recent statute requirements for course work and continuing education for licensed water well contractors.

SUBJECT AREA TO BE ADDRESSED: To update the points and monetary matrix of the Water Well Contractor Disciplinary Guidelines and Procedures Manual to provide more stringent disciplinary action for violations during the construction, repair or abandonment of water wells. Proposed amendments will also require 12 hours of approved course work be completed prior to becoming a licensed water well contractor and 12 hours of continuing education be completed for each renewal cycle of a license.

SPECIFIC AUTHORITY: 373.043, 373.309 FS.

LAW IMPLEMENTED: 120.60, 373.043, 373.306, 373.308, 373.309, 373.316, 373.319, 373.323, 373.324, 373.325, 373.326, 373.329, 373.333, 373.336 FS.

The Department of Environmental Protection announces a public workshop on proposed amendments to Chapter 62-531, Water Well Contractors, to which all persons are invited.

TIME AND DATE: 1:30 p.m., October 19, 2001

PLACE: Hampton Inn, 430 A1A Beach Boulevard, St. Augustine, Florida

If an accommodation for a disability is needed in order to participate in the public workshop, please call the Personnel Specialist, (850)488-2996 or 1(800)955-8771 (TDD), at least 7 days before the meeting.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Donnie McClaugherty, Department of Environmental Protection, Water Quality Standards and Source Water Protection Section, 2600 Blair Stone Road, MS 3575, Tallahassee, Florida 32399-2400, telephone (850)921-9438

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF HEALTH

Division of Medical Quality Assurance Boards

RULE TITLE: Examinations, Fees
 RULE NO.: 64B-1.016

PURPOSE AND EFFECT: Senate Bill 1558, effective July 1, 2001, provided new statutory authority to the Department of Health to set fees for examinations for initial licensure and certification, offered through the Division of Medical Quality Assurance. Accordingly, proposed new Rule 64B-1.016, puts forth examination fees that include all costs to the Department to develop, purchase, validate, administer, and defend such examinations, in an amount certain to cover all administrative

costs, plus the actual per-applicant cost of the examination. Additional fees are proposed to cover the actual cost to the Department to provide examination reviews.

SUBJECT AREA TO BE ADDRESSED: Fees for all licensure and certification examinations that are developed, purchased, validated or administered through the Florida Department of Health, Division of Medical Quality Assurance, along with additional fees for examination reviews.

SPECIFIC AUTHORITY: 456.004(5) FS.

LAW IMPLEMENTED: 456.004(10), 456.017(2) FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE ISSUE OF THE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Lucy Gee, Chief, Bureau of Operations, 4052 Bald Cypress Way, Bin #C10, Tallahassee, Florida 32399-3260

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF HEALTH

Board of Clinical Laboratory Personnel

RULE TITLE: Responsibilities of Directors
 RULE NO.: 64B3-13.001

PURPOSE AND EFFECT: The Board proposes to resolve issues with regard for the delegation of duties by the Clinical Laboratory Director.

SUBJECT AREA TO BE ADDRESSED: Responsibilities of Directors.

SPECIFIC AUTHORITY: 483.805(4) FS.

LAW IMPLEMENTED: 483.800, 483.813, 483.823, 483.825 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT A TIME, DATE AND PLACE TO BE ANNOUNCED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND FOR A COPY OF THE PRELIMINARY DRAFT IS: Joe Baker, Jr., Executive Director, Board of Clinical Laboratory, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B3-13.001 Responsibilities of Directors.

(1) through (4) No change.

(5) The director can delegate performance of responsibilities to licensed supervisors, however, the director remains responsible for ensuring that all duties are properly performed. The delegation of responsibilities must be written and specific.

(6) The laboratory director shall:

(a) Be accessible to the clinical laboratory to provide on-site, telephone or electronic consultation as needed. This responsibility may not be delegated except to a clinical laboratory director.

(b) through (y) No change.

(7) Only a clinical laboratory director qualified pursuant to Chapter 483, Part III, F.S., may use the term "Clinical Laboratory Director" in his or her job title.

Specific Authority 483.805(4) FS. Law Implemented 483.800, 483.813, 483.823, 483.825 FS. History—New 12-6-94, Amended 3-28-95, Formerly 590-13.001, Amended _____.

DEPARTMENT OF HEALTH

Board of Massage

RULE TITLE: Minimum Requirements for Board of Massage Therapy Approval

RULE NO.: 64B7-32.003

PURPOSE AND EFFECT: The Board proposes to amend an existing rule regarding the requirements for Board approval of massage schools.

SUBJECT AREA TO BE ADDRESSED: Massage schools and the requirements for Board approval of massage schools, including hours and courses required.

SPECIFIC AUTHORITY: 480.035 FS.

LAW IMPLEMENTED: 480.033, 480.041 FS.

THE BOARD OF MASSAGE THERAPY WILL CONDUCT A RULE DEVELOPMENT WORKSHOP AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 1:00 p.m., October 24, 2001

PLACE: Crowne Plaza Hotel, 950 N. W. Lejenue Road, Miami, Florida 33126

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop meeting, is asked to advise the agency at least 5 calendar days before the workshop by contacting Karen Eaton, Executive Director, Board of Massage Therapy, (850)245-4444, Ext. 4162. If you are hearing or speech impaired, please contact the agency by calling 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

Section 286.0105, Florida Statutes, provides that, if any person decides to appeal any decision made by the Department/Board of Massage Therapy with respect to any matter considered at this workshop, they will need a record of proceedings, and for such purposes, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND TO RECEIVE A PRELIMINARY DRAFT, IF AVAILABLE, IS: Karen Eaton, Executive Director, Board of Massage, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF HEALTH

Dental Laboratories

RULE TITLE: Dental Laboratory Registration

RULE NO.: 64B27-1.002

PURPOSE AND EFFECT: The Department of Health is proposing amendments to Rule 64B27-1.002, FAC., in order to correspond with Section 456.032, Florida Statutes, requiring biennial registration for each dental laboratory. Additional obsolete language has been deleted.

SUBJECT AREA TO BE ADDRESSED: Biennial registration of dental laboratories.

SPECIFIC AUTHORITY: 466.038 FS.

LAW IMPLEMENTED: 466.032(1) FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Sue Foster, Executive Director, 4052 Bald Cypress Way, Bin #C08, Tallahassee, FL 32399-3250

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

FLORIDA HOUSING FINANCE CORPORATION

RULE TITLES:	RULE NOS.:
Definitions	67-39.002
Guarantee Program	67-39.0025
Feasibility Studies	67-39.003
Eligibility Criteria for Qualified Obligations	67-39.004
Required Submissions for Qualified Lending Institutions	67-39.0045
Fees and Rates	67-39.005
Contractual Provisions of Qualified Obligation Documents	67-39.006
Reimbursable Costs	67-39.008
Program Documents	67-39.010
Guarantee Program	67-39.011
Guarantee Coverage	67-39.012
Guarantee Program Payments	67-39.014
Audit Requirement	67-39.015

PURPOSE AND EFFECT: The purpose of this Rule is to implement the provisions of Section 420.5092, Florida Statutes, establishing the Florida Affordable Housing Guarantee Program.

SUBJECT AREA TO BE ADDRESSED: The rule amends existing Rule 67-39, F.A.C., to provide for additional powers of the Board of Directors of the Florida Housing Finance Corporation, acting in its capacity as guarantor under the

Affordable Housing Guarantee Program, to specify how and when feasibility studies with respect to the guarantee fund will be conducted, to set forth additional eligibility criteria for guarantees of qualified obligations, to specify the submissions required to become a qualified lending institution whose obligations may be guaranteed, to provide for a good faith deposit to be paid to the Corporation in connection with proposed guarantees, and to provide for revised and additional mandatory contractual provisions in documents supporting qualified obligations.

SPECIFIC AUTHORITY: 420.507, 420.5092(4) FS.

LAW IMPLEMENTED: 420.5092 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., October 22, 2001

PLACE: Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301

Any person requiring special accommodation at this workshop because of a disability or physical impairment should contact Laurie Camp at the above address. If you are hearing or speech impaired, please use the Florida Dual Party Relay system which can be reached at 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Junious Brown, Guarantee Program Administrator, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

Section II Proposed Rules

DEPARTMENT OF STATE

Division of Elections

RULE TITLE: RULE NO.:

Clear Indication of Voter's Choice 1S-2.027
on a Ballot

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to identify what is a clear indication of a voter's choice on a ballot as required by section 42, Chapter 2001-40, Laws of Florida.

SUMMARY: The rules provide a practical and uniform method of determining what is a clear indication of a voter's choice on a ballot in a recount situation.

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: 102.166(5)(b) FS.

LAW IMPLEMENTED: 102.166(5)(b) FS.

HEARINGS WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW:

TIME AND DATE: 9:00 a.m. – 12:00 p.m., October 29, 2001
PLACE: Rooms 18-3 and 18-4, Eighteenth Floor, Stephen C. Clark Center, 111 N. W. 1st Street, Miami, Florida 33128-1906

TIME AND DATE: 1:00 p.m. – 4:00 p.m., October 30, 2001
PLACE: 119 West Kaley Street, Orlando, Florida 32806

TIME AND DATE: 9:00 a.m. – 12:00 p.m., November 2, 2001
PLACE: Room 116, Knott Building, 415 West St. Augustine Street, Tallahassee, Florida 32399-0250

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Amy K. Tuck, Assistant General Counsel, Division of Elections, Department of State, Room 1801, The Capitol, Tallahassee, Florida 32399-0250, (850)488-1402

Pursuant to the Americans with Disabilities Act, persons needing special accommodations to participate in this meeting should contact Amy K. Tuck, (850)488-1402, at least three days in advance of the meeting.

THE FULL TEXT OF THE PROPOSED RULE IS:

1S-2.027 Clear Indication of Voter's Choice on a Ballot.

(1) The following are standards to determine voter intent in a manual recount as provided specifically by Section 102.166, Florida Statutes.

(2) The following are guidelines for determining on an optical scan voting system whether or not there is a clear indication on the ballot that the voter has made a definite choice:

(a) Ballots must be marked in pen or pencil.

(b) If a ballot is marked with a color or device that does not permit an accurate machine count, that vote shall count.

(c) If a voter circles the oval or arrow next to a candidate or issue, the vote for that candidate or issue shall count.

(d) If a voter circles or underlines the name of a candidate, the vote shall count for that candidate.

(e) If a voter circles or underlines the name of a party next to a candidate's name, the vote shall count for that candidate.

(f) If there is an "X," a check mark, a diagonal, horizontal or vertical mark, a plus sign, an asterisk, a star or any other mark that is substantially contained in the oval, touching the oval or arrow, or within the blank space between the head and tail of the arrow that clearly indicates the voter intended the oval or arrow to be marked, that vote shall count.