

DEPARTMENT OF HEALTH

Board of Occupational Therapy

RULE TITLE: Examination; Passing Grade
 RULE NO.: 64B11-3.004

PURPOSE AND EFFECT: The Board proposes to review the existing language in this rule to determine if amendments are necessary.

SUBJECT AREA TO BE ADDRESSED: Examination; passing grade.

SPECIFIC AUTHORITY: 468.204, 468.211(4) FS.

LAW IMPLEMENTED: 468.211(4) 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, IF AVAILABLE, IS: Kaye Howerton, Executive Director, Board of Occupational Therapy, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF FINANCIAL SERVICES

Office of Insurance Regulation

RULE TITLE: Filing Procedures for Property and Casualty Insurance Rates, Rules, Underwriting Guidelines, and Forms
 RULE NO.: 69O-170.013

PURPOSE AND EFFECT: To develop rules to adopt procedures and standards for the review and approval of rates for terrorism insurance coverage in accordance with the Terrorism Risk Insurance Act of 2002.

SUBJECT AREA TO BE ADDRESSED: Terrorism insurance endorsements and rates.

SPECIFIC AUTHORITY: 624.308 FS.

LAW IMPLEMENTED: 624.307(1), 624.604, 624.605, 627.062, 627.0645, 627.0651 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: 9:00 a.m., March 2, 2004

PLACE: Room 116, 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 below.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Jack Swisher, Bureau of Property and Casualty Forms and Rates, Office of Insurance Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0330, e-mail swisherj@dfs.state.fl.us

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

69O-170.013 Filing Procedures for Property and Casualty Insurance Rates, Rules, Underwriting Guidelines, and Forms.

(1) through (6) No change.

(7) This rule applies to that portion of a rate filing relating to terrorism coverage required under the Terrorism Risk Insurance Act of 2002. The Office recognizes the difficulty facing an individual insurer in demonstrating that its rates related to terrorism are not excessive, inadequate, or unfairly discriminatory. An insurer is free to use any generally accepted and reasonable actuarial technique in its filing which it believes demonstrates that the rates requested or implemented are in compliance with Section 627.062, Florida Statutes. If an insurer is unable to demonstrate through its own methodology that the rate requested or implemented complies with Section 627.062, Florida Statutes, then the insurer may, at its option, adopt the methodology, data, and rates of another insurer, as appropriate, that have been previously approved by the Office.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 624.604, 624.605, 627.062, 627.0645, 627.0651 FS. History—New 3-30-92, Amended 3-9-93, 8-23-93, 10-3-94, 8-3-95, 10-2-96, 6-19-03, Formerly 4-170.013, Amended _____.

**Section II
 Proposed Rules**

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Mosquito Control Program Administration	5E-13
RULE TITLES:	RULE NOS.:
Definitions	5E-13.021
Eligibility for State Approved Program and/or Aid	5E-13.022
Certified Budgets, Filing	5E-13.027
State Aid Basis and Availability	5E-13.030
District or County Use of Funds	5E-13.031
Program Directors, Employment and Classification	5E-13.032

Penalty for Failure to Comply with Public Law 92-516, the Federal Insecticide, Fungicide, and Rodenticide Act(FIFRA) of the U.S. Environmental Protection Agency and their Rules 5E-13.034
 Intent 5E-13.035
 Demonstrable Increase or Other Indicator of Arthropod Population Level 5E-13.036
 Aircraft Application for the Control of Adult Arthropods 5E-13.037
 Protection of Natural Resources and of the Health, Safety, and Welfare of Arthropod Control Employees and the General Public 5E-13.039
 Criteria for Licensure or Certification of Applicators 5E-13.040

PURPOSE, EFFECT AND SUMMARY: The purpose and effect of the rule development is to amend Rule 5E-13, F.A.C., to address changes to Statute and to develop modifications for the required Mosquito Control State Approved Program forms. The subject area to be addressed is modification of Mosquito Control State eligibility and reporting requirements.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost has been prepared.

Any person who wishes to provide information regarding the SOERC, or to provide a proposal for a lower cost alternative must do so within 21 days of this notice.

SPECIFIC AUTHORITY: 388.361 FS.

LAW IMPLEMENTED: 388.201, 388.261, 388.271, 388.281, 388.341, 388.361, 388.4111 FS.

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

TIME AND DATE: 9:00 a.m., March 5, 2004

PLACE: George Eyster Auditorium, 3125 Conner Blvd., Tallahassee, Florida, (850)488-7447

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Steven Dwinell, Department of Agriculture and Consumer Services, Room 130, 3125 Conner Blvd., Tallahassee, Florida 32399-1650

THE FULL TEXT OF THE PROPOSED RULES IS:

5E-13.021 Definitions.

(1) "Approved Mosquito Control Agency" – any county or district in current compliance with sections 388.101 or 388.241, ~~388.261(2), 403.088(1), 388.162,~~ 388.271, 388.341, Florida Statutes and Rule 5E-13.032, Florida Administrative Code.

(2) No change.

(3) "Arthropods" – those insects of public health or nuisance importance, including all mosquitoes, biting and non-biting midges, dog flies, filth house flies, and biting yellow flies, ~~and sand flies.~~

(4) "Certified budget" – district or county budget for control of arthropods attested to by the clerk of the circuit court, notary public of the state of Florida, secretary of the board of commissioners or any other person duly authorized by law under the official seal of the district or county.

(5) through (12) No change.

(13) "Labeling" – all labels and all other written, printed, or graphic matter:

(a) Accompanying the pesticide or device at any time; or

(b) To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health and Human Services, ~~Education and Welfare~~, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(14) through (19) No change.

(20) "Director" – a qualified person responsible for the planning and direct supervision of a district as defined under Section 388.011(5)~~2~~, F.S., who directs the execution of a county or district mosquito control program and oversees its day-to-day activities.

(21) through (23) No change.

(24) "Public land management agency" – any federal, state, or county agency that may be responsible for the management of such public lands as parks, wildlife management areas, preserves, fishing grounds, sea shores, etc., including but not limited to the department, the Florida Department of Environmental Protection, Fish and Wildlife Conservation ~~Game and Fresh Water Fish~~ Commission, and Trustees of the Internal Improvement Trust Fund.

(25) through (26) No change.

(27) "Tentative" Annual Certified Budget – a budget that will be submitted to the mosquito control board for the county and/or district for approval for the upcoming fiscal year.

(28) "Landing rate count" – a method of determining adult mosquito levels by counting all mosquitoes that land on the visible portion of lower body during a one minute period. Results are expressed as numbers of mosquitoes per minute.

(29) "Direct supervision" – supervision in which the supervisor must be in immediate verbal contact, either directly or by electronic means, including, but not limited to, cell phones, radios and computers.

Specific Authority 388.361 FS. Law Implemented 388.361, ~~388.411~~ FS. History–New 1-1-77, Formerly 10D-54.21, Amended 2-10-87, Formerly 10D-54.021, Amended 3-14-94, _____.

5E-13.022 Eligibility for State Approved Program and/or Aid.

(1) A district or county may be eligible to receive state aid for control of arthropods when it provides the following: an item in its annual budget for such purpose; a contract agreement with the department; signed acknowledgement of being subject to Chapter 215.97, F.S.; a detailed work plan budget; an operational work plan narrative; and the district or county complies with provisions of Section 388.271(1), F.S.

(2) No change.

(3) Participating districts or counties that do not want to receive state aid but want to remain or become a state approved program may be eligible when they provide the following: an annual budget for such purpose; a contract agreement with the department; signed acknowledgement of being subject to Chapter 215.97, F.S.; a detailed work plan budget; an operational work plan narrative; and the district or county complies with provisions of Section 388.271(1), F.S.

Specific Authority 388.361 FS. Law Implemented 388.361 FS., Section 11, Chapter 91-428, Laws of Florida. History—New 1-1-77, Formerly 10D-54.22, 10D-54.022, Amended _____.

5E-13.027 Certified Budgets, Filing.

(1) Not later than September 15 each district or county shall submit to the department two (2) copies of a certified budget on form DACS 130617, Annual Certified Budget for Arthropod Control, (Rev. 9/03) ~~(3/95)~~. Differences in amounts shown on the approved detailed budget and certified budget must be explained by accompanying requests for approval of changes to be made in the detailed budget. The certified budget shall show all estimated cash carry-over amounts as a beginning cash balance. When the estimated cash carry-over amount in any fund is found to be less than the actual cash carry-over amount, a budget amendment shall be submitted to budget the additional amount of funds. However, only local fund carry overs re-budgeted by October 30th will be matched. The department shall make an adjustment in funding amounts payable to the district or counties in the last 3 quarters of current fiscal year and provide notification to each district or county of any distribution changes due to the re-budget. A written request for extension of the September 15 deadline will be authorized provided the request is based on the existence of a documented urgent, non-routine situation, and a “tentative” Annual Certified Budget signed by the director is received by the department prior to the September 15 deadline that applies. Deadline failures will result in delay or loss of state aid which may be re-distributed to other existing state approved programs.

(2) Budget amendments on form DACS 130613 (Rev. 9/03) ~~(3/95)~~, entitled “Arthropod Control Budget Amendment,” shall be prepared and submitted to the department prior to over-expending state funds in any account or expending state funds in non-budgeted accounts. Budget amendments must be explained by accompanying requests for

approval of changes to be made in the detailed budget. Department approval of the amendment(s) must be received before such expenditures are made. Copies of this form may be received from the department’s Bureau of Entomology and Pest Control, 1203 Governors Square Boulevard, Suite 300, Magnolia Center I, Tallahassee, Florida 32301 P. O. Box 210, Jacksonville, Florida 32231-0042.

(3) Not later than thirty (30) days after the end of each month, each district or county shall submit a monthly financial report to the department. Failure to meet the deadlines will delay the quarterly installment and/or result in re-distribution of state aid to other existing state approved programs.

(4) No change.

(5) A district or county shall submit monthly chemical reports of accomplishments and an inventory of chemicals on department prescribed forms in a standardized format designated by the department to the department not later than thirty (30) days after the end of each month.

(6) No change.

(7) Forms DACS 130617, Annual Certified Budget for Arthropod Control (Rev. 9/03) ~~(3/95)~~ and DACS 130613 Arthropod Control Budget Amendment (Rev. 9/03) ~~(3/95)~~, are hereby incorporated by reference. Copies may be obtained from the Bureau of Entomology and Pest Control, 1203 Governors Square Boulevard, Suite 300, Magnolia Center I, Tallahassee, Florida 32301 P.O. Box 210, Jacksonville, Florida 32231-0042.

Specific Authority 388.361 FS. Law Implemented 388.201, 388.271, 388.341 FS., Section 11, Chapter 91-428, Laws of Florida. History—New 1-1-77, Formerly 10D-54.27, 10D-54.027, Amended 7-5-95, _____.

5E-13.030 State Aid Basis and Availability.

(1) A district or county shall be eligible to receive state funds on a dollar-for-dollar matching basis not to exceed \$120,000 ~~\$30,000~~ for any one county for any one year provided they meet the requirements of section 388.261(4), Florida Statutes. Tentative allocations and payments shall be made on the basis of local funds budgeted. If total expenditures of local funds of a district or county for the year are under \$120,000 ~~\$30,000~~ and are less than the budgeted sum, a minus adjustment shall be made in the allocation and the payment of state funds in the manner described in Rule 5E-13.030(3), F.A.C.

(2) A county or district shall, without contributing matching funds, receive state funds, supplies, services, or equipment in an amount not to exceed \$50,000 ~~\$30,000~~ per year for up to 3 years provided the district or county has a new or expanded mosquito control program which serves an area not previously served by the county or district. The total state funding provided for an expanded district will be calculated using the fund allocation formula applied to existing programs, but shall not be more than \$50,000 annually. As with existing programs, following the receipt and review of a district or county annual financial budget submitted in compliance with

Chapter 388.261, F.S., the amount of state funds earned by a district or county for that fiscal year will be based on the amount legislatively authorized and released by the Executive Office of the Governor.

~~(3) In addition to all other state funds, every approved mosquito control agency shall be eligible to receive Mosquito Control/Waste Tire Abatement Grant funds as set forth in Section 403.709(2)(e), Florida Statutes, these funds are to be used for the specific purpose of abating and providing mosquito control relating to waste tire sites, other waste debris sites and similar sites identified by local mosquito agencies as mosquito breeding areas. Each county with a mosquito control program like that described above shall receive a minimum of \$15,000. Any remaining funds shall be distributed to participating counties on the basis of county population. If more than one local mosquito control district exists in a county, the funds shall be prorated between the districts based on the population served by each district.~~

~~(3)(4) For purpose of budgeting state funds in any fiscal year districts or counties shall calculate amounts of state funds available to them based on estimates provided by the department. Tentative allocations and payments shall be made on the basis of matchable local funds budgeted.~~

~~(4)(5) Following receipt and review of a district or county annual financial report submitted in compliance with Chapter 388.271(1) F.S. Rule 5E-13.029(2), F.A.C. the amount of state funds earned by a district or county for that fiscal year shall be determined by the department based on release of funds by the Executive Office of the Governor. That amount is arrived at by dividing the total money appropriated by the number of participating counties or districts. Any eligible county or district budgeting an amount less than that calculated, will have its share reduced to an amount equivalent to that budgeted. Additional funds made available by such a reduction will be divided evenly between the remaining counties or districts. Any over or under allocation of funds will be considered in computing state funds payable to the district or county the succeeding fiscal year. Districts or counties shall be notified of such adjustments in amount of funds to be allocated and if necessary shall amend amount of state funds budgeted. The department shall determine the amount of state funds available following receipt and approval of certified budgets for fiscal year beginning October 1. Following the determination of funds available, if necessary, the department shall make an adjustment in amounts of money payable to the district or counties in the last 3 quarters of current fiscal year. Districts or counties shall be notified of the amount of money payable to them and if necessary shall amend amounts of state funds budgeted.~~

~~(5)(6) The amount of state funds available to a district or county for any fiscal year shall be paid in quarterly installments.~~

Specific Authority 388.361 FS. Law Implemented 388.261 FS. History—New 1-1-77, Formerly 10D-54.30, 10D-54.030, Amended 3-14-94,_____.

5E-13.031 District or County Use of Funds.

~~(1) When purchasing Prior to advertising for the purchase of equipment with state funds, the district or county shall jointly determine with the department the type and size of equipment necessary to perform the work planned. The district or county shall submit complete specifications to the department for all equipment to be purchased when the cost will exceed six thousand (\$6,000) dollars per unit, and shall receive an approved copy of said specifications before advertising for bids.~~

(2) through (3) No change.

(4) Proceeds from sale or rental of property purchased with ~~district county~~ or state funds shall be deposited and credited to State funds.

(5) through (6) No change.

(7) Local and state funds shall be deposited in banks designated as depositories of public funds in accordance with provisions of Section ~~658.60~~ 659.24, F.S.

Specific Authority 388.361 FS. Law Implemented 388.281 FS History—New 1-1-77, Formerly 10D-54.31, 10D-54.031, Amended 3-14-94,_____.

5E-13.032 Program Directors, Employment and Classification.

(1) through (3) No change.

(4) The following minimum director classifications are based upon amount of local funds budgeted for the fiscal year in which they are initially employed and for which they assume responsibilities of administration.

(a) Director I –

Local budget ~~\$30,000.00~~ \$30,000.00 to ~~\$249,999.99~~ \$249,999.99.
State aid ~~\$15,000.00~~ to ~~\$24,999.99~~.

Minimum qualifications for Director I position:

High school graduate with minimum of three (3) years of training and field experience in control of mosquitoes, or three (3) years experience in managing a comparable program, or a graduate of four (4) year college or university with a degree in the basic sciences or engineering.

(b) Director II –

Local budget ~~\$250,000.00~~ \$250,000.00 to ~~\$999,999.99~~ \$999,999.99.
State aid ~~\$25,000~~ to ~~\$49,999.99~~.

Minimum qualifications for Director II position:

Graduate of four (4) year college or university with a degree in the basic sciences or engineering. Requirements for college degree shall be waived upon proof of a satisfactory work experience record of four (4) years duration directing or assisting in directing a work program in the mosquito or arthropod control field of comparable size and budget to that of the District or County were the application is pending.

(c) Director III –

Local budget ~~\$1,000,000.00 and over.~~
 State aid ~~\$50,000.00 and over.~~

Minimum qualifications for Director III position : Graduate of four (4) year college or university with a degree in the basic sciences or engineering and two years work experience in mosquito control.

(5) When a mosquito control program director’s position is to be filled, the applicant shall take and pass a written Director Certification Examination prior to appointment or within six months of employment. Failure to do so may result in delay or loss of state aid which may be re-distributed to other existing state approved programs. A passing score of 70% or higher will be required for certification. The applicant must hold a valid Public Health Pest Control license in order to take the Director Certification Exam. Director Certification Exam scores shall be valid for a period of four (4) years from the date of issuance. Re-examination is not required as long as the qualified director remains in the same directorship position. Certification holders who have not found employment as a program director during this four year period, must retake the Director Certification Exam in order to re-qualify for the position. When a qualified director transfers to another district or program, they must re-take and pass the Director Certification Exam within 6 months of reassignment to the new directorship position only if their Director Certification has expired.

(6) The name and qualifications of a new program director must be forwarded to the department no later than forty five (45) day from employment date. Failure to do so may result in delay or loss of state aid which may be re-distributed to other existing state approved programs.

Specific Authority 388.361 FS. Law Implemented 388.162 FS. History–New 1-1-77, Formerly 10D-54.32, Amended 2-10-87, Formerly 10D-54.032, Amended 3-14-94, 7-5-95, _____.

5E-13.034 Penalty for Failure to Comply with Public Law 92-516, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of the U. S. Environmental Protection Agency and Their Rules.

- (1) No change.
- (2) Certification of applicators may be suspended, revoked, or renewal thereof denied, by the Department, its successor agency or programs, upon one or more of the following grounds:

- (a) through (f) No change.
- (g) Failure of the certified applicators to maintain for a period of at least three ~~two~~ years operational records containing information on kinds, amounts, uses, dates, and places of application of restricted use of pesticides.

Specific Authority 388.361 F.S. Law Implemented 388.361 F.S., Section 11, Chapter 91-428, Laws of Florida, History–New 1-1-77, Formerly 10D-54.34, 10D-54.034, Amended _____.

5E-13.035 Intent.

It is the intent that Rules ~~5E-13.033 and~~ 5E-13.034, F.A.C., shall be subject to provisions of Public law 92-516 administered by the U.S. Environmental Protection Agency and their rules and/or by such laws as may be passed by the State of Florida, regarding the use and application of restricted pesticides as described and listed in the Federal register as rules of the U.S. Environmental Protection Agency.

(1) Mosquito and other arthropod control programs will insure that the application of pesticides are made only when necessary by determining a need in accordance with specific criteria that demonstrate a potential for a mosquito-borne disease outbreak or numbers of disease vector mosquitoes sufficient for disease transmission or defined levels of, or a quantifiable increase in numbers of pestiferous mosquitoes or other arthropods as defined by Section 388.011(1), F.S. A large population of adult mosquitoes or other athropods as defined by Section 388.011(1), F.S. must be demonstrated by a quantifiable increase in, or sustained elevated population level, in order to determine a need for the application of adulticides. At least one of the following criteria will be met and documented by records:

Specific Authority 388.361 FS. Law Implemented 388.361 FS., U.S. Pub. Law 92-516, Section 11, Chapter 91-428, Laws of Florida, History–New 1-1-77, Formerly 10D-54.35, 10D-54.-35, Amended _____.

5E-13.036 Demonstrable Increase or Other Indicators of Arthropod Population Level.

~~When a large population of adult mosquitoes is demonstrated by either a quantifiable increase in, or a sustained elevated, mosquito population level as detected by standard surveillance methods including citizen complaints.~~

(1)(2) ~~Where~~ When adult mosquito populations build to levels exceeding 25 mosquitoes per trap night or 5 mosquitoes per trap hour during crepuscular periods.

(2)(3) ~~When service requests for arthropod mosquito control from the public have been confirmed one or more recognized surveillance methods~~ by landing rate counts or trap counts.

(3)(4) ~~When counts as determined by normal surveillance methods~~ landing rate counts in the daytime exceed 5 per minute for stable flies (dog flies) on beaches and bay shores.

(a)(5) ~~Aircraft applications of mosquito adulticides along beaches and bay shores shall be justified only when there is a demonstrable three-fold increase over a base population.~~

(b)(6) Surveillance records shall be kept at least three (3) years to document need for adulticide applications.

Specific Authority 388.361 FS. Law Implemented 388.361(2)(a) FS. History–New 2-10-87, Formerly 10D-54.036, Amended 3-14-94, 7-5-95, _____.

5E-13.037 Aircraft Application for the Control of Adult Arthropods.

- (1) No change.
- (2) Once the decision to apply an adulticide by aircraft is made, the following will apply:
 - (a) No change.
 - (b) Adulticides selected shall be those labeled for aircraft application ~~in accordance with paragraph 5E-13.046(6)(b), F.A.C.~~ to provide adequate control of the problem mosquitoes or other arthropods and when used in accordance with widespread and commonly recognized practice it will not cause unreasonable adverse effects on the environment. Adulticide labels will be strictly followed.
 - (c) through (f) No change.
- (3) No change.

Specific Authority 388.361 FS. Law Implemented 388.361(2)(a) FS., Section 11, Chapter 91-428, Laws of Florida. History--New 2-10-87, Formerly 10D-54.037, Amended _____.

5E-13.039 Protection of Natural Resources and of the Health, Safety, and Welfare of Arthropod Control Employees and the General Public.

- (1) No change.
- (2) To protect the health, safety and welfare of ~~arthropod mosquito~~ control employees and the general public, applicators certified in public health pest control ~~or health related pest control~~ will supervise no more than ~~5~~ 15 uncertified employees and shall provide instructions and training to those employees to include the following:
 - (a) through (g) No change.
 - (3) A signed statement attesting that this instruction was provided by the certified applicator supervisor to each unlicensed applicator shall be kept on file and made available to the department upon request.

Specific Authority 388.361 FS. Law Implemented 388.361(2)(d) FS., Section 11, Chapter 91-428, Laws of Florida. History--New 2-10-87, Formerly 10D-54.039, Amended _____.

5E-13.040 Criteria for Licensure or Certification of Applicators.

- (1) No change.
- (2) Licensing and exemptions. All persons who apply an arthropod control pesticide, unless they operate under the direct supervision of a licensed applicator, as defined in subsection 5E-13.021(29), F.A.C. shall apply to the department for certification and be licensed as a Public Health Pest Control ~~an arthropod control pesticide~~ applicator by the department whether such pesticides used are classified as general use or restricted use, except those applicators controlling arthropods upon their own individual residential or agricultural property.
- (3) Certification Standards. Competency standards for the certification of Public Health Pest Control applicators will be determined by passing the Public Health Pest Control

~~examination, which demonstrates a practical knowledge of the principles of mosquito control an examination that demonstrates a practical knowledge of the principles and practices of arthropod control and the safe use of pesticides and a category examination which demonstrates a knowledge of vector disease transmission as it relates to and influences application programs and vector-disease transmission. A passing grade of 70 percent, or above, will be required on this examination administered by the department. In addition, applicants must pass the General Standards (Core) exam, to demonstrate a knowledge of pesticide use and safety. A passing grade of 70 percent, or above, will be required on this examination administered by the department.~~

(4) Recertification. All persons licensed in Public Health Pest Control certified shall provide evidence of continued competency prior to license eertificate renewal by examination or by accrual of not less than 16 hours of continuing education credit during each 4 year licensure period. Each eertificate holder shall complete a minimum of 2 hours of approved continuing education on legislation, safety, pesticide labeling, mosquito biology, and mosquito control techniques, or pass an examination given by the department. Failure to meet continuing education requirements or to pass an examination on the topics detailed above, shall result in the non renewal of the license, and applicators must retake and pass both the Public Health Pest Control and the General Standards (Core) examinations to obtain a new license a eertificate. Courses or programs to be considered for credit shall contain one or more of the following topics:

- (a) The law and rules of the state pertaining to mosquito control.
- (b) Precautions necessary to safeguard life, health, and property in the conducting of mosquito control and the application of pesticides.
- (c) Mosquitoes, their habits, identification, and relative importance as to nuisance and vectors of disease.
- (d) Currently accepted practices in the conducting of measures for the control of adult and larval forms of mosquitoes and surveillance techniques.
- (e) How to read labels, a review of current state and federal laws on labeling, and a review of changes in or additions to labels on pesticides used in mosquito control.

(5) through (6) No change.

~~(7) All applicators performing public health pest control shall be licensed by January 1, 1988.~~

(7)(8) Public Health Pest Control applicators shall keep accurate records so that monthly activity reports relative to pesticide application, source reduction, water management, biological control and surveillance activities can be assessed by the department. Pesticides use records shall include the name of applicator, pesticide and amount used, how applied,

where applied, rate of application, date and time of application. These reports shall be retained for a period of 3 years and be made available to the department upon request.

~~(8)(9) Aerial applicators who apply an arthropod control pesticide, shall apply to the department for certification and be licensed as a Public Health Pest Control Aerial applicator by the department whether such pesticides used are classified as general use or restricted use, except those applicators controlling arthropods upon their own individual residential or agricultural property. Aerial applicators shall demonstrate a practical knowledge of the principles and practices of aerial pest control and the safe application of pesticides by aerial delivery means. Such competence will be demonstrated by passing the Aerial, Public Health Pest Control Applicator, and General Standards (Core) examinations in an aerial applicator examination administered by the department. There shall be no provision for an unlicensed aerial applicator to operate under the supervision of a licensed aerial applicator. In addition, aerial applicators conducting mosquito control operations must be certified in Public Health Pest Control as outlined above.~~

~~(10) All new mosquito control directors shall demonstrate competence in all the areas as heretofore described for Public Health Pest Control certification. In addition, a director must demonstrate an understanding of budgetary planning and mathematical calculations for mixing and applying pesticides. Directors shall demonstrate their knowledge of the above by passing an examination administered by the department.~~

Specific Authority 388.361 FS. Law Implemented 388.361(4) FS. History—New 2-10-87, Formerly 10D-54.040, Amended 3-14-94, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Steve Dwinell, Assistant Director, Division of Agricultural Environmental Services, Department of Agriculture and Consumer Services

NAME OF PERSON OR SUPERVISOR WHO APPROVED THE PROPOSED RULE: Steve Rutz, Director, Division of Agricultural Environmental Services, Department of Agriculture and Consumer Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 18, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 8, 2003

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.:
Licensee Identification – Vehicles, Equipment	5E-14.103
Responsibilities and Duties – Records	
Reports, Advertising, Applications	5E-14.142

PURPOSE, EFFECT AND SUMMARY: The purpose of the rule amendment is to implement Section 482.051(2), F.S., that provides authority to allow temporary signage for pest control vehicles used exclusively for sales and solicitation. It also adds an inspection standard that defines wood destroying fungi to exclude surface molds that do not cause damage to wood and adopts a revision to the wood destroying organism inspection report regarding opinions about health effects from mold infestation.

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

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

SPECIFIC AUTHORITY: 482.051, 482.226 FS.

LAW IMPLEMENTED: 482.051, 482.226 FS.

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

TIME AND DATE: 1:00 p.m., March 11, 2004

PLACE: Conference Room C, Hurston Building South Tower, 400 South Robinson St., Orlando, FL 32810

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Mr. Steven Dwinell, Assistant Director, Department of Agriculture and Consumer Services, Room 130, 3125 Conner Blvd., Tallahassee, FL 32399-1650

THE FULL TEXT OF THE PROPOSED RULES IS:

5E-14.103 Licensee Identification – Vehicles, Equipment.

To assist the Department in enforcement of Chapter 482, F.S., and all regulations thereunder, the licensee shall identify all units or equipment used by him or in his behalf for pest control as follows:

(1) All motor vehicles and all trailers used in behalf of or by any licensee or licensee’s employees in the conduct of pest control shall be permanently marked for easy identification with the licensee’s name or trade name, as registered with the Department. The term “permanently marked” shall mean paint or decals applied to the vehicle body itself. Magnetic signs are prohibited except as provided below. This requirement may be waived by the Department for a period of time not to exceed fifteen (15) working days in authentic and verifiable emergencies when the licensee has given written notice to the ~~Department Entomologist Inspector in the area~~ describing the cause of the emergency, the vehicle being replaced, the substituting vehicle, and the anticipated termination date of the emergency. Vehicles used exclusively for the purpose of sales and soliciting of business may be temporarily marked, including the use of magnetic signs, provided that no pesticides or pesticide application equipment are carried in the vehicle. All vehicles used in the conduct of pest control that carry or contain pesticides or pesticide application equipment, or perform wood destroying organisms inspection for the purpose

of real estate transactions in accordance with Chapter 482.226(1) and (2), F.S., shall be permanently marked as provided above.

Specific Authority 482.051(2)(4) FS. Law Implemented 482.051(1)(2), 482.161, 482.191 FS., Section 1, Chapter 92-203, Laws of Florida. History—New 1-1-77, Joint Administrative Procedures Committee Objection Withdrawn – See FAW Vol. 3, No. 30, July 29, 1977, Amended 6-27-79, Formerly 10D-55.103, Amended _____.

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

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

(c) Termite or other wood-destroying organism inspection report:

Pursuant to Sections 482.226(1),(2),(4) and (5), F.S., each licensee having a certified operator in the category of termite or other wood-destroying organism control and who makes and reports the findings of a wood-destroying organism inspection in writing shall provide the party requesting the inspection with the inspection findings in the Wood-Destroying Organisms Inspection Report prescribed by the Department and furnished by the licensee, DACS 13645, Rev. 02/04 ~~3/02~~, which is incorporated by reference. The licensee shall not place any disclaimers or additional language on the Wood Destroying Organisms Inspection Report. The licensee shall inspect for all wood-destroying organisms as defined in Section 482.021(28), F.S., in accordance with the following inspection standards:

1. through 2. No change.

3. The inspection shall include an examination for visual evidence of wood-decaying fungi and damage caused by wood-decaying fungi. Wood-decaying fungi are fungi that contain enzymes necessary to degrade cellulose in wood and that can cause damage to wood, such as those that produce white rot, brown rot, and cubical rot, but not surface molds that do not cause damage to sound wood.

Specific Authority 482.051 FS. Law Implemented ~~482.064~~, 482.071, 482.091, ~~482.111(5),(9)~~, 482.161(1)(g), 482.226(1),(2),(4),(5),(6) FS. History—New 1-2-77, Amended 6-27-79, 6-22-83, 1-20-87, 10-25-90, Formerly 10D-55.142, Amended 8-11-93, 5-28-98, 4-29-02, 4-17-03, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Steve Dwinell, Division of Agricultural Environmental Services, Department of Agriculture and Consumer Services

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Steve Rutz, Director, Division of Agricultural Environmental Services, Department of Agriculture and Consumer Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 10, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 17, 2003

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLES:	RULE NOS.:
Development of Educational Plans for Exceptional 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 Services 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	6A-6.030281
Development of Family Support Plans for Children with Disabilities Ages Birth through Five Years	6A-6.03029
Procedural Safeguards for Children with Disabilities Ages Birth through Two Years	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 Exceptional Students Who Are Gifted	6A-6.03313
Procedural Safeguards for Students with Disabilities Enrolled in Private Schools by Their Parents	6A-6.03314
Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students	6A-6.03411

PURPOSE AND EFFECT: The purpose of these revisions or 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 (IDEA) 20 U.S.C. Chapter 33, and its implementing regulations. The effect of these revisions and new rules will be consistency with the federal requirements in a more consumer-friendly manner.

SUMMARY: These rules are to meet 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, discipline, and the accompanying procedural safeguards. Rules address policies and procedures for the provision of specially designed instruction and related services for exceptional students.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 1001.02(1), 1003.57(5) FS.

LAW IMPLEMENTED: 1001.03, 1002.38, 1003.57(5), 1003.01(3), 1011.62(1)(c) FS., Individuals with Disabilities Education Act 20 U.S.C. Chapter 33

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

TIME AND DATE: 8:30 a.m., March 16, 2004

PLACE: 325 West Gaines Street, Tallahassee, Florida 32399-0400

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Shan Goff, K-12 Deputy Chancellor for Student Achievement, Florida Department of Education, 325 West Gaines Street, Room 514, Tallahassee, Florida 32399-0400, (850)245-5020

THE FULL TEXT OF THE PROPOSED RULES IS:

6A-6.030191 Development of Educational Plans for Exceptional Students who are Gifted.

Educational Plans (EPs) are developed for students identified solely as gifted. Parents are partners with schools and school district personnel in developing, reviewing, and revising the educational plan (EP) for their child. Procedures for the development of the EPs for exceptional students who are gifted, including procedures for parental involvement, shall be set forth in each district's Policies and 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 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) Participating in the determination of 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 to participate in decisions concerning the 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 or is afforded the opportunity to participate at each EP 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 parents 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 parents understand the proceedings at an EP 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 parents a copy of the EP at no cost to the parents.

(3) Educational plan (EP) team participants. The EP team shall include the following participants:

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

(b) One regular education teacher of the student who, to the extent appropriate, is involved in the development and review of a student's EP. Involvement may be the provision of written documentation of a student's strengths and needs.

(c) At least one teacher of the 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 teachers 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 EP team; and

(g) The student, as appropriate.

(4) Contents of Educational Plans (EPs). EPs 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, the student's 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) A statement of how the student's progress toward the goals will be measured and reported to parents; and

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

(5) Considerations in EP development, review and revision. The EP team shall consider the following:

(a) The strengths of the student and needs resulting from the student's giftedness.

(b) The results of recent evaluations, including class work and state or district assessments.

(c) In the case of a student with limited English proficiency, the language needs of the student as they relate to the EP.

(6) Timelines. Timelines for EP meetings for students who are gifted shall include the following:

(a) An EP must be in effect at the beginning of each school year.

(b) An EP shall be developed within thirty (30) calendar days following the determination of eligibility for specially designed instruction and shall be in effect before the provision of these services.

(c) Meetings shall be held to develop and revise the EP at least every three (3) years for students in grades K-8 and at least every four (4) years for students in grades 9-12. EPs may be reviewed more frequently as needed, such as when the student transitions from elementary to middle school and middle to high school.

(7) EP Implementation. An EP must be in effect before specially designed instruction is provided to an eligible student and is implemented as soon as possible following the EP meeting.

(a) The EP shall be accessible to each of the student's teachers who are responsible for the implementation.

(b) Each teacher of the student shall be informed of specific responsibilities related to implementing the student's EP.

Specific Authority 1001.02(1),(2)(n), 1003.01(3)(a),(b), 1003.57(5) FS. Law Implemented 1003.01(3)(a),(b), 1001.42(4)(l), 1011.62(1)(c), 1001.03(8) 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~~ psychiatric condition which is acute or catastrophic in nature, or a chronic illness, or a repeated intermittent illness due to a persisting medical problem and which confines the student to home or hospital, and restricts ~~whose activities are restricted~~ for an extended period of time. The medical diagnosis shall be made by a licensed physician.

(2) The term licensed physician, as used in this rule, is defined in Chapters 458 and 459, Florida Statutes, and ~~Rule 6A-6.03020, FAC.~~, is one who is qualified to assess the student's physical or ~~psychiatric~~ 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 ~~psychiatric~~ 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. ~~(e) Certification by a licensed physician as specified in Rule 6A-6.03020(2), FAC., that the student can~~ Can receive an instructional services program without endangering the health and safety of the instructor or other students with whom the instructor may come in contact; and

(b) ~~(d)~~ The student Student is enrolled in a public school in kindergarten through twelfth grade 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-03025,~~ and 6A-6.03027, 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 that the student is unable to attend school describe the plan of treatment, provide recommendations regarding school re-entry, and give an estimated duration of condition or prognosis. The team determining eligibility may require additional evaluation data. This additional evaluation data must be provided at no cost to the parent.

(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 paragraph (4)(a) of 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 reexamination and medical report shall be provided 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 alternatively assigned to the homebound or hospitalized program and to a school-based program due to an acute, 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 a 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 or designee 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 the individual education plan (IEP) team determines that instruction is by telecommunications or computer devices telephone, the parent, guardian, or primary caregiver shall provide an open, uninterrupted telecommunication link shall be provided at no additional cost to the parent, telephone line during the instructional period, and The parent 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 1001.02(1),(2)(n), 1003.01(3)(a), 1003.57(5) 228.041(18),(19), 229.053(1), 230.23(4)(m) FS. Law Implemented 1001.42(4)(l), 1003.01(3)(a),(b), 1001.03(8), 1003.57(5), 1011.62(1)(c) 228.041(18),(19), 229.565(3)(b)(e), 230.23(4)(m)4., 232.01(1)(e), 236.081(1)(e) 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.

An Individual Educational Plan (IEP) or Individual Family Support Plan (IFSP) must be developed, reviewed, and revised for each eligible child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, in accordance with this rule. Parents are partners with schools and school district personnel in developing, reviewing, and revising the individual educational plan (IEP) for their child. The Florida Department of Education (FLDOE) shall carry out activities to ensure that teachers and administrators in all local school districts are informed about their responsibilities for implementing Title 34, Section 300.550 Code of Federal Regulations (CFR). If there is evidence that the local school district makes placements that are inconsistent with 34 CFR 300.550, the FLDOE shall review the school district's justification for its actions; and assist in planning and implementing any necessary corrective action. Procedures for the development of the individual educational plan, including procedures for parental involvement, and the required contents for the IEP shall be set forth in each district's Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students document and shall be consistent with the following requirements:

(1) Role of parents. The role of parents in developing IEPs includes, but is not limited to:

(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 the determination of how the child will be involved and progress in the general curriculum, including participation in the statewide assessment program and in district-wide assessments;

(e) Participating in the determination of what services the school district will provide to the child and in what setting; and

(f) Participating in the determination of whether the child is pursuing a course of study leading towards a standard diploma, consistent with Section 1003.43, Florida Statutes, or a special diploma, consistent with Section 1003.438, Florida Statutes.

(2) Definitions.

(a) General curriculum. The general curriculum is a 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) Assistive technology device. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability.

(d) 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.

(e) Accommodations. Accommodations are changes that are made in how the student accesses information and demonstrates performance.

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

(g) Transition services. Transition services means a coordinated set of activities for a student with a disability designed within an outcome-oriented process and 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. Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist the student to benefit from special education.

(3) Parent participation for students with disabilities. Each school board shall establish procedures that shall provide for parents, guardians, surrogate parents or persons acting in loco parentis to participate in decisions concerning the IEP. Parents

of each student with a disability must be members of any group that makes decisions on the educational placement of their child. 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, including:

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 parents must indicate the purpose, time, and 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 as required in paragraph (7)(i) of this rule and the notice must 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 paragraphs (7)(i) and (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 parents and the student, beginning at age fourteen (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 parents a copy of the IEP at no cost to the parents.

(4) IEP team participants. The IEP team, with a reasonable number of participants, shall include:

(a) The parents of the student in accordance with subsection (3) of this rule;

(b) At least one (1) 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, classroom accommodations, modifications or supports for school personnel that will be provided for the student consistent with paragraph (7)(c) of this rule.

(c) At least one (1) 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 if the teacher meets the requirements described in this paragraph;

(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 the knowledge or special expertise of any such individual shall be made by the party who invited the individual to be a member of the IEP team; and

(g) The student, if appropriate. If the student does not attend the IEP meeting consistent with paragraphs (4)(h)-(i) of this rule, the school district shall take other steps to ensure that the student's preferences and interests are considered.

(h) The student, beginning by the student's fourteenth 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, as described in paragraphs (7)(i)-(j) of this rule. If the student does not attend, the school district shall take other steps to ensure that the student's preferences and interests are considered.

(i) To implement the requirements of paragraph (7)(j) of this rule, the school district shall invite 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 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 a student's 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, provision of 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 consistent with the following:

1. Extended school year services (ESY) 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.

2. Criteria that can be used to determine whether a student requires ESY may include, but are not limited to:

a. Regression and recoupment;

b. Critical points of instruction;

c. Emerging skills;

d. Nature and/or severity of the disability;

e. Interfering behaviors;

f. Rate of progress; or

g. Special circumstances.

3. School districts may not limit ESY to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

(j) If, after consideration of the factors in paragraphs 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 for the student 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. For students with disabilities who participate in the general statewide assessment program, consistent with the provisions of Rule 6A-1.0943, FAC., a statement of the remediation needed for the student to achieve a passing score on the statewide assessment, or for prekindergarten children, as appropriate, how the disability affects the student'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 student's other educational needs that result from the student'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 classroom accommodations, 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. A parent must provide signed consent for a student to receive instructional modifications that would not be permitted on the statewide assessments and must acknowledge in writing that he or she understands the implications of such accommodations. Accommodations that negate the validity of a statewide assessment are not allowable in accordance with Section 1008.22(3)(c)6., Florida Statutes. If the IEP team determines that the student will not participate in the Florida Comprehensive Assessment Test (FCAT) 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. If a student does not participate in the FCAT, the district must notify the student's parent and provide the parent with information regarding the implications of such nonparticipation in accordance with Section 1008.22(3)(c)6., Florida Statutes.

(f) The projected date for the beginning of the specially designed instruction, services, accommodations and modifications described in paragraph (7)(c) 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) During the student's eighth grade year or during the school year of the student's fourteenth birthday, whichever comes first, a statement of whether the student is pursuing a course of study leading to a standard diploma or a special diploma.

(i) 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;

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; and

3. Consideration of instruction or the provision of 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.

(j) Beginning by the student's sixteenth birthday or younger, if determined appropriate by the IEP team, including the student and the student's parents and updated annually and thereafter, a statement of needed transition services for the student including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

(k) Beginning at least one (1) year before the student's eighteenth birthday, a statement that the student has been informed of his or her rights under Part B of the Individuals with Disabilities Education Act (IDEA) that will transfer from the parent to the student on reaching the age of majority, which is eighteen years of age. The transfer of these rights is described in subsection (10) of Rule 6A-6.03311, FAC.

(8) Transition services for students beginning at age sixteen (16), or younger, if determined appropriate by the IEP team.

(a) The coordinated set of activities described in paragraphs (7)(i) and (j) 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:

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.

(b) 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.

(c) 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 Individual Plan for Employment or other agency plan should be coordinated with the development of the IEP as appropriate.

(d) The district shall identify an IEP team member or designee 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.

(e) If the IEP team determines that transition services are not needed as described in subparagraph (8)(a)1. of this rule, the IEP shall include a statement to that effect.

(9) Transition of children with disabilities from the infants and toddlers early intervention program to pre-kindergarten 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 the 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) Revises 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.

6. The remediation of skills needed to obtain a passing score on the statewide assessment.

(c) Responds to parent's right to ask for revision, of the student's IEP or to invoke due process procedures in accordance with Rule 6A-6.03311(11), FAC., if the parent feels that the efforts required to provide specially designed instruction related services are not being made.

(11) IEP implementation and accountability. The school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, is responsible for providing the specially

designed instruction and related services to students with disabilities in accordance with the students' IEPs. However, it is not required that the school district, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives. An IEP must be 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 their 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.

(c) The school board must make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed on the IEP.

(d) Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures.

(12) Students with disabilities placed in private schools or community facilities through contractual arrangements by the school district, consistent with the requirements of Rule 6A-6.0361, FAC., and 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, the school district shall:

1. Ensure that the student has all of the rights of a child with a disability who is served by a school district.

2. Initiate and conduct meetings to develop, review, and revise an IEP for the student, in accordance with subsections (2) through (11) 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

3. 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's representative and the parents shall be involved in decisions about the IEP and shall agree to proposed changes in the IEP before those changes are implemented by the private school.

(c) Children with disabilities in private schools placed or referred by school districts. As provided in 34 CFR 300.400 and 300.402 apply only to children who are or have been

placed in or referred to a private school or facility by a school district as a means of providing special education and related services.

Specific Authority 1001.02(1),(2)(n), 1003.01(3)(a),(b), 1003.57(5), 229.053(1),(2)(i), 230.23(4)(m) FS., Law Implemented 1001.42(4)(l), 1003.01(3)(a),(b), 1003.57(5), 1011.62(1)(c),(e), 1001.03(8) 120.53(1)(b), 228.041(18),(19), 229.053(2)(i), 230.23(4)(m), 236.081(1)(e) FS., PL 105-17 (20 USC 1401, 1412, 1413, 1414, 1415), History—New 7-13-93, Amended

6A-6.030281 Development of Services 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 paragraph (3)(n) of Rule 6A-6.03411, FAC., and as described in the district's Policies and 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 service plans. 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 services plan meeting or is afforded the opportunity to participate in each meeting:

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

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

(b) A written notice to the parent must indicate the purpose, time, and location of the meeting, and who, by title or position, will be attending. The notice must also include a statement informing the parents that they have the right to invite other individuals with special knowledge or expertise about their child.

1. If transition services will be provided to a student with a disability beginning at age fourteen (14), or younger, if determined appropriate by the services 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 will be provided to a student with a disability, beginning at age sixteen (16), or younger, if determined appropriate by the services 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 parents 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 parents a copy of the services plan at no cost to the parents.

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

(2) Services plan team participants. The services 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 (1) 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 if the teacher meets the requirements described in this paragraph;

(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 the knowledge or special expertise of any such individual shall be made by the party who invited the individual to be a member of the services plan team:

(g) The student if appropriate. If the student does not attend the service plan meeting consistent with paragraph (2)(h) of this rule, the school district shall take other steps to ensure that the student's preferences and interests are considered.

(h) If transition services are to be provided, the student, beginning by the student's fourteenth birthday or younger, if determined appropriate by the services 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.

(i) 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 services 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 services 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 services plan that describes the services to be provided. This services plan, which has been reviewed, 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 services plan must be developed within thirty (30) calendar days following the determination of a student's 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 services 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 services plan development, review, and revision for private school students with disabilities. The services plan team shall consider the following in development, review, and revision of the services plan:

(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 services plan;

(f) In the case of a student who is blind or visually impaired, provision of instruction in Braille and the use of Braille unless the services 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; and

(h) Whether the student requires assistive technology devices and services. On a case-by-case basis, the use of school-district purchased assistive technology devices in a student's home or in other settings is required if the services plan team determines that the student needs access to those devices.

(5) Contents of the services plans for students with disabilities, enrolled in private schools, who are provided services by the school district. In collaboration with the parents and private school personnel of each student with a disability who is provided services from the school district, each district shall develop a services plan that must include with respect to services provided:

(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 student's other educational needs that result from the student'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 not 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 paragraphs (7)(i)-(j) and subsection (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 (18) years of age). The transfer of these rights are described in subsection (10) of Rule 6A-6.03311, FAC.

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

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

(b) Revises the services 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 and,

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

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

(a) The student's services 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 paragraph (7) (a) of this rule shall be informed of specific responsibilities related to implementing the student's services plan and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the services plan.

Specific Authority 1001.02(1),(2)(n), 1003.01(3)(a),(b), 1003.57(5) FS. Law Implemented 1001.42(4)(l), 1003.01(3)(a),(b), 1003.57(5), 1011.62(1)(c), 1001.03(8) FS., PL 105-17 (20 USC 1401, 1412, 1413, 1414, 1415). History—New _____.

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 and Procedures 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:

(d) A statement of the specific early intervention services, or for children ages three (3) through five (5) years, the specially designed instruction and related services, necessary to meet the unique needs of the child and the family including the frequency, intensity, and the method of delivering services;

(e) A statement of the natural environments in which early intervention services, or for children ages three (3) through five (5) years, specially designed instruction and related 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;

(4) No change.

(5) Requirements Timelines for family support plans for children with disabilities ages three (3) through five (5). These family support plans ~~timelines~~ shall be consistent with the requirements of Rule 6A-6.03028(3)-(6)(8), (10), and (11), FAC.

(6) Participants for family support plans for children with disabilities ages birth through two (2) years. The participants shall include the following:

(a) Each initial meeting and each annual meeting to evaluate the family support plan must include the following participants:

1. through 4. No change.

5. For initial family support plan meetings, at least two professionals from two different disciplines directly involved in conducting the evaluations and assessments. For subsequent family support plan meetings, at least two professionals from two different disciplines; A person or persons directly involved in conducting the evaluations and assessments; and

(7) through (8) No change.

(9) Nonpublic schools ~~and integration of plans~~. For children with disabilities ages birth through five (5), the procedures described in Rule 6A-6.03028(6) ~~and (8) (9), (12), FAC.,~~ shall be followed.

Specific Authority 1001.02(1),(2)(n), 1003.01(3)(a),(b), 1003.21(1)(e), 1003.57(5), 229.053(1),(2)(i), 230.23(4)(m), 236.081(1)(e); FS. Law Implemented 1001.42(4), 1003.01(3)(a),(b), 1003.21(1)(e), 1003.57(5), 1011.62(1)(c), 1001.03(8), 228.041(18),(19), 229.053(2)(i), 230.23(4)(m), 236.081(1)(e) FS., P.L. 105-17 (20 USC 1436). History—New 7-13-93, Amended 1-4-94, _____.

6A-6.03032 Procedural Safeguards for Children with Disabilities 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 with procedural safeguards is required in order for school boards to receive state funds for the provision of these services. The school board's policy and procedures for procedural safeguards shall be set forth in the district's Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for 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 1003.57(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 paragraphs (4)(a)-(c) of Rule 6A-6.03311, FAC., shall be followed.

(6) Mediation. Parents shall be provided the opportunity to resolve disputes involving their child through mediation in accordance with procedures established by the Department of Health, Children's Medical Services, the lead agency for this program.

(7)(4) Due process hearings. The procedures described in subsection (11) of Rule 6A-6.0331(5), FAC., shall be followed with the exception that the school district may not initiate a hearing to challenge the parents' decision regarding the placement or the provision of early intervention services for their child.

(5) Examination of records. The procedures described in Rule 6A-6.0331(7), FAC., shall be followed.

Specific Authority 1001.02(1)(2)(n), 1003.01(3)(a),(b), 1003.21(1)(e), 1003.57(5) 120.53(1)(b), 228.041(18)(19), 230.23(4)(m), 232.01(1)(e) FS. Law Implemented 1001.42(4)(l), 1003.01(3)(a)(b), 1003.57(5), 1003.21(1)(e), 1001.03(8), 1011.62(1)(c) 120.53(1)(b), 228.041(18)(19), 230.23(4)(m), 232.01(1)(e) FS., P.L. 105-17, 20 USC 1439, History--New 1-4-94, Amended

(Substantial rewording of Rule 6A-6.0331 follows. See Florida Administrative Code for present text.)

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

The state's goal is to provide full educational opportunity to all students with disabilities ages three (3) through twenty-one (21). Local school boards have the responsibility to ensure that students suspected of having a disability or being gifted are identified, evaluated, and provided appropriate specially designed instruction and related services if it is determined that the student meets the eligibility criteria specified in Rules 6A-6.03011 through 6A-6.03023 and 6A-6.03027, FAC. Additionally, local school boards that elect to serve children with disabilities below the age of three (3) years in collaboration with the Part C Early Intervention Program have the responsibility to ensure that infants and toddlers suspected of having a disability are identified, evaluated, and provided appropriate early intervention services if it is determined that the child meets the eligibility criteria specified in subparagraph (2)(a)1., of Rule 6A-6.03026, FAC. The procedures and criteria for identification, evaluation, and determination of eligibility of exceptional students by local school boards shall be set forth in the school district's Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students document consistent with the following requirements.

(1) Prekindergarten Children. For children below entry age to kindergarten, the activities specified in subsection (2) of this rule are not required. The following requirements apply to this population of children.

(a) For children being considered for eligibility as an infant or toddler with a disability, prior to determining eligibility, existing medical, psychological, social and other related data must be reviewed in addition to the completion of a vision and hearing screening.

(b) For children being considered for eligibility for school district programs for children ages three to kindergarten entry age, prior to referral for evaluation the following activities shall occur:

1. A review of existing social, psychological, and medical data with referral for a health screening when the need is indicated; and

2. A screening for vision, hearing, and communication functioning with referral for complete evaluations when the need is indicated.

(2) Kindergarten Through Grade Twelve Students. It is the local school board's responsibility to address through appropriate interventions and, to the extent possible, resolve a student's learning or behavioral areas of concern in the general education environment prior to a referral for evaluation to determine eligibility as a student with a disability. Notwithstanding the provisions of paragraphs 6A-6.03011(3)(a)-(e), 6A-6.03016(5)(a)-(f), and 6A-6.03018(3)(a)-(b), FAC., prior to the submission of a referral for evaluation to determine eligibility as a student with a disability, the activities in paragraphs (2)(a)-(f) of this rule must be completed. The general education interventions described in paragraph (2)(f) of this rule are not required for students who demonstrate speech disorders, severe cognitive, physical or sensory disorders, or severe social/behavioral deficits that require immediate intervention to prevent harm to the student or others. The activities described in paragraphs (2)(a)-(f) are not required for students considered for eligibility for specially designed instruction for students who are homebound or hospitalized as defined in Rule 6A-6.03020, FAC.

(a) Parent conferences. Two (2) or more conferences concerning the student's specific learning or behavioral areas of concern shall be held and shall include the parents, the student's regular education teacher, and may include other educators with special expertise in the areas of concern such as special education teachers, administrators, and student services personnel. The initial conference with the parents must include discussion of the student's learning or behavioral areas of concerns, the general education interventions planned, and the anticipated effects of the interventions. Other conferences must include discussion of the student's responses to interventions and anticipated future actions to address the student's learning and/or behavioral areas of concern.

(b) Anecdotal records or behavioral observations made by at least two (2) persons, one (1) of whom is the student's classroom teacher, in more than one (1) situation which cite the specific behaviors indicating the need for a referral for evaluation shall be reviewed.

(c) Social, psychological, medical, and achievement data in the student's educational records shall be reviewed;

(d) Attendance records shall be reviewed, and where appropriate, investigation of reasons for excessive absenteeism shall be conducted.

(e) Screening for speech, language, hearing, and vision for the purpose of ruling out sensory deficits that may interfere with the student's academic and behavioral progress shall be conducted. Notwithstanding the provisions of Rules 6A-6.03011 through 6A-6.03018, 6A-6.03021 through 6A-6.03023, and 6A-6.03027, FAC., screening for speech, language, hearing, and vision screening shall be required prior to conducting an evaluation to determine the student's eligibility as a student with a disability.

(f) A minimum of two (2) general education interventions or strategies, shall be attempted. These general education interventions or strategies may include: supplemental academic instruction; change in student's class schedule or teacher; change in instructional strategies and techniques; interventions provided by student services personnel or state or community agency. For students with academic learning problems, the general education interventions must include the use of an academic improvement plan, as required by Section 1008.25(4)(a)-(c), Florida Statutes, and the provision of remedial instruction for a reasonable period of time. Pre- and post-intervention measures of the academic and/or behavioral areas of concern must be conducted to assist in identifying appropriate interventions and measuring their effects.

(3) Referral. Referral is the process whereby a written request is made for a formal individual evaluation to determine a student's eligibility for specially designed instruction and related services. Prior to a referral for students suspected of having a disability, school personnel must make one of the following determinations and include appropriate documentation in the student's educational record:

(a) For students who demonstrate speech disorders, severe cognitive, physical or sensory disorders, or severe social/behavioral deficits, the activities described in paragraph (2)(f) of this rule would be inappropriate in addressing the immediate needs of the student;

(b) The activities, as described in paragraph (2)(f) of this rule, have been implemented but were unsuccessful in addressing the areas of concern for the student; or

(c) The parents of the child receiving general education interventions requested, prior to the completion of these interventions, that the school conduct an evaluation to determine the student's eligibility for specially designed instruction and related services as a student with a disability. In

this case, the activities described in paragraphs (2)(a)-(f) must be completed concurrently with the evaluation but prior to the determination of the student's eligibility for specially designed instruction.

(4) 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, school psychologists, psychologists, speech/language pathologists, teachers, 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 a profession in Florida. Educational evaluators not otherwise 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.

1. Notwithstanding the provisions of subparagraph (6)(a)2., of Rule 6A-6.03016, FAC., and subparagraph (4)(a)1., of Rule 6A-6.03011, FAC., tests of intellectual functioning shall be administered and interpreted by a professional person qualified in accordance with Rule 6A-4.0311, FAC., or licensed under Chapter 490, Florida Statutes.

2. Notwithstanding the provisions of subparagraph 6A-6.03011(4)(a)2., FAC., the standardized assessment of adaptive behavior of students suspected of having a mental handicap, shall include parental input regarding their child's adaptive behavior.

(b) The school board shall ensure that students suspected of having a disability are evaluated within a period of time, not to exceed sixty (60) school days of which the student is in attendance, or for pre-kindergarten children not to exceed sixty (60) school days after:

1. The completion of the activities required in subsection (2) of this rule;

2. The receipt of the referral for evaluation; and

3. The receipt of parental consent for the evaluation.

(c) Circumstances that cause a delay, so that the evaluation cannot be completed within the timeframe required by paragraph (4)(b) of this rule, shall be documented in the student's educational record and communicated to the student's parents.

(d) The school board shall ensure that students suspected of being gifted are evaluated within a reasonable period of time.

(e) Tests and other evaluation materials used to assess a student shall be selected and administered so as not to be discriminatory on a racial or cultural basis and shall be provided and administered in a student's native language or other mode of communication, unless it is clearly not feasible to do so.

(f) Materials and procedures used to assess a student with limited English proficiency shall be 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.

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

(h) 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.

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

(j) Tests shall be 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.

(k) No single assessment shall be used as the sole criterion for determining whether a student is a student with a disability or is a student who is gifted and for determining appropriate educational services for the student.

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

(n) In evaluating a student suspected of having a disability:

1. A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the student including information:

a. Provided by the parents;

b. Related to enabling the student to be involved in and progress in the general education curriculum (or for a prekindergarten child to participate in appropriate activities);

c. That may assist in determining whether the student is a student with a disability; and

d. That may assist in the writing of the individual educational plan or family support plan.

2. The student shall be 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.

3. The evaluation shall be 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.

(5) Determination of eligibility for exceptional students.

(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. The parents of a student being considered for eligibility as a student with a disability shall be invited and encouraged to participate as equal members of the staffing committee. Additional personnel may be involved in determining eligibility by providing information or by attending staffing meetings.

(b) In interpreting evaluation data the staffing committee shall:

1. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, student input as appropriate, 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 the criteria specified in Rules 6A-6.03011 through 6A-6.03019, FAC., Rules 6A-6.03020 through 6A-6.03027, FAC., and Rules 6A-6.03030 through 6A-6.03031, FAC., and the procedures in subparagraphs (3)(f)1. and 2., of Rule 6A-6.03411, FAC.

(c) If a determination is made that a student has a disability and needs specially designed instruction and related services, an individual educational plan (IEP) shall be developed for the student in accordance with Rule 6A-6.03028, FAC. For children ages three (3) through five (5) years, a family support plan (FSP) may be developed, in accordance with Rule 6A-6.03029, FAC. in lieu of an IEP.

(d) 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 and the student does not otherwise meet the eligibility criteria specified in Rules 6A-6.03011 through 6A-6.03018, and 6A-6.03020 through 6A-6.03027, FAC.

(e) A student may not be denied eligibility as a student who is gifted if the determinant factor is limited English proficiency.

(f) For students identified as gifted, an educational plan (EP) in accordance with Rule 6A-6.030191, FAC, shall be developed.

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

(6) Determination of needed evaluation data for a student suspected of having a 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, FAC., and other qualified professionals, as appropriate, take the following actions:

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

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

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 and the student as appropriate, what additional data, if any, are needed to determine the following:

1. Whether the student has a particular disability, as defined in Section 1003.01(3)(a), Florida Statutes, 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) 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 (6) of this rule.

(e) If the determination under paragraphs (6)(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 evaluation to determine whether the student continues to be an eligible student with a disability. The school district is required to conduct the assessment described in subsection (4) of this rule if requested to do so by the student's parents.

(7) Reevaluation. The reevaluation of each student with a disability is conducted, in accordance with paragraphs (4)(a) and (4)(e)-(n) and subsection (6) of this rule, 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-6.03020, 6A-6.03022, 6A-6.03023, and 6A-6.03027, FAC., or if the student's parent or teacher requests a reevaluation, or prior to the determination that the student is no longer a student with a disability in need of specially designed instruction.

(a) The results of any testing administered during the reevaluation process shall be considered by the IEP team including the parent, when reviewing and, as appropriate, revising the student's IEP.

(b) The IEP team, including the parent, and other qualified professionals, as appropriate, shall determine that the student is no longer a student with a disability based on the results of the reevaluation process.

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

(8) Each school district shall designate a staff member as administrator of exceptional student education who shall be responsible for the following:

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

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

(c) Ensuring that parents have been appropriately informed of their child's eligibility determination and their procedural safeguards in accordance with Rules 6A-6.03311, 6A-6.03032, and 6A-6.03313, FAC.

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

(e) Implementing the district's policies, as required by Rule 6A-6.03411, FAC.

(9) The administrator of exceptional student education is authorized to delegate the responsibilities in paragraphs (8)(b)-(d) of this rule.

Specific Authority 1001.02(1),(2)(n), 1003.01(3)(a),(b), 1003.57(5) 120.53(1)(b), 229.053(1),(2)(i), 230.23(4)(m) FS. Law Implemented 1001.42(4)(l) 1003.01(3)(a)-(b), 1001.02(2)(n), 1003.57(5) 120.53(1)(b), 228.041(18),(19), 229.053(2)(i), 230.23(4)(m)4., 236.081(1)(e) FS. History--New 6-17-74, Repromulgated 12-5-74, Amended 7-1-77, 3-28-78, 7-12-78, 8-31-78, 11-29-78, 10-7-81, 7-13-83, 6-2-85, Formerly 6A-6.331, Amended 7-13-93, 1-2-95, . c.f. P.L. 105-17, 20 USC 1401; 1412, 1413, 1414, 1415, 94-142, 20 USC 1401 (19); 1412 (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 Exceptional Students with Disabilities.

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 described in subsections (5) and (6) of this rule respectively, 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 in Section 1003.01(3)(a), 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. The school district shall provide parents with prior written notice a reasonable time before any proposal or refusal to initiate or change the identification, evaluation, educational placement of the student or the provision of a free appropriate public education to the student. Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice.

(a) The prior notice to the parents shall be written in language understandable to the general public and shall be provided 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 or by other means to the parents in their native language or other 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 other 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 proposed or refused action;

3. A description of any other factors that are 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; and

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 their procedural safeguards which provides a full explanation of the provisions of subsections (1)-(12) of this rule relating to:

1. Prior written notice;

2. Provision of the procedural safeguards;

3. Informed parental consent;

4. Opportunity to examine records and participate in meetings;

5. Mediation;

6. State complaint procedures, including a description of how to file a complaint and the timelines under these procedures;

7. Independent educational evaluation;

8. Discipline procedures;

9. Placement of student with disabilities in private school by their parents when the provision of free appropriate public education is at issue;

10. Transfer of rights at the age of majority;

11. Due process hearings, including the student's placement during the pendency of due process proceedings and requirements for disclosure of evaluation results and recommendations; and

12. Attorney's fees;

13. Civil Action;

14. Placement in an interim alternative educational setting;

15. Unilateral placement by parents of children in private schools at public expense.

(b) A copy of the procedural safeguards 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 by either the school district or the parent in accordance with subsection (11) 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) Parents shall understand and agree in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and list the records, if any, that will be released and to whom.

(c) Written parental consent shall be obtained prior to conducting an initial individual evaluation to determine eligibility, prior to initial provision of specially designed instruction and related services to a student with a disability, and prior to conducting a reevaluation for students with disabilities except as provided in paragraph (3)(e) of this rule. Consent for initial evaluation may not be construed as consent for initial placement for receiving specially designed instruction and related services.

(d) School districts shall document their attempts to secure consent from the parent as required by paragraphs (3)(a) and (c) 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 (11) 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 (11) of this rule.

(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 paragraph (3)(d) of Rule 6A-6.03028, FAC., to obtain that consent and the student's parents have failed to respond.

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

(g) A school district can not use a parent's refusal to consent to one service or activity under subsection (3) of this rule to deny the parent or the student any other service, benefit, or activity. 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.

(h) Parental consent is not required before:

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

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

(4) Parents' opportunity to examine records and participate in meetings.

(a) The parents of a child with a disability shall be afforded an opportunity to inspect and review their child's educational records including all records related to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child in accordance with Rule 6A-1.0955, FAC., Section 1002.22, Florida Statutes, 34 CFR 300.569, 300.571, and 300.572, and this rule.

(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 school district must inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to their child. This information must be destroyed at the request of the parent. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(d) 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. Parents shall be provided notice of such meetings early enough to ensure that they will have an opportunity to attend. The written notice to the parents must include 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.

(5) Mediation. The Department of Education shall provide

(e) 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, 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, 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 must:

1. Be voluntary on the part of both parties;

2. Not be used to deny or delay a parent's right to a due process hearing under subsection (11) of this rule or any other rights under this rule;

3. Be 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 or rotational basis from the list described in paragraph (5)(b) of this 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 described in subsection (5) of this rule.

(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 settle 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. Both the parent and the school district may be required to sign a confidentiality pledge prior to the commencement of the mediation 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 Individuals with Disabilities Education Act funds through the Department of Education.

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

3. Is not an employee of a school district, or state agency solely because he or she is qualified as a mediator and 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. The Department of Education shall disseminate to parents and other interested individuals,

including the parent training and information centers, protection and advocacy agencies, and independent living centers, its state complaint procedures.

(a) Within sixty (60) calendar days after a complaint is filed under the provisions of this rule, the Department of Education shall:

1. Carry out an independent on-site investigation, if the Department of Education determines that an investigation is 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 or federal requirement regarding the education of students with disabilities;

4. Issue a written decision to the complainant 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 (11) of this rule, or the complaint contains multiple issues, of which one or more are part of that hearing, the Department of Education shall 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 subsection (6) 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 decision is binding and the Department of Education shall inform the complainant to that effect.

3. The Department of Education shall 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 have the right to obtain an independent educational evaluation for their child and be provided upon request for an independent educational evaluation information about where an independent

educational evaluation may be obtained and of the qualifications of the evaluation specialist in accordance with paragraph (4)(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 (4)(a) of Rule 6A-6.0331, FAC., who is not an employee of the district school board.

(c) 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.

(d) 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 paragraph (4)(a) of Rule 6A-6.0331, 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.

(e) The school district may not impose conditions or timelines for obtaining an independent educational evaluation at public expense other than those criteria described in paragraph (7)(d) of this rule.

(f) 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.

(g) 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 (11) 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 school district initiates a hearing and the final decision from the hearing is that the district's evaluation is appropriate then the independent educational evaluation obtained by the parent will be at the parent's expense.

(h) If a parent requests an independent educational evaluation, 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 a due process hearing to defend the school district's evaluation as described in subsection (11) of this rule.

(i) Evaluations obtained at private expense. 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 if it meets the appropriate criteria described in paragraph (7)(d) of this rule; and,

2. The results of such evaluation may be presented as evidence at any hearing authorized under subsection (11) of this rule.

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

(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 when the provision of a free appropriate public education by the school district is at issue.

(a) If the school district has made a free 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 (11) of this rule.

(c) 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 of or referral by the school district, a court or an 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 (9)(c) of this rule may be reduced or denied in accordance with the requirements of Sections 300.403(d)-(e) of Title 34 of the Code of Federal Regulations.

(10) 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 (10)(d) of this rule.

(a) At age eighteen (18), all other rights afforded 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 all notices 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 (10)(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 by the parent to:

1. Have their child declared incompetent and the appropriate guardianship established in accordance with the provisions of Chapter 744, Florida Statutes;

2. Be appointed to represent the educational interests of their child throughout the child'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 through 6A-6.03023, FAC., in accordance with Section 393.12, Florida Statutes; or

3. Have another appropriate individual appointed to represent the educational interests of their child throughout the child'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-6.03025, FAC., if the parent is not available in accordance with Section 393.12, Florida Statutes.

(11) 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 (ALJ), appointed as required by Section 120.65, Florida Statutes, from the Division of Administrative Hearings, Department of Management Services, on behalf of the Department of Education.

(c) An administrative law judge (ALJ) shall use subsection (11) 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. The procedures for these hearings shall include:

1. Prehearing summary of facts. Prior to the prehearing conference set forth below, the moving party or petitioner shall submit to the ALJ assigned to the case, a brief summary of facts setting forth the facts which the petitioner believes are related to the ALJ's determination of the petitioner's entitlement to the relief sought. The summary shall also include a description of the relief sought by the petitioner and the reasons petitioner is entitled to the relief sought.

2. Prehearing Conference. A prehearing conference shall be scheduled within ten (10) days of the Division of Administrative Hearings' (DOAH's) receipt of the request for a due process hearing. The purpose of the prehearing conference shall be to consider any of the following, as deemed appropriate by the ALJ:

a. Specifying and simplifying the issues;

b. Proposing resolutions;

c. Admitting facts to which both parties agree. A joint written statement specifying the facts to which both parties agree shall be provided to the ALJ within two (2) weeks of the prehearing conference;

d. Preparation of documents that will be submitted by both parties. An authenticated set of these documents shall be exchanged by each party and one combined set shall be filed with the ALJ within two (2) weeks of the prehearing conference;

e. Preparation of the list of the witnesses to be used during the hearing. The list of witnesses shall be filed with the ALJ within two (2) weeks of the prehearing conference;

f. Establishing reasonable limitations and/or guidelines on discovery between the parties. In setting the parameters for discovery, the ALJ should consider the expedited nature of the hearing process, the relative burden on the parties, and whether the discovery sought is necessary or whether it could be obtained by other, less burdensome means;

g. Determining whether unusual circumstances exist that would require the use of expedited discovery prior to the hearing such as depositions, document production, or interrogatories;

h. Determining whether unusual circumstances exist that would require the filing of any motions or pleadings prior to or during the hearing;

i. Determining the date, time, and place of the hearing and how many days the parties may require to present their case.

j. Discussing other matters which may aid in simplifying the proceeding or disposing of matters in dispute, including settling matters in dispute.

3. Upon conclusion of the prehearing conference, the ALJ shall issue a prehearing order setting forth the following:

- a. The date, time and location of the hearing.
 - b. The issues to be resolved at the hearing.
 - c. The relief being sought.
 - d. The deadline, no later than five (5) days before the hearing, for the parties to disclose their witness lists and evidence to be used at the hearing.
 - e. Any reasonable limits on the amount of time for the hearing.
 - f. Limitations or parameters for discovery.
 - g. The filing and dispositions of any requests or motions, and
 - h. Other matters or relevant information as determined by the ALJ.
4. No pleadings, other than the request for hearing, are mandatory unless ordered by the ALJ.
5. The ALJ has the authority to issue subpoenas to compel the attendance of witnesses and the production of records, to issue summary rulings in absence of a disputed issue of material fact.
6. If there is conflict between the due process provisions set forth in subsection (11) of this rule and Chapter 28-106, FAC., the provisions of subsection (11) shall govern.
- (d) Status of student during proceedings. Except as provided in subsection (9) of Rule 6A-6.03312, FAC., during the time that an administrative or subsequent 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 proceeding must remain in the present educational placement. If the proceeding 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 for all parties.
1. Any party to a hearing conducted pursuant to subsection (11) of this rule has the right:
- a. To be represented by counsel or to be represented by a qualified representative under the qualifications and standards set forth in Rules 28-106.106 and 28-106.107, FAC., or to be accompanied and advised by individuals with special knowledge or training with respect to the problems of 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 at the option of the parents, electronic verbatim record of the hearing at no cost to the parents; and

e. To obtain written, or at the option of the parents, electronic findings of fact and decisions at no cost to the parents.

2. Additional disclosure of information.

b. An administrative law judge may bar any party that fails to comply with sub-subparagraph (11)(e)2.a. of this rule from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
a. At least five (5) business days prior to a hearing conducted pursuant to subsection (11) 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.

(f) Parental rights at hearings. In addition to the rights identified in paragraph (11)(e) of this rule, parents involved in hearings must be given the right to:

1. Have their child who is the subject of the hearing present.

2. Open the hearing to the public.

(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 attorney representing the child, to provide notice. The notice, must remain confidential and 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 forwarding the Division of Administrative Hearings by facsimile transmission of the parents' request for a hearing upon its receipt.

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. 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 (11) of this rule, and the deadlines established herein.

5. Arranging for the provision and payment of clerical assistance, the hearing, use of facilities, and a verbatim transcript of the hearing.

6. Completing other responsibilities specified by the school board.

7. To determine whether an interpreter is needed and arranging for the interpreter as required;

(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 an index 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.

4. Developing a model notice to assist parents in filing a request for a due process hearing that includes the information required in subparagraph (11)(g)1. of this rule.

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

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

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

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

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

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

11. 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;

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

13. To maintain the confidentiality of all information; and

14. To rule on requests for specific extensions of time beyond the periods set forth in paragraph (11)(i) of this rule, at the request of either party.

(j) Civil Action. A decision made in a hearing conducted under subsection (11) of this rule shall be final; unless, within thirty (30) days, a party aggrieved by the decision brings a civil action in federal district or state circuit court without regard to the amount in controversy, as provided in Section 1003.57(5), Florida Statutes. The state circuit or federal district 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 decision shall have the right to request an impartial review by the appropriate state district court of appeal as provided by Sections 120.68 and 1003.57(5), Florida Statutes. Nothing in this rule restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under the procedures safeguards available under the IDEA, the procedures under impartial hearing or appeal must be exhausted to the same extent as would be required had the action been brought under the remedies available under the IDEA.

(12) 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 court may award reasonable attorneys' fees consistent with the provisions of 300.513 of Title 34 of the Code of Federal Regulations. Funds under Part B may not be used to pay attorneys' fees or costs of a party related to action

or proceedings. However, this does not preclude a public agency from using Part B funds for conducting any action or proceeding under the Act.

Specific Authority 1001.02(1),(2)(n), 1003.01(3)(a),(b), 1003.57(5) 120.53(1)(b), 228.041(18),(19), 229.053(1), 230.23(4)(m), 236.081(1)(e) FS. Law Implemented 1001.42(4)(l), 1003.01(3)(a),(b), 1001.03(8), 1101.62(1)(c), 1003.57(5) 120.53(1)(b), 228.041(18),(19), 229.053(1), 230.23(4)(m) FS., P.L. 105-17 94-142, 20 USC 1414 and 1415. History--New 7-13-83, 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 students' individual educational plans (IEPs). 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 in 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 support. Positive behavioral support is a process for designing and implementing 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) Functional behavioral assessment. A functional behavioral assessment (FBA) is a process for developing a useful understanding of how behavior relates to the environment and may include any or all of the following: review of records, interviews, observations, and the collection of data using formal or informal measurement procedures.

(d) 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.

(e) Illegal Drug. An illegal drug means a controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 U.S.C. 812(c) or under any other provision of federal law.

(f) 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.

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

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

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

(j) 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 and that meets the requirements of paragraph (6)(a) of this rule.

(k) 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, on behalf of the Department of Education, 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 (11) 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 for the hearing or the filing of the district's request for the hearing without exceptions or extensions.

(l) Short Term Removals. A short term removal is the removal of a student with a disability from the student's current placement 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.

(m) Long Term Removals. A long term removal is the removal of a student with a disability from the student's current placement 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.

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

(2) Authority of School Personnel. Consistent with the school board's Code of Student Conduct and to the extent that 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 school 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) In conducting the review, the IEP team and other qualified personnel shall:

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 that, in relationship to the behavior subject to disciplinary action:

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

b. 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. 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)(j) and (6)(b) of this rule, if the IEP team determines that the student's behavior was a manifestation of the disability, the student's placement cannot be changed by school personnel as a disciplinary intervention. However, the IEP team may determine that a change of placement is necessary to provide the student a free, appropriate public education in the least restrictive environment.

(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 subject to disciplinary action 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)(b) of this rule.

(f) Immediate steps must be taken to remedy any deficiencies in the student's IEP or placement or in their implementation that were 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 contemplated:

(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 referenced 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 conduct 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) for the student before the behavior that resulted in the removal, the IEP team must meet to develop an assessment plan.

2. As soon as practicable after developing the assessment plan and completing the FBA, as prescribed in subparagraph (4)(d)1., of this rule, the IEP team must meet to develop an appropriate PBIP to address the behavior and shall implement the PBIP.

3. 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) 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 shall review the PBIP and its implementation to determine if revisions 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 that the IEP team determines is 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) Beginning on the eleventh cumulative school day of removal in a school year, a school district must provide a free appropriate public education (FAPE) to a student with a disability, consistent with the requirements of this rule and the following:

1. A school district must provide services to such a student 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.

2. If the removal is not for 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(s), 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.

(c) 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 must determine 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 these services, accommodations, and modifications, including those described in the student's current IEP, that will enable the student to meet the 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 any IAES placement contemplated and provide the parent with a copy of the notice of procedural safeguards, referenced in Rule 6A-6.03311, FAC., on the day the placement decision is made.

(7) Expedited Hearings.

(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 school personnel maintain that 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 (11) of Rule 6A-6.03311, FAC.

(b) School district personnel may request subsequent expedited hearings for alternative placements if a forty-five (45) day term has expired, the district maintains that the student's behavior continues to be and 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 a federal district or state circuit court, as provided in Section 1003.57(5), Florida Statutes or by requesting an impartial review by the appropriate district court of appeal as provided by Sections 120.68 and 1003.57(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 to 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) and paragraph (8)(a) of this rule.

(9) Student's Placement During Proceedings.

(a) If a parent requests a hearing or an appeal to challenge an IAES placement, a manifestation determination or disciplinary action resulting from the student's involvement with a weapon, illegal drugs, or a controlled substance, 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 the 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 paragraph 6A-6.03311(11)(d), FAC., and Section 1003.57(5), Florida Statutes, except as specified in paragraphs (9)(a)-(b) of this rule, if a parent requests for a hearing to challenge a manifestation determination, the student must remain in the current educational placement, unless the parent of the student and the district agree otherwise.

(10) Protections for Students not Yet Eligible for Special Education. 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 the student's 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 the parent does not know how to write or has a disability that prevents a written statement, 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 special education; 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 school 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 the school district has no 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 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 1002.22, 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 individual educational plan (IEP) and any statement of current or previous disciplinary action that has been taken against the student.

(13) Suspension and expulsion rates.

(a) The state education agency (SEA), the Florida Department of Education, will examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities.

1. Among local education agencies (LEA's) in the state; or

2. Compared to the rates for non-disabled children within the school districts.

(b) If the discrepancies described in paragraph (a) of this section are occurring, the SEA reviews and, if appropriate, revises (or requires the affected state agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Individuals with Disabilities Education Act (IDEA) in accordance with 300.146 of Title 34 Code of Federal Regulations.

Specific Authority 1001.02(1),(2)(n), 1003.01(3)(a),(b), 1003.57(5), 1006.09 FS. Law Implemented 1001.03(8), 1001.42(4)(l), 1003.01(3)(a),(b), 1003.57(5), 1006.09 FS. P.L. 105-17, 20 USC 1401, 1414, 1415 FS. History—New _____.

6A-6.03313 Procedural Safeguards for Exceptional 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 about these rights to appropriate district and school personnel so that the needs of the student can be identified and appropriately met. The school board's 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. The school district shall provide parents with prior written notice a reasonable time before any proposal or refusal to initiate or change the identification, evaluation, 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 provided in the native language or other mode of communication commonly used by the parent 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 to the parents orally or by other means 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 other 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 proposed or refused action;

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

4. Information on how the parent can obtain a copy of the procedural safeguards specified in this rule.

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

(a) Parents must be provided a copy of their procedural safeguards which provides a full explanation of the provisions included in this rule.

(b) A copy of the procedural safeguards must be available to the parents of a child who is gifted, 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 notification of each EP meeting; and

4. Upon receipt of a request for a due process hearing by either the school district or the parent 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 conducting an initial evaluation to determine eligibility 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 at any time 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 other 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) Parents' 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 1002.22, 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 including all records related to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

(c) The parents of a student who is gifted must be afforded an opportunity to participate in meetings with respect to the development of their child's educational plan.

(5) Evaluations obtained at private expense. If the parent obtains an independent evaluation at private expense which meets the requirements of subsection (4) of Rule 6A-6.0331, 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.

(a) The results of such evaluation may be presented as evidence at any hearing authorized under subsection (7) of this rule.

(b) 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, as defined in paragraph (7)(c) of Rule 6A-6.03411, FAC.

(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) Within ninety (90) calendar days after a complaint is filed, under the provisions of this rule, the Department of Education shall:

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 shall 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 subsection (6) 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 decision is binding and the Department of Education shall inform the complainant to that effect.

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

(7) Due process hearings. Due process hearings shall be available to parents of students who are gifted 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, on behalf of the Department of Education.

(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 subsequent 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 proceeding must remain in the

present educational assignment. If the proceeding 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 for all parties.

1. Any party to a hearing conducted pursuant to subsection (7) of this rule has the right:

a. To be represented by counsel or to be represented by a qualified representative under the qualifications and standards set forth in Rules 28-106.106 and 28-106.107, FAC., or to be accompanied and advised by individuals with special knowledge or training with respect to the problems of students who are gifted, 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 at the option of the parents, electronic, verbatim record of the hearing at no cost to the parents; and

e. To obtain written, or at the option of the parents, electronic findings of fact and decisions at no cost to the parents.

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

(f) Parental rights at hearings. Parents involved in hearings must be given, in addition to the rights described in paragraph (7)(e) of this rule, the right to:

1. Have their child who is the subject of the hearing present; and

2. Open the hearing to the public.

(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 to the school district. The notice required, which must remain confidential, 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

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 forwarding the Division of Administrative Hearings by facsimile transmission of the parent's request for a hearing upon its receipt;

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. Determining whether an interpreter is needed and arranging for the interpreter as required;

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 the provision and payment of clerical assistance, the hearing, use 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 an index 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 establish 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-hearing 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 the parent's advisor or representative is sufficiently knowledgeable about or trained regarding students who are gifted;

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

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

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

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

11. 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;

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

13. To maintain the confidentiality of all information; and

14. 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) Civil action. A decision made in a hearing conducted under subsection (7) of this rule shall be final, unless, within thirty (30) days, a party aggrieved by the decision brings a civil action in state circuit court without regard to the amount in controversy, as provided in Section 1003.57(5), Florida Statutes. The state circuit 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 decision shall have the right to request an impartial review by the appropriate district court of appeal as provided by Sections 120.68 and 1003.57(5), Florida Statutes.

Specific Authority 1001.02(1)(2)(n), 1003.01(3)(a),(b), 1003.57(5) FS. Law Implemented 1001.42(4)(l) 1003.01(3)(a)(b), 1003.57(5), 1001.03(8) FS. History—New _____.

6A-6.03314 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 they have information regarding the school district services that continue to be available to their children.

(1) Rights of children with disabilities enrolled by their parents in private schools. Except as provided in subsection (9) of Rule 6A-6.03311, FAC., a child with a disability who has been enrolled in a private school by his or her parent does not have an individual right to receive some or all of the specially designed instruction and related services that the child would receive if enrolled in a public school.

(2) Prior notice. The district shall provide parents with 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 provided 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 (2)(b)1. and (2)(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.

(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 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 (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.

(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 paragraph (3)(d) of Rule 6A-6.03028, FAC., to obtain that consent and the student's parents have failed to respond.

(4) Parents' 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 1002.22, 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, or educational placement of their child.

(5) 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.

(6) 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 Title 34, Sections 300.451 through 300.462, Code of Federal Regulations (CFR). The Department of Education's complaint procedures are described in subsection (6) of Rule 6A-6.03311, FAC.

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

(8) Due Process Hearings. Administrative due process hearings, as described in section (11) of Rule 6A-6.03311, FAC., are available if the parent of a child with a disability, enrolled in a private school by their parents, alleges that the school district failed to comply with the requirements for the

identification and evaluation of students with disabilities as described in 34 CFR 300.451 and 300.530 through 300.543. Such due process hearings are not available if the parent alleges that the school district failed to comply with the requirements of 34 CFR 300.452 – 300.462 including the provision of services indicated on the student's services plan.

(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 1002.38(6), 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 34 CFR 300.450 – 300.457 and paragraph (3)(o) of Rule 6A-6.03411, FAC.

Specific Authority 1001.02(1),(2)(n), 1003.01(3)(a),(b), 1003.57(5) FS. Law Implemented 1001.42(4)(l) 1003.01(3)(a),(b), 1003.57(5) FS., P.L. 105-17, 20 USC 1414 and 1415. History--New _____.

(Substantial rewording of Rule 6A-6.03411 follows. See Florida Administrative Code for present text.)

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

This rule shall apply beginning with the procedures documents submitted for the 2004-05 school year and thereafter, in accordance with Section 1003.57(4), Florida Statutes. All students with disabilities aged three (3) through twenty-one (21) residing in the state have the right to a free appropriate public education (FAPE) consistent with the requirements of Title 34, Sections 300.300-300.313, Code of Federal Regulations (CFR). FAPE shall be available to any individual student with a disability who needs special education and related services, even though the student is advancing from grade to grade. The only exceptions to the provision of FAPE are for students who have exited with a standard diploma or the equivalent and certain students who are incarcerated in an adult correctional facility as referenced in 34 CFR 300.122 and 300.311. 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, it shall: develop a written statement of policies for providing an appropriate program of specially designed instruction and related services, as required by Section 1003.57(4), Florida Statutes; submit its written statement of procedures to the designated office in the Department of Education; and report the total number of exceptional students in the manner prescribed by the Department. Applicable state statutes, State Board of Education rules, and federal laws and regulations relating to the provision of specially designed instruction and related services to exceptional students shall serve as criteria for the review and approval of the procedures documents. This procedures 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 procedures document shall be submitted in accordance with timelines required by the Department and shall include, but not be limited to, the requirements specified in subsections (2)-(5) of this rule.

(1) Definitions.

(a) Exceptional Student Education (ESE). ESE refers to the specially designed instruction that is provided to meet the unique needs of exceptional students who meet the eligibility criteria described in Rules 6A-6.03011 through 6A-6.03027, FAC.

(b) Early Intervention. Early intervention means developmental services that are designed to meet the developmental needs of an infant or toddler with a disability in any one (1) or more of the following areas:

1. Physical development;
2. Cognitive development;
3. Communication development;
4. Social or emotional development; or
5. Adaptive development.

(c) Special education. Special education refers to the specially designed instruction and related services, as defined in paragraphs (1)(d) and (e) of this rule, 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.

(d) Specially-Designed Instruction. Specially-designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, and/or delivery of instruction:

1. To address the unique needs of the student that result from the student's disability or giftedness; and
2. To ensure access to the general curriculum, so that the student can meet the district's expected proficiency levels, as appropriate.

(e) Related Services. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(f) Free Appropriate Public Education (FAPE). FAPE refers to special education and related services for students ages three (3) through twenty-one (21) that:

1. Are provided at public expense under the supervision and direction of the local school board without charge to the parent;
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., or a family support plan for students aged three (3) through five (5) in accordance with Rule 6A-6.03029, FAC.

(g) Screening. Screening is a process for ruling out sensory deficits that may interfere with the student's academic and behavioral progress as described in paragraph (2)(e) of Rule 6A-6.0331, FAC.

(h) General education interventions. General education interventions are required activities to address and resolve a student's learning or behavioral areas of concern prior to a referral for evaluation to determine eligibility for a student suspected of having a disability.

(i) Referral. Referral is the process whereby a written request is made for a formal individual evaluation to determine a student's eligibility for specially designed instruction and related services.

(j) 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.

(k) Dismissal. Dismissal is the process whereby a student is determined to no longer be in need of exceptional student education after the completion of the reevaluations described in subsection (7) of Rule 6A-6.0331, FAC.

(2) Provision of Specially Designed Instruction and Related Services. Specially designed instruction is required for each exceptional student and may be provided directly, in cooperation with other school districts or agencies, or through contractual arrangements with private schools.

(3) 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 be made in accordance with 34 CFR 300.552-300.553 and shall include consideration of the following:

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 the regular educational environment occurs only if 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

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

(b) Procedures for screening. Minimum requirements are:

1. Screening for vision and hearing problems shall be in accordance with the school district's school health plan and consistent with the requirements of paragraph (2)(e) of Rule 6A-6.0331, FAC.

2. Notwithstanding the provisions of Rules 6A-6.03011 through 6A-6.03018, 6A-6.03021 through 6A-6.03023, and 6A-6.03027, FAC., screening for speech, language, hearing, and vision shall be required prior to conducting an evaluation to determine the student's eligibility as a student with a disability.

(c) Procedures for general education interventions. The procedures for general education interventions shall be consistent with the requirements of Rule 6A-6.0331(2), FAC.

(d) Procedures for referral. Procedures for referral shall be consistent with the requirements of Rule 6A-6.0331(3), FAC.

(e) Procedures for student evaluation shall be implemented in accordance with the requirements of Rule 6A-6.0331, FAC.

(f) Procedures for determining eligibility. Procedures for determining eligibility shall include:

1. Determining eligibility for students with disabilities, in accordance with subsection (5) 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, 6A-6.03020 through 6A-6.03027, and 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 (5) 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. For local school boards who elect to serve children with disabilities below the age of three (3) years in collaboration with the Part C Early Intervention Program, determining eligibility for infants and toddlers with disabilities in accordance with subsection (5) of Rule 6A-6.0331, FAC., whereby the staffing committee determines that the infant or toddler has a disability in accordance with the definition found in subparagraph (2)(a)1. of Rule 6A-6.03026, FAC. and needs early intervention services.

(g) Procedures for providing an individual educational plan (IEP), educational plan (EP), or family support plan (FSP), 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 (7) of Rule 6A-6.0331, FAC.

(j) Procedures for participation of students with disabilities in statewide assessment, as required by Section 1008.22, Florida Statutes, including alternate assessment, in accordance with Rule 6A-1.0943, FAC.

(k) Procedures for dismissal.

(l) Procedures for the provision of 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 (10) 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 shall be provided in accordance with 34 CFR 300.403 and 300.451-300.462.

1. Upon request, 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 34 CFR 300.450 – 300.455.

2. The location of any specially designed instruction and related services provided to these students shall be consistent with the requirements of 34 CFR 300.456, 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 students' services plans, in accordance with Rule 6A-6.030281, FAC.

(o) Procedures for providing information and services to parents of students with disabilities eligible for opportunity scholarships, in accordance with Section 1002.38, Florida Statutes, and participating private schools. 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 specially designed instruction and related services from the local school board.

3. Determine the location of the specially designed instruction and related services consistent with subparagraph (3)(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 students' services plans and Rule 6A-6.030281, FAC.

4. Expenditure of funds for services provided to these students shall be made in accordance with 34 CFR 300.453.

(p) Procedures for evaluating exceptional student education programs which shall include those areas identified by the Department of Education's continuous monitoring activities.

(q) Procedures for the 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.

(t) Procedures for the provision of surrogate parents in accordance with Rule 6A-6.0333, FAC.

(6) Procedures for the delivery of specially designed instruction and related services to eligible exceptional students or early intervention services to eligible infants and toddlers with disabilities in accordance with Rules 6A-6.03011 through 6A-6.03027, and 6A-6.03030 through 6A-6.03031, FAC., which shall include:

(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 described in subsection (3) of this rule.

(c) Instructional program to include philosophy, curriculum, and instructional support.

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

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

(b) Contractual arrangements with private schools or community facilities in accordance with Rule 6A-6.0361, FAC.

(c) 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.

(d) Confidentiality of student records in accordance with Section 1002.22, Florida Statutes, Rule 6A-1.0955, FAC., and the notice to parents required by 34 CFR 300.561 and 300.573.

(e) 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 board.

(f) 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.

(g) Provision of nonacademic and extra curricular activities to ensure that each student with a disability participates with non-disabled children in those services and activities to the maximum extent appropriate to the needs of that child in accordance with 34 CFR 300.553.

(h) Opportunity scholarships that are provided in accordance with Section 1002.38, Florida Statutes. The local school board or the private school who provides the specially designed instruction and related services to participating students with disabilities shall receive the funding for these services as provided by Sections 1011.62(1)(e) and 1002.38(6), Florida Statutes.

Specific Authority 1001.02(1)(2)(n), 1003.01(3)(a)(b), 1003.57(4)(5) 229.053(1), 230.23(4)(m)4, FS. Law Implemented 1001.42(4)(l), 1003.01(3)(a)(b), 1002.38, 1001.03(8), 1003.57(4), 1011.62(1)(e) 228.041(18),(19), 229.565(3)(b),(c), 230.23(4)(m)4., 236.081(1)(e) FS. History—New 11-18-84, Amended 10-1-85, Formerly 6A-6.3411, Amended 12-14-93, c.f. PL105-17, 20 USC S.1401 et seq., 34 CFR, Parts 76 and 300, PL-94-142, 20 USC S.1401 et seq., 34 C.F.R. Parts 76 and 300.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Shan Goff, K-12 Deputy Chancellor for Student Achievement,
Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: Jim Warford, K-12 Chancellor,
Department of Education

DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: February 2, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: September 12, 2003

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLES:	RULE NOS.:
Definitions	6A-22.001
Rehabilitation Provider Qualifications	6A-22.002
Reemployment Assessments	6A-22.0031
Screening Process	6A-22.006
Reporting Services and Costs: Qualified Rehabilitation Provider and Employer or Carrier Responsibilities	6A-22.010
List of Forms	6A-22.011

PURPOSE AND EFFECT: These rules are amended to expand the definition of those who may be a qualified rehabilitation provider, include the documentation required for reemployment assessments, correct citations to educational programs, clarify what rehabilitation services are provided by a rehabilitation company, and who may provide those services, eliminate the trial work period, allow Registered Nurses who are also Certified Case Managers to be qualified rehabilitation providers, and document the identity of applicants for services. The effect will be rules which reflect current law and practices.

SUMMARY: These rules are to be amended to reflect current law and practices relating to rehabilitation reemployment.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 440.491 FS.

LAW IMPLEMENTED: 440.491 FS.

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

TIME AND DATE: 8:30 a.m., March 16, 2004
 PLACE: 325 West Gaines Street, Tallahassee, Florida 32399-0400

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Reginald L. Watkins, Chief, Bureau of Rehabilitation and Reemployment Services, 2728 Centerview Drive, Suite 101A, Tallahassee, FL 32399-0400, (850)245-3470

THE FULL TEXT OF THE PROPOSED RULES IS:

6A-22.001 Definitions.

(1) "Cooperative working agreement" means a written contractual agreement between the Department and a qualified rehabilitation provider or a public or private agency to provide comprehensive reemployment services such as on-the-job training development, job placement and follow up.

(2) "Customary residence" is the injured employee's place of permanent residence.

(3) "Customary vicinity" is the distance traveled by the injured employee from his customary residence to his place of employment at the time of injury.

(4) "Education program" means a formal course of study or a certificate program in a training and education facility, agency or institution operating under Chapters 1004, Parts II, III, and IV, 1005, 239, Part II, 240, Parts II and III or 246, F.S., or a career and technical education program defined in Section Chapter 1003.01(4)(c), 228.041(22)(e), F.S. Florida Statutes (1997), which states: "At the post secondary education level, courses of study that provide ~~vocational~~ competencies needed for entry into specific occupations or for advancement within an occupation." Outside of the State of Florida, an education program shall be approved as governed by comparable statutes of that state.

(5) "Ergonomic job analysis" is the objective study of the relationship among job demands, environmental conditions and human functional characteristics.

(6) "Good cause" is termination resulting from employee conduct:

(a) Evincing such willful or wanton disregard of an employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of his employee; or

(b) Carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of an employer's interests or of the employee's duties and obligations to his employer.

(7) "Individualized written rehabilitation program" (IWRP) is an individualized written rehabilitation program as defined in the Rehabilitation Act of 1973, 29 U.S.C. §§ 701, et seq.

(8) "Labor market" means an area not to exceed a 50 mile radius of the injured employee's customary vicinity.

(9) "On-the-job training (OJT) contractor" is a qualified rehabilitation provider or employee of a public or private agency which has entered into a cooperative working agreement with the Department for the provision of on-the-job development and follow-up services.

(10) "On-the-job training (OJT) contract" is a contract between an employer, injured employee and the Department in which an employer agrees to hire an injured employee subject to the same working conditions and benefits as all other similarly situated employees. Pursuant to the contract, the employer shall provide training and adequate supervision to enable the injured employee to achieve predetermined competencies to ensure a return to suitable gainful employment with the contract employer at the end of the contract period.

(11) "Rehabilitation Company" means a business entity such as a corporation, or partnership, or sole proprietorship which employs or contracts to provide services pursuant to Section 440.491, F.S. Florida Statutes. All services provided by

a carrier or a rehabilitation company under Section 440.491, Florida Statutes, shall be provided only by an individual who is a qualified rehabilitation provider or a facility that is a qualified rehabilitation provider. Neither the employment status of the person providing the services, nor the main method of communication in providing the services negates the statutory requirement that a person providing such services must be a qualified rehabilitation provider.

(12) "Rehabilitation Facility" means an institution or agency accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) for a specific vocational rehabilitation program.

(13) "Test-site" is a Department approved location that may be inspected by the Department, to be used by a qualified rehabilitation provider for vocational evaluation and assessment services.

~~(14) "Trial period of reemployment" is a period of employment to validate whether an injured employee who has been determined to be permanently and totally disabled has been rehabilitated to the extent that he has reestablished an earning capacity.~~

~~(14)(15)~~ "Vocational evaluator" is a qualified individual employed by the Department or who holds the designation of a certified vocational evaluator and is approved by the Department to perform vocational evaluations.

~~(15)(16)~~ "Vocational specialist" means an individual who possesses:

(a) A master's degree in vocational rehabilitation (counseling, evaluation, adjustment); or

(b) Is certified by the Commission on Rehabilitation Counselor Certification, or by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists; and

(c) Is employed by a CARF-accredited facility.

Specific Authority 440.491(5),(6),(7),(8) FS. Law Implemented 440.491 FS. History—New 7-1-96, Amended 2-9-00, 6-26-01, Formerly 38F-55.001, Amended _____.

6A-22.002 Rehabilitation Provider Qualifications.

(1) The Department shall approve qualified rehabilitation providers who submit proof of meeting the following requirements:

(a) Rehabilitation nurse:

1. A current Florida license as a registered professional nurse, and

2. A current C.R.R.N. certificate as a Certified Rehabilitation Registered Nurse from the Association of Rehabilitation Nurses, or

3. A current C.O.H.N. certificate as a Certified Occupational Health Nurse from the American Board for Occupational Health Nurses, or

4. A current C.R.C. certificate as a Certified Rehabilitation Counselor from the Commission on Rehabilitation Counselor Certification, or

5. A current C.D.M.S. certificate as a Certified Disability Management Specialist from the Certification of Disability Management Specialists Commission, or

6. A current C.C.M. certificate as a Certified Case Manager from the Commission for Case Management Certification.

(b) Rehabilitation counselor:

1. A current C.R.C. certificate as a Certified Rehabilitation Counselor from the Commission on Rehabilitation Counselor Certification, or

2. A current C.D.M.S. certificate as a Certified Disability Management Specialist from the Certification of Disability Management Specialists Commission.

(c) Vocational evaluator: A current C.V.E. certificate as a Certified Vocational Evaluator from the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.

(d) Facilities, other than hospitals:

1. Current accreditation by CARF in a specific vocational rehabilitation program in which the facility will provide services, and

2. Designation on the application of the qualified rehabilitation counselor or vocational specialist who will be a member of the core team to provide services to injured employees.

(e) Companies:

1. Employ only qualified rehabilitation providers for the purpose of providing all services under Section 440.491, Florida Statutes and are,

2. Incorporated under Chapters 607 and 617, Florida Statutes F.S., or are a partnership under Chapter 620, Florida Statutes F.S.

3. Submit a non-refundable twenty-five (25) dollar biennial renewal fee, and a signed, typed and completed qualified rehabilitation provider application on form DWC-96, which is incorporated by reference and made a part of this rule to become effective April 2004 rule, for each business address providing any services under Section 440.491, Florida Statutes.

(2) Applicants applying for renewal shall submit a non-refundable twenty-five (25) dollar ~~\$25.00~~ biennial renewal fee, and a signed, typed and completed qualified rehabilitation provider application on form DWC-96, ~~which is incorporated by reference into this rule,~~ and a copy of current certification and applicable licensure.

(a) Attendance at a Department sponsored or approved qualified rehabilitation provider workshop is required before the initial application and also before each renewal.

(b) An applicant for initial listing in the directory or an applicant whose qualified rehabilitation provider number has expired shall not provide services to injured employees until notification of an assigned provider number or renewal is received from the Department.

(3) Each applicant shall submit a signed, typed and completed form DWC-96, proof of attendance at a Department sponsored or approved qualified rehabilitation provider workshop, and a non-refundable check or money order in the amount of twenty-five (25) dollars \$25.00 payable to Workers' Compensation Administrative Trust Fund to the Department of Education, Bureau of Rehabilitation and Reemployment Services, Provider Relations Section, 2728 Centerview Drive, 101A Forrest Building, Tallahassee, Florida 32399-06640400. Illegible or unsigned applications and applications submitted without the application fee shall be returned. Facilities and companies must attach to this application a listing of all individuals listed in the directory as qualified rehabilitation providers who provide services under Section 440.491, Florida Statutes for the facility or company.

(4) Department approval of a qualified rehabilitation provider, facility or company shall be revoked for a period of six (6) months for one or more of the following:

- (a) Revocation of credentials or certification by the applicable certification or credentialing board.
- (b) Misrepresentation of credentials or certification.
- (c) Allowing a non-qualified rehabilitation provider to report and bill for services using an individual's, company's and or facility's qualified rehabilitation provider number.

(5) Employees of the Department, other public agencies and private agencies receiving federal or state funds to provide reemployment services are exempt from the requirements of Rule 6A-22.002(2) and (3), F.A.C.

Specific Authority 440.491(7) FS. Law Implemented 440.491(7) FS. History--New 7-1-96, Amended 6-26-01, Formerly 38F-55.002, Amended _____.

6A-22.0031 Reemployment Assessments.

(1) Reemployment assessments shall include documentation of the following:

- (a) From the injured employee:
 - 1. Discussion of the injured employee's understanding of their injury, treatment and prognosis.
 - 2. Description of the injured employees job duties, including physical demands.
 - 3. Discussion about accommodations that might allow the injured employee to return to work.
 - 4. The injured employee's work history.
 - 5. Factors that would impede the injured employee's ability to return to work, and
 - 6. Results of any vocational, interest, academic, psychological or other testing if conducted with the injured employee.

(b) From the employer:

- 1. Discussion of the injured employee's job of injury, including a job description with the essential functions and physical demands of the job.
 - 2. Discussion about the ability to return the injured employee to work in either the same job, modified job or different job, and
 - 3. Discussion of possible accommodations that could allow the injured employee to return to work in either the same job, modified job or different job.
- (c) From the Health Care Provider(s):
- 1. Discussion of the injured employee's diagnosis and prognosis.
 - 2. Discussion of factors that could enhance or impede the healing process.
 - 3. Anticipated release to return-to-work date and anticipated physical limitations, and
 - 4. Anticipated Maximum Medical Improvement date and anticipated permanent physical imitations.

Specific Authority 440.491(1),(4),(8) FS. Law Implemented 440.491 FS. History--New _____.

6A-22.006 Screening Process.

- (1) A request for screening is made using a form DWC-23. Before the Department will consider a request complete and initiate a screening, the injured employee must sign the form DWC-23.
- (2) The screening process shall consist of:
 - (a) A review of all available medical and vocational documentation relevant to the compensable injury to determine whether the injured employee is able to perform the duties of the pre-injury occupation; and
 - (b) A review of the documentation which supports the payment of temporary partial disability and wage loss benefits to determine the injured employee's inability to obtain suitable gainful employment because of his injury; and
 - (c) An interview with the injured employee.
- (3) The carrier shall provide, within 10 business days of receipt of a request from the Department, any medical, vocational, and other requested documents or reports related to the injured employee's workers' compensation case.
- (4) The Department may request the information directly from the authorized treating physician(s), or qualified rehabilitation provider(s), or obtain the services of an expert medical adviser to identify the injured employee's ability to return to work, permanent impairment rating, and permanent work restrictions.
- (5) The Department shall not provide any reemployment services, including a vocational evaluation unless the injured employee provides documentation to establish identity and employment eligibility. Such documentation shall be consistent with the acceptable documents for verifying identity and

employment eligibility as required by the US Department of Justice, Immigration and Naturalization Service's Employment Eligibility Verification Form I-9.

~~(6)(5)~~ The Department shall not provide a vocational evaluation or any reemployment services when form DWC-23, which is signed by the injured employee, is received by the Department more than one (1) year from the date of last payment of indemnity benefits or the furnishing of remedial treatment, care, or attendance from the employer or carrier.

~~(7)(6)~~ Following a Department screening the Department shall not provide any additional reemployment services or refer the injured employee for a vocational evaluation:

(a) If the injured employee has filed a claim for permanent total disability benefits under Section 440.15(1), F.S., which the carrier has denied, wherein either the injured employee's medical condition or vocational capabilities are in dispute, until such time as an Office of the Judge of Compensation Claims adjudicates the injured employee's claim; or

(b) If the injured employee's medical condition is unresolved or unstable, until such time as the medical condition becomes stable; or

(c) If the injured employee has reached maximum medical improvement and returned to and maintained suitable gainful employment for at least 90 calendar days; or

(d) If the injured employee refuses to accept reemployment services from the Department.

~~(8)(7)~~ The Department shall not refer the injured employee for a vocational evaluation if the injured employee:

(a) Has returned to suitable gainful employment as a result of placement services provided by the Department; or

(b) Has no documented permanent physical restrictions related to the injury; or

(c) Has transferable skills which would allow return to work in suitable gainful employment; or

(d) Was terminated by the employer for good cause unrelated to the injury or any restrictions or limitations resulting therefrom; or

(e) Terminated suitable gainful employment for reasons unrelated to the injury.

Specific Authority 440.491(5),(6),(8) FS. Law Implemented 440.491 FS. History—New 7-1-96, Amended 6-26-01, Formerly 38F-55.009, Amended _____.

6A-22.010 Reporting Services and Costs: Qualified Rehabilitation Provider and Employer or Carrier Responsibilities.

(1) through (3) No change.

(4) Upon request a qualified rehabilitation provider providing a Department sponsored reemployment service, including a vocational evaluation, shall make available to the Department information and documentation to certify that the

authorized service that was rendered is complete pursuant to Rule 6A-22.010, F.A.C., if such information or documentation is identified by the Department Division.

(8) Testing instruments, including work samples, used in vocational evaluations, reemployment assessments or other reemployment service activities may be administered and scored under the supervision of a qualified rehabilitation provider. Testing instruments shall be interpreted by the qualified rehabilitation provider with whom the contract for services is authorized.

Specific Authority 440.491(5),(6),(7) FS. Law Implemented 440.491 FS. History—New 7-1-96, Amended 6-26-01, Formerly 38F-55.013, Amended _____.

6A-22.011 List of Forms.

(1) Forms DWC-21, DWC-22, DWC-23, DWC-24 and DWC-96 and accompanying instructions are incorporated by reference as part of this rule to become effective April 2004 chapter. Each form shall be typed or legibly completed in order for the form to be considered properly filed or submitted with the Department.

(a) Department reemployment services billing form shall be submitted to the Department on form DWC-21, ~~dated 6/26/01~~.

(b) Reemployment status review form shall be submitted to the Department on form DWC-22, ~~dated 6/26/01~~.

(c) Request for screening form shall be submitted to the Department on form DWC-23, ~~dated 6/26/01~~.

(d) ~~Agency~~ Department and student agreement for sponsorship of training and education form shall be completed on form DWC-24, ~~dated 6/26/01~~.

(e) Qualified rehabilitation provider application shall be submitted to the Department on form DWC-96, ~~dated 6/26/01~~.

(2) A copy of the forms and accompanying instructions incorporated by subsection 6A-22.011(1), F.A.C., may be obtained from the Department of Education, Bureau of Rehabilitation and Reemployment Services, 2728 Centerview Drive, Suite 101A, Forrest Building, Tallahassee, Florida 32399-~~0664~~0400. Copies are also available at the following Department web site: <http://www.firm.edu/doe/rules/rules.htm>.

Specific Authority 440.491(5),(6),(7),(8) FS. Law Implemented 440.491 FS. History—New 7-1-96, Amended 6-26-01, Formerly 38F-55.014, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Reginald L. Watkins, Chief, Bureau of Rehabilitation & Reemployment Services, Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Loretta Costin, Director, Division of Vocational Rehabilitation, Department of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 2, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 24, 2003

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF CORRECTIONS

RULE TITLE: General Libraries
 RULE NO.: 33-501.310

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to set forth guidelines for the operation and use of general institutional libraries.

SUMMARY: The proposed rule provides guidelines for inmate access to libraries and library materials, penalties for infractions involving libraries and library materials, limitations on access for inmates in specified confinement statuses, and provision of access for impaired inmates.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Perri King Dale, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-501.310 General Libraries.

(1) Definitions.

(a) Book on tape – refers to a book title that has been read aloud and recorded on one or more cassette tapes by the Bureau of Braille and Talking Book Library.

(b) Bureau of Braille and Talking Book Library – refers to the agency that provides books on tape, Braille books, and other auxiliary aids for individuals who, due to a disability, are unable to read books in print.

(c) General library – refers to the general library services programs operating in correctional facilities that are directly supervised by a library supervisor. Reading rooms and deposit collections established in dormitories, hospital wards, confinement units, work camps, forestry camps, road prisons, and work release centers are not general libraries.

(d) Hardcover book – refers to a bound publication with a rigid, pressboard cover that is attached to the book through use of end sheets. It is also commonly referred to as a hardbound book.

(e) Impaired inmate – where used in this section, refers to inmates who are unable to handle or read written material due to a physical or mental impairment that substantially limits one or more major life activities, as determined by a physician, psychologist, academic teacher or other specialist to which the inmate was referred to by the department for diagnosis or treatment of the impairment.

(f) Library Supervisor – refers to the librarian specialist, library technical assistant, or any other employee that the warden or designee appoints to supervise the institutional general library program.

(g) Periodical on tape – refers to a magazine or newspaper issue that has been read aloud and recorded on one or more cassette tapes by the Bureau of Braille and Talking Book Library.

(h) Soft cover book – refers to a bound publication with a flexible, paper cover, also referred to as a soft bound or paperback book.

(2) Inmates at major institutions of the department shall be provided access to general library materials and services, to include access to books, periodicals, and newspapers, as staffing and budgetary limitations, security requirements, and this rule and other department rules permit.

(3) Rule 33-501.401, F.A.C., shall serve as the primary materials selection policy for general libraries. General libraries shall not acquire, maintain, or circulate to inmates any item that the department's literature review committee has ruled as inadmissible. The library supervisor shall be responsible for ensuring that all library materials made accessible to inmates are admissible.

(4)(a) Inmates who mutilate, deface or pilfer general library materials shall be subject to disciplinary action as provided in Rules 33-601.301-601.314, F.A.C. Any inmate who has been found guilty of such a disciplinary infraction may be charged costs to repair or replace library materials or equipment and may have his or her privilege of visiting the library and using library materials suspended for up to 60 days.

(b) Inmates who do not follow general library program procedures governing the use of library materials, or who exhibit behavior that is in noncompliance with department rules while in the library, shall be subject to disciplinary action as provided in Rules 33-601.301-601.314, F.A.C. Any inmate who has been found guilty of such a disciplinary infraction may have his or her privilege of visiting the library and using library materials suspended for up to 60 days.

(5) Inmates in disciplinary confinement and maximum management shall not be permitted to borrow general library books. Inmates in administrative confinement, protective management, and close management shall be provided library

services as provided in Rules 33-602.220, 33-602.221, and 33-601.800, F.A.C. Inmates on death row shall be provided the same library services as are provided to inmates in close management. General library programs shall not send hardcover books to inmates in administrative confinement, close management, or on death row.

(6) Bureau of Braille and Talking Book Library Services. Impaired inmates who receive assistance from the Bureau of Braille and Talking Book Library Services shall be allowed to possess a tape player or record player from the Bureau. Any alteration of equipment provided by the Bureau shall result in confiscation of the equipment and suspension of those privileges.

(a) A tape recorder shall be available for impaired inmates to use at a location determined by the warden which allows for supervision of use and which does not unduly restrict access.

(b) Impaired inmates shall obtain approval from the chief health officer to utilize the tape recorder in lieu of pen and paper for correspondence purposes.

(c) Impaired inmates who are eligible for library services from the Bureau of Braille and Talking Book Library Services may request library materials by means of direct correspondence with that library.

(d) Mailroom staff shall forward any books or periodicals on tape received from the Bureau of Braille and Talking Book Library Services to the general library.

1. Impaired inmates in open population shall pick up Bureau of Braille and Talking Book Library books and periodicals on tape from the general library and shall return said materials to the general library when they are finished with them.

2. Impaired inmates in administrative confinement, disciplinary confinement, close management, or on death row shall be provided access to books on tape, and periodicals on tape where allowed by other department rules, via the same procedures used to provide non-impaired inmates with access to the general library's soft-cover books, or by means of correspondence, and shall return said materials to the general library when they are finished with them.

(e) Possession limits. Impaired inmates, except for those in close management, shall be limited to possession of four books on tape. Possession limits for inmates in close management are established in Rule 33-601.800, F.A.C. An inmate who already possesses the maximum number of books or periodicals on tape allowed shall not be allowed to receive any more until some are returned to the general library or to the Bureau of Braille and Talking Book Library Services.

(f) Any book on tape, periodical on tape, or equipment that an impaired inmate receives from the Bureau of Braille and Talking Book Library Services remains the Bureau's property and must be returned to the Bureau or to the institution's general library when:

1. An inmate loses the use of books and periodicals on tape or equipment for disciplinary reasons; or

2. A physician, psychologist, academic teacher or other specialist to which the inmate was referred to by the department for diagnosis or treatment of the impairment determines that the inmate no longer has physical impairments that qualify him or her for services from that library.

(g) No Bureau of Braille and Talking Book Library materials that are inadmissible per the rejection criteria established in Rule 33-501.401, F.A.C., shall be issued to impaired inmates. Any book or periodical on tape that contains subject matter that is inadmissible shall be returned.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Marilyn Heck
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: James V. Crosby, Jr.
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 2, 2004
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 16, 2004

DEPARTMENT OF CORRECTIONS

RULE TITLE: Close Management
RULE NO.: 33-601.800

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to revise close management forms and to clarify provisions related to: placement in close management, transfer of close management inmates to other institutions, housing conditions and privileges of close management inmates, and review of close management inmates.

SUMMARY: The proposed rule revises close management forms and clarifies provisions related to: placement in close management, transfer of close management inmates to other institutions, housing conditions and privileges of close management inmates, and review of close management inmates.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Perri King Dale, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.800 Close Management.

(1) Definitions.

(a) Housing supervisor – a correctional officer sergeant, or above, who is in charge of the close management confinement unit for a particular shift.

(b) through (g) No change.

(h) Critical Event – inmate involvement, after the CM team decision placement, in one or more of the following events or behaviors: assignment to suicide observation status attempt or other action that could have caused serious bodily harm; homicide; attempted homicide; escape; attempted escape; physical assault; attempted physical assault.

(i) Review – where used herein, refers to the evaluation of pertinent information or documentation concerning an inmate’s close management confinement status to determine if changes or modifications are required or recommended.

(j) No change.

(k) Institutional Classification Team (ICT) – the team consisting of the warden or assistant warden, classification supervisor, and a chief of security, that is responsible for making work, program, housing and inmate status decisions at a facility and for making other recommendations to the State Classification Office (SCO). The only exception to the above listed membership of the ICT is the makeup of the ICT at the designated CM facilities when considering the placement, continuance, modification, or removal of inmates from close management units. For these purposes, multiple ICTs consisting of the following members can be utilized:

1. Warden, a chief of security or a correctional officer with a rank and position no less than CM housing lieutenant, and the classification supervisor or a senior classification officer who does not have the inmate on his or her caseload; or

2. Assistant Warden for Operations, a chief of security or a correctional officer with a rank and position no less than CM housing lieutenant, and the classification supervisor or in his or her absence from the institution the acting classification supervisor; or

3. Assistant Warden for Programs, a chief of security or in his or her absence from the institution the acting chief of security, and the classification supervisor or a senior classification officer who does not have the inmate on his or her assigned caseload.

(l) through (p) No change.

(q) State Classification Office (SCO) – a staff member at the central office level who is responsible for the review of inmate classification decisions. Duties include approving, modifying or rejecting ICT recommendations.

(2) Levels of Close Management.

(a) Close Management I (CMI).

1. No change.

2. An inmate assigned to CMI will be ineligible for a work assignment. An inmate may be placed in CMI without having previously been in CMII or III. Any of the following factors constitutes a basis for placement of an inmate in CMI status:

a. through k. No change.

~~i. An inmate who meets the criteria for placement in CMII or CMIII and has been in close management previously during the current period of incarceration;~~

~~l.m. An inmate who is currently in CMII or CMIII and shows an inability to adjust as evidenced by subsequent major rule violation(s) continued disciplinary actions or unsatisfactory ratings;~~

~~n.n. No change.~~

(b) Close Management II (CMII).

1. CMII is restrictive cell housing, which may or may not be restricted to single cell housing.

2. An inmate may be placed into CMII without having previously been placed in CMIII. Any of the following factors constitutes a basis for placement of an inmate in CMII status:

a. through h. No change.

~~i. Has met the criteria for placement in CMIII and has been in close management previously during the current period of incarceration; and~~

~~l.j. Is currently in CM III and shows an inability to adjust as evidenced by subsequent major rule violation(s) continued disciplinary action or unsatisfactory ratings.~~

(c) No change.

(3) Procedures for Placement in Close Management.

(a) through (b) No change.

(c) The classification officer shall complete section I of the Report of Close Management, Form DC6-233C. Form DC6-233C is incorporated by reference in subsection (19) of this rule. Upon completion of section I, the classification officer shall forward Form DC6-233C to the classification supervisor. The classification officer shall ensure that the inmate receives a copy of the Report of Close Management, Form DC6-233C, to prepare for the close management review. The inmate will be given a minimum of 48 hours to prepare for the review unless waived by completing a Close Management Waiver, Form DC6-265. Form DC6-265 is incorporated by reference in subsection (19) of this rule. The inmate may present information verbally or in writing for consideration by the ICT. The staff member delivering Form DC6-233C to the inmate shall document on Form DC6-233C that the inmate was informed of his or her allotted time to prepare for the review.

~~(d)(e)~~ Prior to docketing an inmate's case for close management review, the classification supervisor will submit a referral to the senior psychologist for evaluation of the inmate utilizing the Close Management Referral Assessment, DC6-128. Form DC6-128 is incorporated by reference in subsection (19) of this rule.

~~(e)(d)~~ No change.

~~(f)(e)~~ Upon receiving the completed close management referral assessment, the classification supervisor will submit the case for ICT Docket. ~~The ICT will evaluate the recommendations for close management placement and the mental health assessment, interview the inmate, and document its findings and recommendations on the Report of Close Management, Form DC6-233C. Form DC6-233C is incorporated by reference in subsection (19) of this rule. The inmate will be given a minimum of forty-eight hours to prepare for the review unless waived by completing a Close Management Waiver, Form DC6-265. Form DC6-265 is incorporated by reference in subsection (19) of this rule. The inmate may present information verbally or in writing for consideration by the ICT. The team will document on Form DC6-233C that the inmate was informed of his or her allotted time to prepare for the review. The ICT is authorized to postpone the case review to allow an inmate additional time to prepare. If an extension of time is given, the team will document such postponement on form DC6-233C.~~

~~(f)~~ A staff assistant will be assigned to assist an inmate when the team determines the inmate is illiterate or does not understand English, has a disability that would hinder his ability to represent himself, or when the complexity of the issue makes it unlikely that the inmate will be able to properly represent himself or herself. This assistance can also be offered at the inmate's request. In such event, it is the responsibility of the staff member to explain the close management recommendation and procedures to the inmate. Even though the staff member will be authorized to assist an inmate during the hearing and aid the inmate in presenting his or her position, the staff member will not take the position of an advocate or defense attorney for the inmate.

(g) ICT Hearing. The ICT shall evaluate the recommendations for close management placement and the mental health assessment, interview the inmate, and consider the information provided by the inmate. The ICT shall ensure that the inmate was given a minimum of 48 hours to prepare for the review unless waived by completing a Close Management Waiver, Form DC6-265. The team shall document on Form DC6-233C that the inmate was allowed at least 48 hours to prepare for the review. The ICT shall inquire whether or not the inmate is in need of staff assistance. A staff assistant shall be assigned to assist an inmate when the team determines that the inmate is illiterate or does not understand English, has a disability that would hinder the inmate's ability to represent him or herself, or when the complexity of the issue

makes it unlikely that the inmate will be able to properly represent him or herself. This assistance can also be provided at the inmate's request. In such event, it is the responsibility of the staff member to explain the close management recommendation and procedures to the inmate. Even though the staff member will be authorized to assist an inmate during the hearing and aid the inmate in presenting his or her position, the staff member shall not take the position of an advocate or defense attorney for the inmate. The ICT is authorized to postpone the case review to allow an inmate additional time to prepare. If an extension of time is given, the team shall document the postponement on Form DC6-233C. The inmate will appear at the hearing unless he or she demonstrates disruptive behavior, either before or during the hearing, that impedes the process or the inmate waives his or her right to be present at the close management hearing. If the inmate waives his or her right to be present at the close management hearing, the Close Management Waiver, Form DC6-265, shall be completed. In such cases, the review will be completed without the inmate, and, the absence, or removal, or presence of the inmate will be documented on Form DC6-233C. After the interview and review of all pertinent information including the mental health assessment, the ICT will make a recommendation to the SCO. This recommendation will be documented on Form DC6-233C. The ICT will inform the inmate of the basis for its decision and provide a copy of the team's decision to the inmate after the conclusion of the hearing. The ICT classification member supervisor will ensure that enter the team results are entered in OBIS.

(h) The SCO will review the recommendations of the ICT, the Close Management Referral Assessment, Form DC6-128, and other pertinent information before making the final decision regarding close management placement. This review will be on site and the SCO may interview the inmate, except in situations requiring more immediate action. In these cases, the SCO will review the documentation in OBIS. The SCO will approve, disapprove, or modify the ICT's recommendation or obtain further information from the team before reaching a final decision. If the team's recommendation is disapproved or modified by the SCO, the inmate will be informed of the decision in writing by the SCO. Inmate notification will not be required when the SCO has approved the ICT's recommendation. After the review is complete, the SCO will document its decision in OBIS. A copy of Form DC6-233C will be kept in the inmate record file.

(4) Transfers From a Non-CM Institution.

(a) Once a CM recommendation is made, the ICT team will also enter a transfer the recommendation in OBIS ~~and provide a copy of the DC6-233C reflecting the decision and signatures to the SCO. A copy of the DC6-233C will be kept in the inmate record file.~~

(b) The inmate will remain in administrative or current confinement status pending review and final decision of the SCO. If the inmate's release date from disciplinary confinement expires, the inmate shall be placed in administrative confinement until the review and decision is made by the SCO. ~~The SCO will review the recommendation from the ICT and either approve or disapprove the recommendation.~~

(c) If placement in CM is approved, the SCO will document its decision in OBIS and notify the Bureau of Sentence Structure and Transportation for future transfer of the inmate to an appropriate CM facility.

(d) If the CM recommendation is disapproved, the SCO will determine if a transfer for other management reasons should be approved. The SCO will document its decision in OBIS. If a transfer is approved, the SCO will notify the Bureau of Sentence Structure and Transportation for future transfer of the inmate to an appropriate non-CM facility provide written notification to the ICT of the requesting institution on its decision not to transfer. After the review is complete, the SCO will document its decision in OBIS.

(5) Transfers While Inmate is in CM Status.

(a) No change.

(b) To transfer an inmate in close management status to another close management facility, the following will occur:

1. No change.

2. Transfers will be limited to those inmates in close management;

a. Who are being recommended for a close management level that the sending institution is not capable of providing, based on institutional mission or close management stratification issues, or

b. Situations that involve special reviews. Inmates with protection or threat reviews involving inmates housed at the same CM facility will be handled within the CM unit and, unless exceptional circumstances exist, will not be transferred from one CM institution to another based solely on these reviews, or

c. Situations that require an inmate to be moved to a higher level facility.

(c) The recommendation by the ICT to transfer a close management inmate will be decided by the SCO. If approved, the SCO will submit notification to the Bureau of Sentence Structure and Transportation for transfer of the inmate. ~~(d)~~ The receiving institution shall then place the inmate directly into the approved close management status without completing an additional evaluation.

(d) If the transfer recommendation is disapproved, the SCO will provide written notification to the ICT of the requesting institution of its decision not to transfer.

(e) After the review is complete, the SCO will document its decision in OBIS.

(6) Close Management Facilities.

(a) through (d) No change.

(e) Water Supply to CM Units. All close management cells will be equipped with toilet facilities and running water for drinking and other sanitary purposes. Water in the cell can be turned off when necessary due to misbehavior. Misbehavior is defined as any activity exhibited by an inmate which causes an interruption in the water system and its proper function, such as intentionally clogging a toilet bowl or sink with paper in order to then flood the housing area. It also includes the intentional misuse of the water for such purposes as throwing it on staff or other inmates, or mixing it with another substance for an unauthorized purpose (inmate mixes water with soap or shampoo and apply to the floor or himself or herself to hinder cell extraction). In such event, the inmate will be furnished with an adequate supply of drinking water by other means to prevent dehydration. This action can be taken in addition to formal disciplinary action being taken against the inmate pursuant to established procedures regarding disciplinary action. Any misbehavior from an inmate and subsequent action by security staff will be documented on the Close Management Daily Record of Segregation, Form DC6-229A. Form DC6-229A is incorporated by reference in subsection (19) of this rule.

(f) No change.

(g) The close management cells will be physically separate from other confinement cells; whenever possible given the physical design of the facility and the number of inmates housed in a close management cell shall not exceed the number of bunks in the cell. Whenever such location is not possible, and have physical barriers shall be placed to preclude the reduce cross association of those in close management with those in other statuses confinement when such locations are not possible. Close management cells shall They will be built to permit verbal communication and unobstructed observation by the staff. ~~The close management cells will not exceed the number of bunks in the cell, whenever possible, given the physical design of the facility and the number of inmates housed in close management.~~

(h) Inmates shall be weighed upon entering close management, at least once a week while in close management, and upon leaving close management. The weight of the inmate shall be documented on Form DC6-229A, Close Management Daily Record of Segregation.

(7) No change.

(8) Behavioral Risk Assessment.

(a) The MDST shall determine behavioral risk of each CM team decision inmate by completing the Behavioral Risk Assessment (BRA), Form DC4-729. Form DC4-729 is incorporated by reference in subsection (19) of this rule.

(b) Behavioral risk shall be determined as follows:

1. through 2. No change

3. Within 120 days of the initial (14 day) assessment; and every 180 days thereafter Each time that the MDST reviews the ISP.

(c) The BRA shall be completed at the above intervals regardless of S-grade or housing assignment, including, for example, when the CM inmate is housed outside the CM unit in order to access necessary medical or mental health care.

(c) through (d) renumbered (d) through (e) No change.

~~(f)(e)~~ The SCO shall consider results from all the behavioral risk assessments; and all results from mental health evaluations that have been completed since the inmate's last formal assessment and evaluation, and other information relevant to institutional adjustment, staff and inmate safety, and institutional security in its review of ICT recommendations made after CM placement.

(9) Mental Health Services.

(a) Chapter 33-404, F.A.C., Mental Health Services, shall apply to CM inmates except where otherwise specified herein.

(b) CM inmates shall be allowed out of their cells to receive mental health services as specified in an ISP unless, within the past ~~4~~ 48 hours, the inmate has displayed hostile, threatening, or other behavior that could present a danger to others. Security staff shall determine the level of restraint required while CM inmates access services outside their cells.

(10) Conditions and Privileges in CM Units.

(a) Clothing – Inmates in close management shall be provided the same clothing and clothing exchange as the general inmate population unless there are facts to suggest that on an individual basis exceptions are necessary for the welfare of the inmate or the security of the institution. In such cases, the exceptions shall be documented on Form DC6-229A and approved by the chief of security. Shower slides may be substituted for regulation shoes. Any item may be removed from the cell in order to prevent the inmate from inflicting injury to himself or herself or others or to prevent the destruction of property or equipment. If an inmate's clothing is removed, a modesty garment shall be immediately obtained and given to the inmate. If the inmate chooses not to wear the garment, the garment shall be left in the cell and this action shall be documented on Form DC6-229A, Close Management Daily Record of Segregation. Under no circumstances shall an inmate be left without a means to cover himself or herself.

(b) Bedding and linen – Bedding and linen for inmates in close management shall be issued and exchanged the same as is provided to the general inmate population. Any exceptions shall be based on potential harm to individuals or a threat to the security of the institution. The shift supervisor or the senior correctional officer must approve the action initially. Such exceptions shall be documented on Form DC6-229A and the chief of security shall make the final decision in regard to action no later than the next working day following the action.

(c) Personal Property – Inmates shall be allowed to retain personal property including stamps, watches, rings, writing paper, envelopes and health and comfort items unless there is a indication of a security problem. Close management inmates at all levels shall be allowed to possess a “walkman” type radio with approved headphones as is allowed for general population inmates. Exceptions or removal of any item will be documented on the DC6-229A. An Inmate Impounded Personal Property List, Form DC6-220, will be completed by security staff and signed by the inmate designating what personal items were removed. The original will then be placed in the inmate's property file and a copy of the form will be given to the inmate for his or her records. If items of clothing, bedding or personal property are removed in order to prevent the inmate from inflicting injury to himself or herself or others, ~~or~~ to prevent the destruction of property or equipment, or to prevent the inmate from impeding security staff from accomplishing functions essential to the unit and institutional security, staff shall re-assess the need for continued restriction every 72 hours thereafter. The warden, based on this assessment, will make the final determination on the continued denial or return of the items. The items will be returned to the inmate when no further behavior or threat of behavior of the type leading to the restriction has occurred. Form DC6-220 is incorporated by reference in Rule 33-602.220, F.A.C.

(d) Comfort Items – Inmates in close management shall be permitted personal hygiene items and other medically needed or prescribed items such as eye glasses or hearing aids, except when security requirements dictate otherwise. Inmates in close management shall not possess any products that contain baby oil, mineral oil, cocoa butter, or alcohol. In the event certain items that inmates in close management are not normally prohibited from possessing are removed, the senior correctional officer shall be notified and must approve the action taken, or the item must be returned to the inmate. Action taken shall be recorded on the Close Management Daily Record of Segregation, Form DC6-229A, which must be reviewed by the chief of security. When any personal property is removed, an Inmate Impounded Personal Property List, Form DC6-220, designating what personal items were removed, shall be completed by security staff and signed by the inmate. The following comfort items shall be provided as a minimum: toothbrush, toothpaste, bar of soap, towel or paper towels, and feminine hygiene products for women, and toilet tissue.

(e) Personal Hygiene – Inmates in close management shall meet the same standards in regard to personal hygiene as required of the general inmate population.

1. At a minimum each inmate in close management confinement shall shower three times per week and on days that the inmate works.

2. through 3. No change.

(f) Diet and Meals – All inmates in close management shall receive normal institutional meals as are available to the general inmate population except that if any item on the regular menu might create a security problem in the close management confinement area, then another item of comparable quality shall be substituted. An alternative meal (special management meal) may be provided for any inmate in close management who uses food or food service equipment in a manner that is hazardous to himself or herself, staff, or other inmates. The issuance of a special management meal will be in strict accordance with Rule 33-602.223, F.A.C. Any deviation from established meal service is to be documented by security staff on the Close Management Daily Record of Segregation, Form DC6-229A.

(g) Canteen Items.

1. Inmates in CMI and II, following 30 days in close management status and having no major rule violations during this period satisfactory adjustment, will be allowed to make canteen purchases once per week unless restricted by disciplinary action. Inmates in CMI and II will be allowed to purchase up to five non-food items and five food items. In making this determination, with the exception of stamps and notebook paper, it is the number of items that is counted not the type of item. For example, three security pens counts as three items, not one item. Twenty-five stamps or fewer will count as one item and two packages or less of notebook paper will count as one item.

2. Inmates in CMIII, following 30 days in close management status and having no major rule violations during this period satisfactory adjustment, will be allowed to make canteen purchases once each week unless restricted by disciplinary action. Inmates in CMIII will be allowed to purchase up to five non-food items and ten food items. In making the determination, with the exception of stamps and notebook paper, it is the number of items that is counted not the type of item. For example, three packages of cookies count as three items, not one item.

3. No change.

(h) No change.

(i) Legal Access – An inmate in close management will have access to his or her personal legal papers and law books and have correspondence access with the law library. Access to the law library will be obtained through delivery of research materials to an inmate's cell, and access to visits with research aides. Although the inmate may not be represented by an attorney at any administrative hearing under this rule, access to an attorney or aide to that attorney will be granted for legal visits at any reasonable time during normal business hours. Indigent inmates will be provided paper and writing utensils in order to prepare legal papers. Inmates who are not indigent will be allowed to purchase paper and envelopes for this purpose by completing Form DC6-251, CMI and II Canteen Order, or

Form DC6-252, CMIII Canteen Order, within the stated time frames. Forms DC6-251 and DC6-252 are incorporated by reference in subsection (19) of this rule. Typewriters or typing services are not considered required items and will not be permitted in close management ~~confinement~~ cells. Inmates with disabilities that hinder the preparation of legal correspondence will be allowed the use of auxiliary aids (writer/reader). An inmate who is provided an auxiliary aid shall also be allowed access to a research aide for the purpose of preparing legal documents, legal mail, and filing grievances.

(j) No change.

(k) Writing utensils – Inmates in close management shall possess only security pens. Other types of pens or pencils shall be confiscated and stored until the inmate is released from close management status. If a security pen is not available, the inmate shall be allowed to sign out a regular pen from the confinement unit officer. All care shall be taken to ensure that an inmate who requests access to a pen in order to prepare legal documents or legal mail or to file a grievance with the department has access to a pen for a time period sufficient to prepare the legal mail, documents, or grievances. Inmates shall be allowed to purchase security pens within the specified time frames. An inmate who has been provided a "writer/reader" will be allowed access to such for the purpose of reading and preparing correspondence.

(l) Reading materials – Reading materials, including scriptural or devotional materials and books that are in compliance with admissibility requirements, are allowed in close management units unless there is an indication of a threat to the safety, security, or sanitation of the institution. If it is determined that there is a safety, security or sanitation risk, the items will be removed. Such removal of reading materials will be documented on Form DC6-229A, Close Management Daily Record of Segregation. If items are removed in order to prevent the inmate from inflicting injury to himself or herself or others or to prevent the destruction of property or equipment, staff shall re-assess the need for continued restriction every 72 hours thereafter. The warden, based on this assessment, will make the final determination on the continued denial or return of the items. The items will be returned to the inmate when no further behavior or threat of behavior of the type leading to the restriction has occurred. An inmate who receives services from the Bureau of Braille and Talking Book library will be allowed to have his tape player, devotional or scriptural material tapes, and other books on tape which are in compliance with Rule 33-501.401, F.A.C.

(m) Exercise – Those inmates confined on a 24-hour basis excluding showers and clinic trips may exercise in their cells. If the inmate requests a physical fitness program handout, the wellness specialist or the close management confinement officer shall provide the inmate with an in-cell exercise guide and document such on the Close Management Daily Record of Segregation, Form DC6-229A. However, an exercise schedule

shall be implemented to ensure a minimum of ~~six three~~ hours per week (two hours three days per week) of exercise out of doors. The assignment and participation of an inmate on the restricted labor squad or other outside work squad required to work outside at least one day per week will satisfy the minimum exercise requirements for the week. Such exercise periods shall be documented on Form DC6-229A. The ICT is authorized to restrict exercise for an individual inmate only when the inmate is found guilty of a major rule violation as defined in this rule. ~~In this instance, a major rule violation is defined as: any assault, battery or attempted assault or battery; any spoken or written threat towards any person; inciting, attempting to incite or participating in any riot, strike, mutinous act or disturbance; fighting; possession of weapons, ammunition, explosives or escape paraphernalia; escape or escape attempt.~~ Inmates shall be notified in writing of this decision and may appeal through the grievance procedure. The denial of exercise shall be for no more than 15 days per incident and for no longer than 30 days in cumulative length. Medical restrictions determined by health services staff can also place limitations on the amount and type of exercise permitted. Such restrictions of exercise periods will be documented on the Close Management Daily Record of Segregation, Form DC6-229A. A disabled inmate who is unable to participate in the normal exercise program will have an exercise program developed for him that will accomplish the need for exercise and take into account the particular inmate's limitations. Close management inmates shall be allowed equal access to outdoor exercise areas with exercise stations.

(n) No change.

(11) Programs and Privileges in Close Management Units.

(a) While in a close management unit, an inmate's movement within the institution and contacts with other individuals will be restricted. Privileges will also be limited depending on the specific close management level. If an inmate transfers to a less restrictive level due to satisfactory adjustment, the adjustment period required for any privilege shall be waived. Upon placement in CM, inmates shall receive a copy of the Close Management Housing Unit Instructions, Form NII-046. Form NII-046 is incorporated by reference in subsection (19) of this rule.

(b) CMI. Privileges for an inmate assigned to CMI ~~who maintains a satisfactory adjustment~~ are as follows:

1. through 3. No change.

4. Subscribe to one magazine and newspaper ~~as provided for in Rule 33-210.101, F.A.C.~~, and possess no more than four issues of each at any given time; an inmate who receives services from the Bureau of Braille and Talking Book Library will be allowed to receive up to four issues of a magazine;

5. Make one telephone call of the length allowed by Rule 33-602.205, F.A.C. every 30 days ~~after following~~ 30 days in close management status and having no major rule violations

~~during this period of satisfactory adjustment~~ as well as emergency telephone calls and telephone calls to an attorney as explained in Rule 33-602.205, F.A.C.;

6. Unless restricted pursuant to Rule 33-601.731, F.A.C., CMI inmates shall be eligible to receive one two-hour non-contact personal visit by appointment;

a. ~~After~~ After completing 30 days in close management status and having no major rule violations during this period.

b. If found guilty of any major rule violations while assigned to CMI, the inmate is eligible to be considered for visits 30 days following release from disciplinary confinement or the disciplinary hearing, if a penalty other than disciplinary confinement was imposed;

c. The inmate is eligible to receive one two-hour non-contact personal visit by appointment after each subsequent 30 day period with no major rule violations while in the status unless security or safety concerns would preclude a visit.

d. All visits for CMI inmates will be non-contact visits.

(c) CMII. In addition to the programs provided for CM I inmates and those privileges outlined in (11)(b)1.-4. of this rule, the following privileges are authorized:

1. Unless restricted pursuant to Rule 33-601.731, F.A.C., CMII inmates will be eligible to receive one two-hour non-contact personal visit by appointment;

a. After completing 30 days in close management status and having no major rule violations during this period ~~since being assigned to close management~~.

b. If found guilty of any major rule violations while assigned to CMII, the inmate is eligible to be considered for a visit 30 days following release from disciplinary status or the disciplinary hearing if a penalty other than disciplinary confinement was imposed, ~~with no major rule violations~~.

c. The inmate is eligible to receive personal visits by appointment after each subsequent 14 day period with no major rule violations while in the status unless security and safety concerns would preclude a visit.

d. All visits for inmates in CMII will be non-contact visits.

2. CMII inmates shall be allowed to make one telephone call of the length allowed by Rule 33-602.205, F.A.C., every 14 days after 30 days in close management status and having no major rule violations during this period ~~of satisfactory adjustment~~ as well as emergency telephone calls and calls to attorneys as provided in Rule 33-602.205, F.A.C.

3. CMII inmates, following 30 days in close management status and having no major rule violations during this period ~~satisfactory adjustment~~, shall be allowed access to the day room area for social purposes to include watching television programs for up to two days per week, not to exceed 4 hours per occasion or to extend beyond 10:00 PM. This is allowed only when it does not conflict with organized program activities. The number of participants at any one time will be determined by the senior correctional officer shift supervisor ~~in~~

consultation with the duty warden. This determination will be based on considerations such as day room size, availability of seating, and safety and security issues associated with the availability of supervising staff as well as staff available for response should a problem develop. CMII inmates will be restrained during the above-described dayroom access unless determined by the senior correctional officer chief of security that the inmate can safely participate without restraints.

4. Participation in educational and program opportunities shall be in-cell or out-of-cell as determined by security and programs staff.

(d) CMIII. In addition to the programs provided above for CMI inmates, and those privileges outlined in subparagraph (11)(b)1.-4. of this rule, the following privileges are authorized:

1. CMIII inmates will be entitled to:

a. Unless restricted pursuant to Rule 33-601.731, F.A.C., CMIII inmates shall be eligible to receive one two-hour contact personal visit by appointment after completing 30 days in close management status and having no major rule violations during this period since being assigned to close management.

b. CMIII inmates shall be subject to placement on non-contact status as outlined in Rule 33-601.735709, F.A.C.

~~c.~~ If found guilty of a disciplinary infraction while assigned to CMIII, the inmate is eligible to be considered for visits 14 days following release from disciplinary status or the disciplinary hearing if a penalty other than disciplinary confinement was imposed, ~~and the inmate has no major rule violations.~~

~~d.~~ The inmate is eligible to receive one two-hour contact personal visit by appointment after each subsequent 14 day period with no major rule violations during this period while in the status unless security or safety concern would preclude a visit. The warden will determine the level of supervision and restraint required.

2. CMIII inmates, following Day room privileges after 30 days in close management status and having no major rule violations during this period satisfactory adjustment shall be allowed access to the day room area for social purposes to include watching television programs for up to five days per week, not to exceed 4 hours per occasion or to extend beyond 10:00 p.m.. This is allowed only when it does not conflict with organized program activities. The number of participants at any one time will be determined by the senior correctional officer shift supervisor in consultation with the duty warden. This determination will be based on considerations such as day room size, availability of seating, and safety and security issues associated with the availability of supervising staff as well as staff available for response should a problem develop. CMIII inmates shall not be restrained for dayroom activities unless security or safety concerns require otherwise.

3. CMIII inmates shall be allowed to make one telephone call of the length allowed by Rule 33-602.205, F.A.C., every seven days after 30 days in close management status and having no major rule violations during this period of satisfactory adjustment as well as emergency telephone calls and calls to attorneys as provided in Rule 33-602.205, F.A.C.

(12) Suspension of Privileges. The ICT shall suspend an inmate's privileges if security and safety concerns would preclude an inmate from receiving certain privileges. Any action taken by the ICT regarding the suspension or limiting of privileges will be documented on the Close Management Daily Record of Segregation, Form DC6-229A. Privileges suspended by the ICT in excess of 30 days will require the review and approval of the SCO.

(13) through (14) No change.

(15) Contact by Staff.

(a) The following staff members shall be required to officially inspect and tour the close management unit. All visits by staff shall be documented on the Inspection of Special Housing Record, Form DC6-228. Form DC6-228 is incorporated by reference in subsection (19) of this rule. The staff member shall also document his or her visit on the Close Management Daily Record of Segregation, Form DC6-229A, if there is any discussion of significance, action or behavior of the inmate, or any other important evidential information which may have an influence or effect on the status of confinement. These visits shall be conducted at a minimum of:

1. through 9. No change.

(16) Review of Close Management.

(a) An ICT member shall review inmates in close management at least once every week for the first 60 days and once every 30 days thereafter. For the purposes of this review the ICT member shall be the warden, assistant warden for operations or programs, a chief of security, or classification supervisor. The purpose of this review shall be toward reducing the inmate's status to the lowest management level or returning the inmate to general population as soon as the facts of the case indicate that this can be done safely, and, if applicable, review the inmate's disciplinary confinement status as outlined in subsection 33-602.222(8), F.A.C. If, upon completion of the ICT member's weekly or 30 day review, an ICT review for modification of the close management team decision, release to general population, or release from disciplinary confinement status is indicated, the ICT member shall notify the classification supervisor. The classification supervisor shall ensure that the case is placed on the docket for ICT review. During the review, the ICT shall consider the results of the behavioral risk assessments and mental health evaluations that have been completed prior to the review, and other information relevant to institutional adjustment, staff and inmate safety, and institutional security.

(b) All services provided by any mental health or program staff member shall be recorded on the Close Management Daily Record of Segregation, Form DC6-229A, which shall be kept in the ~~officers' station of the CM unit. When the form has been completely filled out or the inmate has been released from the CM unit, a copy shall be placed in the inmate file and the original shall be filed in the mental health record.~~

(c) When an inmate has not been released to general population and is in any close management status for six months, the classification officer shall interview the inmate and shall prepare a formal assessment and evaluation on the Report of Close Management. Such reports shall include a brief paragraph detailing the basis for the CM team decision ~~confinement~~, what has transpired during the six-month period, and whether the inmate should be released, maintained at the current level, or modified reduced to another a lower level of management. The case shall be forwarded to the classification supervisor who shall docket the case for ICT review.

(d) The ICT shall review the report of close management prepared by the classification officer, consider the results of behavioral risk assessments and mental health evaluations and other information relevant to institutional adjustment, staff and inmate safety, and institutional security, and insert any other information regarding the inmate's status ~~and interview the inmate. If applicable, the ICT shall review the inmate's disciplinary confinement status in accordance with subsection 33-602.222(8), F.A.C. The inmate shall be present for an interview unless he or she demonstrates disruptive behavior, either before or during the hearing, that impedes the process, or the inmate waives his or her right to be present at the close management hearing, the Close Management Waiver, Form DC6-265, shall be completed. In such cases, the review will be completed without the inmate. The absence, removal or presence of the inmate will be documented on Form DC6-233C. The ICT's CM and, if applicable, Disciplinary confinement status recommendations shall be documented in OBIS and the Report of Close Management, Form DC6-233C. If it is determined that no justifiable safety and security issues exists for the inmate to remain in close management the ICT shall forward their recommendation for release to the SCO for review. For an inmate to remain in close management the ICT shall justify the safety and security issues or circumstances that can only be met by maintaining the inmate at the current level or modifying the inmate to another a lower level of management.~~

(e) The SCO shall conduct an onsite interview with each inmate at least once every six months or as often as necessary to determine if continuation, modification, or removal from close management status is appropriate. The SCO shall review all reports prepared by the ICT concerning an inmate's close management and, if applicable, disciplinary confinement status, consider the results of behavioral risk assessments and mental health evaluations and other information relevant to

institutional adjustment, staff and inmate safety, and institutional security. The SCO shall and may interview the inmate unless exceptional circumstances exist or the inmate is approved for release to general population before determining the final disposition of the inmate's close management status. If it is determined that no justifiable safety and security issues exist for the inmate to remain in close management the SCO shall cause the inmate to be immediately released. For an inmate to remain in close management, the SCO shall determine based on the reports and documentation that there are safety and security issues or circumstances for maintaining the inmate at the current level or at a modified lower level of management. If applicable and in accordance with subsection 33-602.222(8), F.A.C., the SCO shall determine whether the inmate is to continue or be removed from disciplinary confinement status. The SCO's decisions shall be documented in OBIS and the Report of Close Management, Form DC6-233C. ~~The SCO ICT shall advise the inmate of its the SCO's decision.~~

(f) Reviews required by this section shall be completed regardless of the inmate's housing assignment, including when a CM inmate is housed outside the CM unit in order to access medical or mental health care.

(17) Close Management Records.

(a) No change.

(b) A Close Management Daily Record of Segregation, Form DC6-229A, shall be maintained for each inmate as long as he is in close management. Form DC6-229A shall be utilized to document any activities, including cell searches, items removed, showers, outdoor exercise recreation, haircuts and shaves. If items that inmates in close management are not prohibited from possessing are denied or removed from the inmate, the shift supervisor or the senior correctional officer must approve the action initially. The Central Office ADA coordinator shall be contacted within 24 hours if any item is removed that would be considered an auxiliary aid or device that ensures a disabled inmate an equal opportunity as a non-disabled inmate. The items denied or removed shall be documented on Form DC6-229A and the chief of security shall make the final decision in regard to the action no later than the next working day following the action. Staff shall re-assess the need for continued restriction every 72 hours thereafter as outlined in subsection (10) of this rule. The close management unit confinement housing officer shall make a notation of any unusual occurrences or changes in the inmate's behavior and any action taken. Changes in housing location or any other special action shall also be noted. Form DC6-229A shall be maintained in the housing area for 30 days. After each 30 day review of the inmate by a member of the ICT, Form DC6-229A shall be forwarded to the ICT for review. Once reviewed, these forms shall be forwarded to classification to be filed in the institutional inmate record.

(c) A Daily Record of Segregation – Supplemental, Form DC6-229B, shall be completed and attached to the current Form DC6-229A whenever additional written documentation is required concerning an event or incident related to the specific inmate.

(d)(e) An Inspection of Special Housing Record, Form DC6-228, shall be maintained in each close management unit area. Each staff person shall sign the record when entering and leaving the close management unit confinement area. Prior to leaving the close management unit confinement area, each staff member shall indicate any specific problems. No other unit activities will be recorded on Form DC6-228. Upon completion, Form DC6-228 shall be maintained in the housing area and forwarded to the chief of security on a weekly daily basis where it shall be maintained on file pursuant to the current retention schedule.

(e) A Housing Unit Log, Form DC6-209, shall be maintained in each close management unit. Officers shall record all daily unit activities on Form DC6-209, to include any special problems or discrepancies noted. The completed Form DC6-209 shall be forwarded daily to the chief of security for review.

(18) Staffing Issues.

(a) Officers assigned to a close management confinement unit shall be reviewed every 18 months by the chief of security to determine whether a rotation is necessary. The chief of security shall review personnel records, to include performance appraisals, incident reports, uses of force, and any other documentation relevant to the officer’s assignment and job performance; interview the officer and the officer’s supervisors for the period of review; and shall make a recommendation to the warden as to the necessity of a rotation. The warden shall review the recommendation, request additional information, if necessary, and make the final determination as to whether the officer continues in the current assignment or is rotated to another assignment. Any officer assigned to a close management confinement post shall be authorized a minimum period of five days annual leave or a five day assignment to a less stressful post every six months.

(b) No change.

(19) Forms. The following forms referenced in this rule are hereby incorporated by reference. Copies of any of these forms are available from the Forms Control Administrator, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

(a) Form DC6-128, Close Management Referral Assessment, effective date December 16, 2001.

(b) through (e) No change.

(f) Form DC6-229A, Close Management Daily Record of Segregation, effective date _____.

(g) Form DC6-229B, Daily Record of Segregation – Supplemental, effective date _____.

(h)(f) Form DC6-233C, Report of Close Management, effective date December 16, 2001.

(i)(g) Form DC6-251, CMI and II Canteen Order, effective date December 16, 2001.

(j)(h) Form DC6-252, CMIII Canteen Order, effective date December 16, 2001.

(k)(i) No change.

(l)(j) Form DC4-729, Behavioral Risk Assessment, effective date December 16, 2001.

(m) Form DC6-209, Housing Unit Log, effective date _____.

(n) Form NII-046, Close Management Housing Unit Instructions, effective date _____.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History–New 2-1-01, Amended 12-16-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Michael Rathmann

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: James V. Crosby, Jr.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 26, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 29, 2003

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Pilot Commissioners

RULE TITLE: Probable Cause Determination

RULE NO.: 61G14-17.002

PURPOSE AND EFFECT: The proposed rule amendment is intended to address the composition of the probable cause panel.

SUMMARY: The proposed rule amendment clarifies the composition of the Board’s probable cause panel.

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

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

SPECIFIC AUTHORITY: 310.013(3), 455.013(3) FS.

LAW IMPLEMENTED: 455.013(3) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Anthony Spivey, Executive Director, Board of Pilot Commissioners, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G14-17.002 Probable Cause Determination.

(1) The determination as to whether probable cause exists to believe that a violation of the provisions of Chapter 445 or 310, Florida Statutes, or the rule promulgated thereunder has occurred shall be made by a probable cause panel of the Board. The panel shall consist of three (3) Board members, not more than one (1) member of the panel shall be a non-pilot Board Member. Former Board members who hold an active valid license may serve on the Probable Cause Panel but at least two (2) current Board members must be members of the Panel at all times.

(2) No change.

Specific Authority 310.013(3), 455.013(3) FS. Law Implemented 455.013(3) FS. History--New 1-28-80, Formerly 21SS-8.06, Amended 9-4-91, Formerly 21SS-8.006, 21SS-17.002, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Pilot Commissioners

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Pilot Commissioners

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 9, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 16, 2004

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Engineers

RULE TITLE: Experience
RULE NO.: 61G15-20.002

PURPOSE AND EFFECT: This rule is being amended to remove obsolete language and to clarify what is required for valid experience as required by subsection 61G15-20.001(2), F.A.C.

SUMMARY: This rule sets forth the experience requirements and documentation necessary to qualify for the examination.

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

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

SPECIFIC AUTHORITY: 471.013(1)(a) FS.

LAW IMPLEMENTED: 471.005(6), 471.013(1)(a) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW (IF NOT REQUESTED, A HEARING WILL NOT BE HELD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Natalie Lowe, Executive Director, Florida Board of Professional Engineers, 2507 Callaway Road, Suite 200, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G15-20.002 Experience.

(1)(a) In order to meet the prerequisites for entry into the engineering examination, an applicant is required to have four years of acceptable experience in engineering at the time of application and four years of acceptable educational qualifications. In determining whether an applicant's experience background is sufficient to meet the requirements set forth in subsection 471.013(1)(a)1. and 2., F.S., the Board has determined that an individual must have the requisite number of years of acceptable engineering experience gained through education and through the requisite amount of full-time employment in engineering. The type of employment which shall be acceptable must principally involve activities in the field of engineering as defined in subsection 471.005(4)(a), F.S., ~~and shall include at least one year of engineering design experience.~~ The Board may accept engineering experience in foreign countries if such experience is properly verified by the Board from evidence supplied by the applicant to be equivalent to that accepted as experience by the Board as to any state or territory.

(b) Because the evaluation of experience is a complex and subjective matter, the Board establishes the following guidelines which shall be generally applicable absent extraordinary evidence and documentation supporting a departure therefrom:

1. The acquisition of acceptable engineering experience should logically follow and constitute an application of the engineering education previously obtained.

2. Engineering experience obtained prior to the completion of the engineering degree is usually of a subprofessional nature. Such experience, if deemed acceptable and properly verified, may be awarded experience credit at 25% of the actual time. If the experience is obtained after the completion of a substantial number of engineering design courses, and involves matters of average or above average complexity, experience credit may be awarded at up to 50% of actual time. In any event, the total engineering experience credit allowable for pregraduation experience shall not exceed 12 months.

3. Experience credit is based on a 40 hour per week full-time basis. No additional credit is allowable for overtime work, or for part-time work experience obtained while pursuing engineering education on a full-time basis, or for the part-time pursuit of a masters or doctorate degree while obtaining full-time work experience.

4. Experience must be progressive on engineering projects to indicate that it is of increasing quality and requiring greater responsibility.

5. Experience must not be obtained in violation of the licensure act.

6. Experience gained in the armed services, to be creditable, must be of a character equivalent to that which would have been gained in the civilian sector doing similar work. Normally, it would be expected that the applicant while in the armed services served in an engineering or engineering-related group.

7. Experience should be gained under the supervision of a licensed professional engineer or, if not, an explanation should be made showing why the experience should be considered acceptable.

8. For sales experience to be creditable, it must be demonstrated that engineering principles were required and used in gaining the experience.

9. Teaching experience, to be creditable, must be in engineering or engineering-related courses at an advanced level in a college or university offering an engineering program of four years or more that is approved by the board.

10. Experience gained in engineering research and design projects by members of an engineering faculty where the program is approved by the board is creditable.

11. Experience may not be anticipated. The experience must have been gained by the time of the application.

12. Experience in construction, to be creditable, must demonstrate the application of engineering principles.

13. Experience should include demonstration of a knowledge of engineering mathematics, physical and applied science, properties of materials, and the fundamental principles of engineering design.

14. Experience should include demonstration of the application of engineering principles in the practical solution of engineering problems.

(2) In order to verify an applicant's experience record, the Board will require evidence of employment from employers or supervisors who are employed in the engineering profession or are professional engineers, who shall set forth the quality and character of the applicant's duties and responsibilities. In addition to the employer verification, an applicant must list three personal references who are professional engineers. Should the Board find the information submitted by the applicant is insufficient or incomplete, the Board may require the applicant to supply additional references or evidence regarding the applicant's experience and background or both so that an intelligent decision may be made on whether admittance to the examination is allowable.

The Board will accept as equivalent to one year's experience a masters degree in engineering from a college or university from a Board approved engineering program as defined in subsection 61G15-20.001(2), F.A.C. approved pursuant to

~~Section 471.013, F.S.~~ The Board will also accept as equivalent to one year's experience a doctorate in engineering from a college or university from a Board approved engineering program as defined in subsection 61G15-20.001(2), F.A.C. approved pursuant to Section 471.013, F.S.

Specific Authority 471.013(1)(a) FS. Law Implemented 471.005(6), 471.013(1)(a) FS. History--New 1-8-80, Amended 3-11-80, 6-23-80, 7-7-83, 9-13-84, Formerly 21H-20.01, Amended 8-18-87, 12-4-91, Formerly 21H-20.002, Amended 12-26-94, 5-20-02, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Professional Engineers

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Professional Engineers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 8, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 14, 2003

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Engineers

RULE TITLES: RULE NOS.:

Qualification Program for Special Inspectors of Threshold Buildings 61G15-35.003

Common Requirements to All Engineers Providing Threshold Building Inspection Services as Special Inspectors 61G15-35.004

PURPOSE AND EFFECT: The Board proposes to amend this rule to update the language and to remove the subsections (1)(e) relating to self-certification of competency of applicant and (2) relating to automatically qualifying the registered professional engineers who are Certified Special Inspectors listed on the Roster maintained by the Department of Community Affairs. Rule 61G15-35.004, F.A.C., is being amended to change Threshold Building Inspectors to Special Inspectors for clarity and uniformity with other existing rules.

SUMMARY: Rule 61G15-35.003, F.A.C., sets forth the requirements for qualification as a special inspector of threshold buildings, and Rule 61G15-35.004, F.A.C., sets forth the threshold requirement guidelines the inspectors doing the inspecting and for the buildings being inspected.

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

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

SPECIFIC AUTHORITY: 471.008, 471.033(2) FS.

LAW IMPLEMENTED: 471.015(7), 471.033 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW (IF NOT REQUESTED, A HEARING WILL NOT BE HELD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Natalie Lowe, Executive Director of the Florida Board of Professional Engineers, 2507 Callaway Road, Suite 200, Tallahassee, Florida 32303

THE FULL TEXT OF THE PROPOSED RULE IS:

61G15-35.003 Qualification Program for Special Inspectors of Threshold Buildings.

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

(a) Proof of current licensure in good standing as a licensed professional engineer whose principal practice is structural engineering in the State of Florida.

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

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

(d) Experience in the structural inspection and/or design of at least three threshold ~~type~~ buildings. This experience must be within the ten calendar years preceding submission of the application.

~~(e) Self certification as to the competency of the applicant to perform structural inspections on threshold buildings.~~

~~(2) All registered professional engineers who are certified Special Inspectors and on the Roster of Special Inspectors maintained by the Department of Community Affairs, pursuant to Rule 9B-3.043, F.A.C., as of June 30, 2000 shall be qualified pursuant to this rule and shall continue to be certified Special Inspectors of threshold buildings.~~

(3) through (5) renumbered (2) through (4) No change.

Specific Authority 471.008, 471.033(2) FS. Law Implemented 471.015(7), 471.033 FS. History—New 4-19-01, Amended 7-7-02, _____.

61G15-35.004 Common Requirements to All Engineers Providing Threshold Building Inspection Services as Special Inspectors.

(1) For each Threshold Building, a notice shall be filed for public record, bearing the name, address, signature, date and seal of the Special Inspector, certifying that the Special Inspector is competent to provide the engineering services for the specific type of structure.

(2) ~~Special Threshold Building~~ Inspectors utilizing Authorized Representatives shall insure the Authorized Representative is qualified by education or licensure to

perform the duties assigned by the ~~Special Threshold Building~~ Inspector. The qualifications shall include licensure as a professional engineer or architect; graduation from an engineering education program in civil or structural engineering; graduation from an architectural education program; successful completion of the NCEES Fundamentals Examination; or registration as building inspector or general contractor.

(3) ~~Special Threshold Building~~ Inspectors shall be in responsible charge of the work of the Authorized Representative, including reviewing reports and spot checks.

(4) ~~Special Threshold Building~~ Inspectors shall institute quality assurance procedures to include but not be limited to requiring unscheduled visits, utilization or relevant check lists, use of a Daily Inspection Report and insuring that the Special Inspector or the Authorized Representative is at the project whenever so required by the inspection plan.

Specific Authority 471.008, 471.033(2) FS. Law Implemented 471.015(7), 471.033 FS. History—New 3-21-01, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Professional Engineers

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Professional Engineers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 3, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 26, 2003

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

State Boxing Commission

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
General Rules for Kickboxing	61K1-2
RULE TITLES:	RULE NOS.:
Purpose, Applicability and Scope of Rules	61K1-2.001
Definitions	61K1-2.002
Commission, Duties and Responsibilities;	
Deputy Commissioners	61K1-2.0023
Medical Advisory Council, Duties	
and Responsibilities	61K1-2.0024
Executive Secretary, Duties and	
Responsibilities	61K1-2.0025
Deputy Commissioners, Duties and	
Responsibilities	61K1-2.0026
Commission Representatives, Duties	
and Responsibilities	61K1-2.0027
Inspectors, Duties and Responsibilities	61K1-2.0028
Licenses, Permits; Requirement, Procedure	
and Period, Fee	61K1-2.003
Insurance	61K1-2.0035
Weight Classes; Weigh-In; Pre-Match	
Physical of Participant and Referee	61K1-2.004
Drugs and Foreign Substances; Penalties	61K1-2.0043

Promoter and Matchmaker; Licensing and Bond; Duties and Conduct 61K1-2.005

Arena Equipment; Ring Requirements; Floor Plan and Apron Seating; Emergency Medical and Other Equipment and Services 61K1-2.006

Participants' Apparel and Appearance 61K1-2.007

Bandages, Handwraps, Footwraps and Shinpads 61K1-2.008

Gloves, Footpads and Mouthpiece 61K1-2.009

Physician; License and Duties; Authority Manager; License; Contract Between Manager and Participant 61K1-2.010

Participant; License; Conduct and Other Requirements 61K1-2.012

Judge; License and Duties 61K1-2.013

Announcer; License and Duties 61K1-2.016

Timekeeper or Assistant Timekeeper; License and Duties 61K1-2.017

Second; License and Duties 61K1-2.018

Referee; License and Duties 61K1-2.019

Trainer; License and Conduct 61K1-2.023

Booking Agent, Representative of Booking Agent; License 61K1-2.024

Rounds 61K1-2.030

Scoring System for Kickboxing; Scoring, Criteria; Knockdowns, Fouls; Determination of Win or Draw; Decision Final, Exceptions 61K1-2.035

Post-Match Physical Requirements; Suspensions 61K1-2.037

Post-Match Reports Required to be Filed; Penalty for Late Filing 61K1-2.040

Closed Circuit Telecasts; Requirements; Penalty for Late Filing 61K1-2.042

Method of Payment 61K1-2.050

Administrative Complaints; Informal Hearing Officer 61K1-2.070

Forms 61K1-2.080

PURPOSE AND EFFECT: The purpose and effect of the proposed rule amendments is to delete separate set of rules for kickboxing and incorporate kickboxing rules within boxing and mixed martial rules, Chapter 61K1-1, F.A.C.

SUMMARY: In order to streamline Chapter 548 disciplines of kickboxing, boxing, and mixed martial arts, Chapter 61K1-2, F.A.C., General Rules for Kickboxing, is repealed.

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

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

SPECIFIC AUTHORITY: 548.003(2) FS.

LAW IMPLEMENTED: 548 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Jason Penley, Assistant Executive Director, The Florida State Boxing Commission, 725 S. Bronough Street, Room 206, Tallahassee, Florida 32399, (850)488-8500

THE FULL TEXT OF THE PROPOSED RULES IS:

61K1-2.001 Purpose, Applicability and Scope of Rules.

Specific Authority 548.003 FS. Law Implemented 548.004, 548.006, 548.007, 548.061 FS. History–New 11-5-89, Amended 1-1-90, Formerly 7F-2.001, Repealed.

61K1-2.002 Definitions.

Specific Authority 548.003 FS. Law Implemented 548.002, 548.006, 548.013, 548.017, 548.021, 548.045, 548.046, 548.057, 548.06, 548.061 FS. History–New 11-5-89, Formerly 7F-2.002, Amended 2-9-95, 11-20-95, Repealed.

61K1-2.0023 Commission, Duties and Responsibilities; Deputy Commissioners.

Specific Authority 548.003 FS. Law Implemented 548.003, 548.004, 548.006, 548.011, 548.025, 548.035, 548.054, 548.056, 548.07, 548.071, 548.073 FS. History–New 11-5-89, Formerly 7F-2.0023, Amended 2-9-95, Repealed.

61K1-2.0024 Medical Advisory Council, Duties and Responsibilities.

Specific Authority 548.003 FS. Law Implemented 548.046, 548.045 FS. History–New 11-5-89, Formerly 7F-2.0024, Repealed.

61K1-2.0025 Executive Secretary, Duties and Responsibilities.

Specific Authority 548.003 FS. Law Implemented 548.004, 548.006, 548.011, 548.056 FS. History–New 11-5-89, Amended 1-1-90, Formerly 7F-2.0025, Amended 2-9-95, Repealed.

61K1-2.0026 Deputy Commissioners, Duties and Responsibilities.

Specific Authority 548.003 FS. Law Implemented 548.004, 548.006, 548.056, 548.061, 548.071 FS. History–New 11-5-89, Formerly 7F-2.0026, Amended 2-9-95, Repealed.

61K1-2.0027 Commission Representatives, Duties and Responsibilities.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.045, 548.046, 548.057 FS. History–New 11-5-89, Amended 1-1-90, 5-13-90, Formerly 7F-2.0027, Amended 2-9-95, Repealed.

61K1-2.0028 Inspectors, Duties and Responsibilities.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.046, 548.058 FS. History–New 11-5-89, Formerly 7F-2.0028, Repealed.

61K1-2.003 Licenses, Permits; Requirement, Procedure and Period, Fee.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.012, 548.013, 548.014, 548.017, 548.021, 548.025, 548.026, 548.028, 548.032, 548.035, 548.045, 548.046, 548.057, 548.066 FS. History–New 11-5-89, Amended 5-13-90, Formerly 7F-2.003, Amended 2-9-95, Repealed.

61K1-2.0035 Insurance.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.049, 548.071 FS. History–New 11-5-89, Formerly 7F-2.0035, Repealed.

61K1-2.004 Weight Classes; Weigh-In; Pre-Match Physical of Participant and Referee.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.043, 548.045, 548.046, 548.071, 548.075 FS. History–New 11-5-89, Amended 1-1-90, 5-13-90, Formerly 7F-2.004, Amended 2-9-95, Repealed.

61K1-2.0043 Drugs and Foreign Substances; Penalties.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.028, 548.045, 548.046, 548.047, 548.05, 548.053, 548.054, 548.058, 548.071, 548.075, 548.079 FS. History–New 11-5-89, Formerly 7F-2.0043, Repealed.

61K1-2.005 Promoter and Matchmaker; Licensing and Bond; Duties and Conduct.

Specific Authority 548.003 FS. Law Implemented 548.002, 548.006, 548.011, 548.012, 548.013, 548.014, 548.017, 548.028, 548.032, 548.037, 548.046, 548.049, 548.05, 548.052, 548.053, 548.054, 548.056, 548.058, 548.06, 548.061, 548.064, 548.066, 548.071 FS. History–New 11-5-89, Amended 1-1-90, 5-13-90, Formerly 7F-2.005, Amended 2-9-95, Repealed.

61K1-2.006 Arena Equipment; Ring Requirements; Floor Plan and Apron Seating; Emergency Medical and Other Equipment and Services.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.032, 548.045, 548.046, 548.057 FS. History–New 11-5-89, Amended 1-1-90, Formerly 7F-2.006, Repealed.

61K1-2.007 Participants' Apparel and Appearance.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.043, 548.045, 548.046, 548.071 FS. History–New 11-5-89, Formerly 7F-2.007, Amended 2-9-95, Repealed.

61K1-2.008 Bandages, Handwraps, Footwraps and Shinpads.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.043, 548.046 FS. History–New 11-5-89, Formerly 7F-2.008, Repealed.

61K1-2.009 Gloves, Footpads and Mouthpiece.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.043, 548.057 FS. History–New 11-5-89, Amended 1-1-90, 5-13-90, Formerly 7F-2.009, Repealed.

61K1-2.010 Physician; License and Duties; Authority.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.017, 548.021, 548.045, 548.046, 548.047, 548.056 FS. History–New 11-5-89, Amended 5-13-90, Formerly 7F-2.010, Amended 2-9-95, Repealed.

61K1-2.011 Manager; License; Contract Between Manager and Participant.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.017, 548.05, 548.053, 548.054, 548.056, 548.057, 548.058 FS. History–New 11-5-89, Amended 5-13-90, Formerly 7F-2.011, Amended 2-9-95, Repealed.

61K1-2.012 Participant; License; Conduct and Other Requirements.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.017, 548.041, 548.045, 548.046, 548.047, 548.056, 548.058, 548.071 FS. History–New 11-5-89, Amended 1-1-90, Formerly 7F-2.012, Amended 2-9-95, Repealed.

61K1-2.013 Judge; License and Duties.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.017, 548.056, 548.057 FS. History–New 11-5-89, Amended 5-13-90, Formerly 7F-2.013, Amended 2-9-95, Repealed.

61K1-2.016 Announcer; License and Duties.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.017, 548.057 FS. History–New 11-5-89, Formerly 7F-2.016, Amended 2-9-95, Repealed.

61K1-2.017 Timekeeper or Assistant Timekeeper; License and Duties.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.017, 548.057 FS. History–New 11-5-89, Formerly 7F-2.017, Amended 2-9-95, Repealed.

61K1-2.018 Second; License and Duties.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.017, 548.046, 548.056, 548.057 FS. History–New 11-5-89, Formerly 7F-2.018, Amended 2-9-95, Repealed.

61K1-2.019 Referee; License and Duties.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.017, 548.056, 548.057, 548.058 FS. History–New 11-5-89, Formerly 7F-2.019, Amended 2-9-95, Repealed.

61K1-2.023 Trainer; License and Conduct.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.017, 548.056 FS. History–New 11-5-89, Formerly 7F-2.023, Amended 2-9-95, Repealed.

61K1-2.024 Booking Agent, Representative of Booking Agent; License.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.056 FS. History–New 11-5-89, Formerly 7F-2.024, Amended 2-9-95, Repealed.

61K1-2.030 Rounds.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.057 FS. History–New 11-5-89, Formerly 7F-2.030, Repealed.

61K1-2.035 Scoring System for Kickboxing; Scoring, Criteria; Knockdowns, Fouls.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.054, 548.057, 548.058, 548.071 FS. History–New 11-5-89, Formerly 7F-2.035, Amended 2-9-95, Repealed.

61K1-2.037 Post-Match Physical Requirements; Suspensions.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.045, 548.046, 548.071 FS. History–New 11-5-89, Formerly 7F-2.037, Amended 2-9-95, Repealed.

61K1-2.040 Post-Match Reports Required to be Filed; Penalty for Late Filing.

Specific Authority 548.003 FS. Law Implemented 548.053, 548.06, 548.075 FS. History—New 11-5-89, Amended 5-13-90, Formerly 7F-2.040, Amended 2-9-95, Repealed.

61K1-2.042 Closed Circuit Telecasts; Requirements; Penalty for Late Filing.

Specific Authority 548.003 FS. Law Implemented 548.06, 548.061 FS. History—New 11-5-89, Amended 5-13-90, Formerly 7F-2.042, Amended 2-9-95, Repealed.

61K1-2.050 Method of Payment.

Specific Authority 548.003 FS. Law Implemented 548.006 FS. History—New 11-5-89, Formerly 7F-2.050, Amended 2-9-95, Repealed.

61K1-2.070 Administrative Complaints; Informal Hearing Officer.

Specific Authority 548.003 FS. Law Implemented 548.004, 548.006, 548.073 FS. History—New 11-5-89, Formerly 7F-2.070, Amended 2-9-95, Repealed.

61K1-2.080 Forms.

Specific Authority 548.003 FS. Law Implemented 548.006, 548.011, 548.05 FS. History—New 11-5-89, Amended 5-13-90, Formerly 7F-2.080, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Susan E. Wilkinson, Assistant General Counsel, Office of the General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: J. Christian Meffert, Executive Director, Florida State Boxing Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2004

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Department of Environmental Protection are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Economic Self-Sufficiency Program

RULE TITLE: Medicare Buy-In Demonstration Project
PURPOSE AND EFFECT: The purpose of this notice is to inform citizens that the department intends to repeal the above-referenced rule that established the Medicare Buy-In Demonstration Project that ended December 31, 1999. The effect of this rule repeal is to remove the rule from the Florida Administrative Code.

RULE NO.: 65A-1.720

SUMMARY: The Medicare Buy-In Demonstration Project ended December 31, 1999. Rule 65A-1.720, F.A.C., is no longer required.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

A statement of estimated regulatory cost was not prepared for this rule repeal. 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: 409.919 FS.

LAW IMPLEMENTED: 409.903, 409.904 FS.

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

TIME AND DATE: 9:00 a.m. – 10:00 a.m., April 5, 2004

PLACE: 1317 Winewood Boulevard, Building 3, Room 439, Tallahassee, Florida 32399-0700

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Nathan Lewis, Program Administrator, 1317 Winewood Boulevard, Building 3, Room 448, Tallahassee, Florida 32399-0700, (850)414-5927

THE FULL TEXT OF THE PROPOSED RULE IS:

65A-1.720 Medicare Buy-In Demonstration Project.

Specific Authority 409.919 FS. Law Implemented 409.903, 409.904 FS. History—New 11-11-99, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Robi Olmstead, Government Operations Consultant II

NAME OF SUPERVISOR OR PERSON WHO APPROVED PROPOSED RULE: Nathan Lewis, Program Administrator, Public Assistance Policy Bureau

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 26, 2004

DEPARTMENT OF FINANCIAL SERVICES

Division of Insurance Agents and Agency Services

RULE TITLE: Effect of Law Enforcement Records on Applications for Licensure
RULE NO.: 69B-211.042

PURPOSE AND EFFECT: The purpose and effect is to amend paragraph 69B-211.042(21)(aa), F.A.C., to insert the words "with intent to defraud" after "passing worthless check(s)" in the list of class A crimes. This is to explicitly conform the rule to case law construing the meaning of "moral turpitude" in the context of writing a bad check; e.g., *The Florida Bar v. Davis*, 361 So2d 159. Also subsection 68B-211.042(22), F.A.C., is being amended to add "(i) Passing worthless check without intent to defraud." This is to avoid leaving out such crimes as a result of narrowing the classification in (21)(aa).

SUMMARY: This amendment adds fraudulent intent to “passing worthless check(s)” in the list of crimes involving moral turpitude for the purpose of insurance representative licensure application evaluation. The amendment also lists passing worthless check without intent to defraud as a crime without “moral turpitude.”

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No significant economic impact is expected.

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

SPECIFIC AUTHORITY: 624.308 FS.

LAW IMPLEMENTED: 112.011, 624.307(1), 626.161, 626.171, 626.201, 626.207, 626.211, 626.291, 626.601, 626.611(7), (14), 626.621(8), 626.631, 626.641 FS.

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

TIME AND DATE: 9:30 a.m., Wednesday, March 10, 2004

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 below.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Audrey Huggins, Chief, Bureau of Agent and Agency Licensing, Division of Agent and Agency Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0319, (850)413-5405

THE FULL TEXT OF THE PROPOSED RULE IS:

69B-211.042 Effect of Law Enforcement Records on Applications for Licensure.

(1) through (20) No change.

(21) Class “A” Crimes include all those listed in this subsection, where such crimes are felonies, and all are of equal weight notwithstanding from which subparagraph they are drawn. The Department finds that each felony crime listed in this subsection is a crime of moral turpitude.

(a) through (z) No change.

(aa) Passing worthless check(s) with intent to defraud.

(bb) through (III) No change.

(22) through (24) No change.

Specific Authority 624.308 FS. Law Implemented 112.011, 624.307(1), 626.161, 626.171, 626.201, 626.207, 626.211, 626.291, 626.601, 626.611(7),(14), 626.621(8), 626.631, 626.641 FS. History—New 10-17-02, Amended_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mary Alice Palmer, Director of Agent and Agency Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Audrey Huggins, Bureau Chief of Agent and Agency Licensing, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 2, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 4, 2002

DEPARTMENT OF FINANCIAL SERVICES

Division of Workers’ Compensation

RULE TITLE: Subcontractors Requirement Regarding

RULE NO.: 69L-6.024

Proof of Coverage

69L-6.024

PURPOSE AND EFFECT: To provide consistency between Sections 440.05(14) and 440.10(1)(c), Florida Statutes. The effect will be that where a subcontractor is a corporation and has an officer or officers who elect to be exempt and has no employees who may recover benefits under Chapter 440, Florida Statutes, the subcontractor shall provide a copy of the certificate of exemption for the exempt officer or officers to the contractor, and is not required to provide the contractor with evidence of workers’ compensation insurance.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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: 440.05(9), 440.591 FS.

LAW IMPLEMENTED: 440.02(15), 440.05(14), 440.10(1)(c) FS.

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

TIME AND DATE: 1:00 p.m., March 9, 2004

PLACE: 104J Hartman Building, 2012 Capital Circle, Southeast, 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 below.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bruce Brown, Bureau Chief, Bureau of Compliance, Division of Workers’ Compensation, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-4228, (850)488-2333

THE FULL TEXT OF THE PROPOSED RULE IS:

69L-6.024 Subcontractors Requirement Regarding Proof of Coverage.

(1) Under Section 440.05(14), Florida Statutes, an officer of a corporation who elects to be exempt from Chapter 440, Florida Statutes, may not recover benefits or compensation under Chapter 440, Florida Statutes, and a carrier may not consider any officer of a corporation who holds a valid certificate of election to be exempt for purposes of determining the appropriate premium for workers' compensation coverage. In order to be consistent with the provisions of Section 440.05(14), Florida Statutes, in instances where a subcontractor is a corporation and has an officer or officers who elect to be exempt, and the subcontractor provides a copy of the officer's or officers' certificate of election to be exempt to a contractor pursuant to Section 440.10(1)(c), Florida Statutes, the subcontractor is not required to also provide evidence of workers' compensation insurance to the contractor if the subcontractor has no employees who may recover benefits under Chapter 440, Florida Statutes, at any time during the life of the contract or project for which evidence of exemption or coverage is required. If a subcontractor hires one or more employees at any time during the life of a contract, that subcontractor must provide the contractor with evidence of workers' compensation insurance before any such employee or employees can perform any work related to that contract.

Specific Authority 440.05(9), 440.591 FS. Law Implemented 440.02(15), 440.05(14), 440.10(1)(c) FS. History--New 1-1-04, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Bruce Brown, Bureau Chief, Bureau of Compliance, Division of Workers' Compensation, Department of Financial Services
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dan Sumner, Deputy Division Director, Division of Workers' Compensation, Department of Financial Services

DATE PROPOSED RULE APPROVED BY THE AGENCY HEAD: December 11, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 3, 2003

Section III

Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF STATE

Division of Elections

RULE NO.:

RULE TITLE:

1S-2.031

Recount Procedures

SECOND NOTICE OF CHANGE

Notice is hereby given that proposed Rule 1S-2.031 published in the FAW, Page 4903, Vol. 29, No. 45, on December 12, 2003, has been further changed to reflect comments received from the public and from the Joint Administrative Procedures Committee.

Changes were made to Rule 1S-2.031, F.A.C., so that it now reads:

1S-2.031 Recount Procedures.

(1) All procedures relating to machine and manual recounts shall be open to the public.

(2) At least two members of the canvassing board shall be present during all times a machine or manual recount is being conducted.

(3) All recounts are to be ordered by the board responsible for certifying the results of the race or races being recounted.

(4) As used in this rule, "undervote" means that the tabulator recorded no vote for the office or question or that the elector did not designate the number of choices allowed for the race.

(5) Machine Recounts shall be conducted as follows:

(a) The canvassing board responsible for ordering the machine recount shall be responsible for notifying the candidates or committees in the affected race or races that a machine recount will be conducted. In addition, notice of the machine recount shall be posted on the door of the public entrance to the building where the supervisor of elections office is housed so that the notice is accessible to the public 24 hours a day.

(b) Optical Scan Ballot Machine Recounts.