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FLORIDA DEPARTMENT OF EDUCATION  
BUREAU OF INSTRUCTIONAL SUPPORT AND COMMUNITY SERVICES

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# Proposed ESE Rules

**as advertised in the**

Florida Administrative Weekly

February 13, 2004

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**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE TITLES:	RULE NOS.:
Development of Educational Plans for Exceptional Students Who Are Gifted Specially Designed Instruction for Students Who Are Homebound or Hospitalized	6A-6.030191
Development of Individual Educational Plans for Students with Disabilities	6A-6.03020
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-6.03028
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Procedural Safeguards for Students with Disabilities Enrolled in Private Schools by Their Parents	6A-6.03313
Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students	6A-6.03314
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.	6A-6.03411

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