

Rule 6A-6.0331 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 Rules 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 Rule 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)(1) 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)(c) 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.~~

6A-6.0331 Identification and Assignment of Exceptional Students to Special Programs. Procedures and criteria for diagnosis, evaluation, assignment, and discipline of exceptional students shall be set forth in the district's special programs and procedures document for the exceptional student program consistent with the following requirements.

(1) Student evaluation.

(a) The school board shall be responsible for the medical, physical, psychological, social and educational evaluations of students, who are suspected of being exceptional students, by competent evaluation specialists. Evaluation specialists shall include, but not be limited to, persons such as physicians, psychologists, audiologists, and social workers with each such person licensed in the professional's field as evidenced by a valid license or certificate to practice such profession in Florida. Educational evaluators not covered by a license or certificate to practice a profession in Florida shall either hold a valid Florida teacher's certificate or be employed under the provisions of Rule 6A-1.0502, FAC. Tests of intellectual functioning shall be administered and interpreted by a professional person qualified in accordance with Rule 6A-4.0311, FAC., or licensed under Chapter 490, Florida Statutes.

(b) The district's evaluation procedures shall provide for the use of valid tests and evaluation materials, administered and interpreted by trained personnel, in conformance with instructions provided by the producer of the tests or evaluation materials. For children and students not proficient in the English language, the district's evaluation procedures shall provide for the use of the language or other mode of communication commonly used by the child or student.

(c) The district shall provide a reevaluation of each student with a disability at least every three (3) years, in accordance with the requirements prescribed in subsection (1) of this rule, or more frequently if conditions warrant or if required by Rules 6A-6.03011 through 6A-6.03025, FAC.

(2) Staffing committees.

(a) A staffing committee utilizing the process of reviewing student data including but not limited to diagnostic, evaluation, educational or social data shall recommend student eligibility for special programs.

(b) A minimum of three (3) professional personnel, one (1) of whom shall be the district administrator of exceptional students or designee, shall meet as a staffing committee. Additional personnel may be involved in the eligibility recommendation by providing information or by

attending staffing meetings. In the case of homebound or hospitalized students, the district administrator may receive recommendations of the staffing committee without a formal meeting.

(c) Parents shall be invited to participate in eligibility staffing meetings for children ages birth through five (5) years as provided in Rule 6A-6.03028(7), FAC.

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

(a) Coordinating all district programs for exceptional students;

(b) Reviewing the recommendations of the evaluation specialists and the staffing committee;

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

(d) Assuring that parents have been appropriately informed of the student's recommended educational assignment and of their due process rights;

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

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

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

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

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

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

rule.

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

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

Specific Authority 120.53(1)(b), 229.053(1)(2)(i), 230.23(4)(m) FS. Law Implemented 120.53(1)(b), 228.041(18)(19), 229.053(2)(i), 230.23(4)(m)4., 236.081(1)(c) 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. 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.