

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.

(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.

(5) Mediation. The Department of Education shall provide parents of children with disabilities and school district personnel the opportunity to resolve disputes involving any matter related to a proposal or refusal to initiate or change the identification, evaluation, 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.

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.

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.

(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)(1), 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-6.03311 Procedural Safeguards for Exceptional Students. The school board policy and procedures for procedural safeguards shall be set forth in Rule 6A-6.03411, FAC., and shall include adequate provisions for the following:

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

(2) Content of notice.

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

2. 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;

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

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

(3) Parental consent.

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

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

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

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

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

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

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

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

(c) The notice shall include:

1. A full explanation of all the procedural safeguards available to the parents as provided in Rules 6A-1.0955, 6A-6.03311, 6A-6.0333, FAC.; and Section 230.23(4)(m)4., Florida Statutes.

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

(d) Parental consent is voluntary and may be revoked at anytime.

(e) 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.

(f) Except for formal, individual preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child. Any changes in the child's special program after the initial placement are not subject to parental consent but are subject to prior notice as defined by subsection (1) of this rule.

(g) Surrogate parents shall be appointed pursuant to the requirements of Rule 6A-6.0333, FAC.

(4) Independent evaluation.

(a) The school district shall notify the parent of an exceptional student of the right to an independent evaluation and provide to the parents, on request, information about

where an independent educational evaluation may be obtained.

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

(c) The school district shall consider the results of such evaluation in any decision regarding the student.

(d) The school district may initiate a due process hearing to show that its evaluation is appropriate.

(e) The independent evaluation may be presented as evidence at a hearing as described in subsection (5) of this rule.

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

(g) Whenever an independent evaluation is conducted, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the evaluation specialist, shall be the same as the criteria prescribed by Rule 6A-6.0331(1), FAC., for use by the school district when it initiates an evaluation.

(h) The independent evaluation shall be conducted by a qualified evaluation specialist as prescribed in Rule 6A-6.0331(1)(a), FAC., who is not an employee of the district school board.

(5) Due process hearings.

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

(b) The school district shall inform 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.

(c) The school district shall keep a list of persons who serve as hearing officers including a statement of the qualifications of each of these persons.

(d) A decision made in a hearing conducted under subsection (5) of this rule is final unless a party to the hearing brings civil action as provided in Section

(j) The superintendent or designee shall make arrangements for conducting the hearing which shall include:

1. Notifying the hearing officer;
2. Determining the need for an interpreter for the parents

and, if needed, making appropriate arrangements;

3. Establishing a time and place which are reasonably convenient to the parent and student involved, and notifying all parties;

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

5. Notifying all parties regarding information, rights and responsibilities before, during, and after the hearing;

6. Determining parental wishes concerning the attendance of the student at the hearing and whether they wish the hearing to be opened or closed, and making appropriate arrangements by notifying all parties;

7. Assuring that the hearing meets the required timelines as required in Rule 6A-6.0331(5), FAC.;

8. Transmitting the findings and decisions, after deleting any personally identifiable information, of any such hearings to the Commissioner for review by the state advisory committee for the education of exceptional students; and

230.23(4)(m)4., Florida Statutes, or brings civil action in federal court. In the alternative, any party aggrieved by the final decision shall have the right to request an impartial review of the hearing officer's order by the District Court of Appeals as provided by Section 120.68, Florida Statutes.

(e) A hearing shall be conducted by a hearing officer from the Division of Administrative Hearings, Department of Administration.

(f) Hearing officers shall use subsection (5) of this rule for any such hearings.

(g) Duties and responsibilities of a hearing officer shall be:

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

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

3. To mail to all parties copies of the facts, findings and decision regarding the hearing;

4. To be accountable for all deadlines and procedures in the statutes and rules for such hearings;

5. To maintain confidentiality of all information; and

6. To rule on requests for specific extensions of time beyond the periods set forth in Rule 6A-6.0331(5), FAC., at the request of either party.

(h) Any party to a hearing has the following rights:

1. To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of exceptional students or both;

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

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

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

5. To obtain written findings of fact and decisions.

(i) Parents involved in hearings must be given the right to have the student who is the subject of the hearing present and to open the hearing to the public.

9. Completing other responsibilities specified by the school board.

(k) The district shall ensure that not later than forty-five (45) days after the receipt of a request for a hearing a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties and the Division of Public Schools.

(l) During the time that an administrative or judicial proceeding regarding a complaint is pending, unless the district and the parent of the student agree otherwise, the student involved in the complaint must remain in the present educational assignment. If the complaint 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.

(6) Attorneys' Fees. The court may award reasonable attorneys' fees as part of the costs to the parents or guardian of a handicapped child if they are the prevailing party.

(7) Examination of records.

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

(b) The right to inspect and review education records under this rule includes the right to have a representative of the parent inspect and review the records.
Specific Authority 120.53(1)(b), 228.041(18)(19), 229.053(1), 230.23(4)(m), 236.081(1)(c) FS. Law Implemented 120.53(1)(b), 228.041(18)(19), 229.053(1), 230.23(4)(m) FS., P.L. 94-142, 20 USC 1415. History - New 7-13-83, 12-20-83, 4-26-84, Formerly 6A-6.3311, Amended 7-17-90.