

Rule 6A-6.03311 is substantially rewritten to read (see Florida Administrative Code for present text).

6A-6.03311 Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities. Each school district must establish, maintain and implement procedural safeguards that meet the requirements of this rule.

(1) Prior written notice. The school district shall provide parents with written notice a reasonable time before proposing or refusing to initiate or change the identification, evaluation, educational placement of the student or the provision of a free appropriate public education (FAPE) to the student. Prior notice may be provided at any meeting where such proposal or refusal is made. Graduation from high school with a regular diploma constitutes a change in placement, requiring prior written 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 used by the parents, unless it 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 these requirements have been met.

(c) The notice to the parents shall include:

1. A description of the action proposed or refused by the school district;
2. An explanation of why the school district proposes or refuses to take the action;

3. A description of each evaluation procedure, assessment, record, or report the school district used as a basis for the proposed or refused action;

4. A statement that the parents of a student with a disability have protection under the procedural safeguards of these rules and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

5. Sources for parents to contact to obtain assistance in understanding the provisions of Rules 6A-6.03011 through 6A-6.0361, FAC.;

6. A description of other options that the individual education plan (IEP) team considered and the reasons why those options were rejected; and

7. A description of other factors that are relevant to the school district's proposal or refusal

(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 Rules 6A-6.03011 through 6A-6.0361, FAC., relating to:

1. Prior written notice;

2. Parental consent;

3. Access to education records;

4. The availability of mediation;

5. The opportunity to present and resolve complaints through the state complaint and due process hearing procedures, including the time period in which to file a complaint, the opportunity for the school district to resolve the complaint, and the difference between the request for due process procedures and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures pursuant to Rule 6A-6.03311(5), FAC.;

6. Independent educational evaluations;

7. Procedures for students who are subject to placement in an interim alternative educational setting;

8. Requirements for placement of students with disabilities in private school by their parents at public expense;

9. Due process hearings, including the student's placement during the pendency of any due process hearing request and requirements for disclosure of evaluation results and recommendations;

10. Civil actions, including the time period in which to file those actions; and

11. Attorney's fees.

(b) A copy of the procedural safeguards must be given to the parents of a student with a disability only one time a school year, except that a copy also must be given to the parents:

1. Upon initial referral or parent request for evaluation;

2. In accordance with the discipline procedures when a change in placement occurs;

3. Upon receipt of the first State complaint and upon receipt of the first request for a due process hearing in a school year; and

4. Upon request by a parent.

(c) A school district may place a current copy of the procedural safeguards on its internet Web site, if a Web site exists.

(d) A parent of a student with a disability may elect to receive notices required by this rule by an electronic mail communication, if the school district makes that option available.

(e) The procedural safeguards must be provided in an understandable language as provided under subsection (1) of this rule.

(3) Parents' opportunity to inspect and review education records.

(a) The parents of a student with a disability shall be afforded an opportunity to inspect and review their student's educational records including all records related to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child in accordance with Rule 6A-1.0955, FAC., Section 1002.22, Florida Statutes, and 34 CFR §§ 300.613-625.

(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.

(4) Mediation. The Department of Education shall provide parents of students 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 FAPE to the student, including matters arising prior to the filing of a request for due process, 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 (10) 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 (4)(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 (4) 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 convenient to both the parent and the school district.

(f) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that:

1. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings;

2. Is signed by both the parent and a representative of the school district who had the authority to bind the district; and

3. Is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(g) Whether or not the dispute is resolved through mediation, 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 of any Federal court or State court.

(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 is involved in the education or care of the student;

2. Must not have a personal or professional interest that conflicts with the person's objectivity; and.

3. Is not an employee of a school district or state agency solely because he or she is paid by the Department of Education to serve as a mediator.

(5) State complaint procedures. The Department of Education shall provide parents and other interested persons, including an organization or individual from another state, the opportunity to resolve any complaint that a school district has violated a requirement of Part B of the Individuals with Disabilities Education Act (IDEA) or its implementing regulations regarding the education of students with disabilities through its state complaint procedures. The Department of Education shall disseminate its state complaint procedures to parents and other interested individuals, including the parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

(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. Provide the school district with the opportunity to respond to the complaint, including, at a minimum:

a. A proposal to resolve the complaint, at the discretion of the school district; and

b. An opportunity for a parent who has filed a complaint and the school district to engage in mediation consistent with this rule.

4. Review all relevant information and make an independent determination as to whether the school district is violating a federal requirement regarding the education of students with disabilities;

5. 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

6. Extend the time limit established in paragraph (6)(a) of this rule only if exceptional circumstances exist with respect to a particular complaint or the parent and the school district involved agree to extend the time to engage in mediation pursuant to subsection (5) of this rule.

(b) Procedures for the effective implementation of the Department of Education's final decision, if needed, include the following:

1. Technical assistance activities;

2. Negotiations;

3. Corrective actions to achieve compliance; and

4. Where the Department of Education has found a failure to provide appropriate services, the Department must address the failure to provide appropriate services, including corrective action appropriate to address the needs of the student (such as compensatory services or monetary reimbursement) and appropriate future provision of services for all students with disabilities.

(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 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 this rule.

2. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, the administrative law judge's decision is binding on that issue 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.

(d) Filing a complaint. An organization or individual may file a signed written complaint and must forward a copy of the complaint to the school district serving the student at the same time the party files the complaint with the Department of Education. The complaint must include:

1. A statement that a school district has violated a requirement of Part B of the IDEA or its implementing regulations regarding the education of students with disabilities;

2. The facts on which the statement is based;

3. The signature and contact information for the complainant; and

4. If alleging violations with regard to a specific student:

a. The name and address of the residence of the student;

b. The name of the school the student is attending;

c. In the case of a homeless student or youth available contact information for the student, and the name of the school the student is attending;

d. A description of the nature of the problem of the student, including facts relating to the problem;

e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed; and

f. Alleged violations that occurred not more than one (1) year prior to the date that the complaint is received.

(e) The Department of Education will develop a model form to assist parents and other parties in filing a state complaint. However, neither the Department of Education nor a school district may require the use of the model form. Parents, school districts, and other appropriate parties may use the appropriate model form or another form or other document, as long as the form or other document that is used meets, as appropriate, the content requirements in paragraph (5)(d) above.

(6) Independent educational evaluations.

(a) A parent of a student with a disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.

(b) The parent of a student with a disability has the right to be provided, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and of the school district criteria applicable to independent educational evaluations.

(c) For purposes of this section, independent educational evaluation is defined to mean an evaluation conducted by a qualified evaluation specialist who is not an employee of the school district responsible for the education of the student in question.

(d) 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.

(e) 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 used 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.

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

(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 due process hearing under 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 parent still has a right to an independent educational evaluation, but not at public 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.

(i) A parent is entitled to only one (1) independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(j) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the school district an evaluation obtained at private expense:

1. The school district shall consider the results of such evaluation in any decision regarding the provision of FAPE to the student, if it meets appropriate district criteria described in this rule;
and

2. The results of such evaluation may be presented by any party as evidence at any due process hearing regarding that student.

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

(7) Placement of students with disabilities in private schools by their parents when the provision of FAPE is at issue.

(a) A school district is not required to pay for the costs of education, including special education and related services, of a student with a disability at a private school or facility if that school district has made FAPE available to the student and the parents elected to place the student in a private school or facility. However, the school district must include that student in the population whose needs are addressed consistent with Rule 6A-6.030281, FAC.

(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 this rule.

(c) If the parents of a student with a disability, who previously received special education and related services under the authority of a school district, 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 FAPE 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 provided by the Department of Education and the school district.

(d) The cost of reimbursement described in paragraph (c) of this subsection may be reduced or denied if:

1. At the most recent IEP Team meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the school district to provide FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public expense or at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the school district of the information described herein;

2. Prior to the parents' removal of the child from the public school, the school district informed the parents, through the notice requirements described in Rules 6A-6.03011 through 6A-6.0361, FAC, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

3. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

4. Exception. Notwithstanding the notice requirement in paragraph 1. of this section, the cost of reimbursement must not be reduced or denied for failure to provide the notice if:

- a. The school prevented the parent from providing the notice;
- b. The parents had not received notice, pursuant to the procedural safeguards requirements,

of the notice requirement in paragraph 1 of this section; or

- c. Compliance with (i) of this section would likely result in physical harm to the student;

and

5. Notwithstanding the notice requirement in subparagraph (7)(d)1., of this rule, the cost of reimbursement may not, in the discretion of the court or a hearing officer, be reduced or denied for failure to provide this notice if:

- a. The parent is not literate or cannot write in English; or
- b. Compliance with subparagraph (7)(d)1. of this section would likely result in serious

emotional harm to the student.

(8) Transfer of Parental Rights at the Age of Majority.

(a) When a student with a disability reaches the age of eighteen (18), (except for a student with a disability who has been determined incompetent under State law or who has had a guardian advocate appointed to make educational decisions as provided by Section 393.12, Florida Statutes), the right to notice under Rules 6A-6.03011 through 6A-6.0361, FAC., is retained as a shared right of the parent and the student.

(b) All other rights afforded to parents under Rules 6A-6.03011 through 6A-6.0361, FAC., transfer to the student.

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

(d) For a student with a disability who has attained age eighteen (18) and is 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 this rule. For students incarcerated in state correctional facilities, all rights accorded to parents under this rule transfer to the student, including notice, regardless of the age of the student.

(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 the student 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 student throughout the student's eligibility for FAPE under Rules 6A-6.03011 through 6A-6.0361, FAC.; or
3. Have another appropriate individual appointed to represent the educational interests of the student throughout the student's eligibility for FAPE under Rules 6A-6.03011 through 6A-6.0361, FAC., if the parent is not available in accordance with Section 393.12, Florida Statutes.

(9) Due process Hearings and Resolution Sessions.

(a) A due process hearing request may be initiated by a parent or a school district as to matters related to the identification, evaluation, or educational placement of a student or the provision of FAPE to the student.

(b) A due process hearing request must allege a violation that occurred not more than two (2) years before the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process hearing request. This limitations period does not apply to a parent if the parent was prevented from filing a due process hearing request because of:

1. Specific misrepresentations by the school district that it had resolved the problem

forming the basis of the due process hearing request; or

2. The school district's withholding of information from the parent that was required under Rules 6A-6.03011 through 6A-6.0361, FAC., to be provided to the parent.

(c) Information for parents. The school district must inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the school district files a due process hearing request.

(d) The due process hearing request. The school district must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process hearing request (which must remain confidential). The party filing a due process hearing request must forward a copy of the request to the Florida Department of Education. A due process hearing request must contain the following:

1. The name of the student;

2. The address of the residence of the student;

3. The name of the school the student is attending;

4. In the case of a homeless student or youth, available contact information for the student and the name of the school the student is attending;

5. A description of the nature of the problem of the student relating to the proposed or refused initiation or change in the identification, evaluation, placement or provision of FAPE to the student, including facts relating to the problem; and

6. A proposed resolution of the problem to the extent known and available to the party at the time, including any remedy authorized by the IDEA.

(e) A party may not have a hearing on a due process hearing request or engage in a resolution session, as described below, until the party, or the attorney representing the party, files

a due process hearing request that meets the requirements of paragraph (d) of this subsection.

(f) The Department of Education will develop a model form to assist parents and school districts in filing a due process hearing request. However, neither the Department of Education nor a school district may require the use of the model form. Parents and school districts may use the appropriate model form or another form or other document, as long as the form or other document that is used meets, as appropriate, the content requirements in paragraph (d) of this subsection.

(g) A due process hearing request will be deemed sufficient unless the party receiving the due process hearing request notifies the administrative law judge (ALJ) and the other party in writing, within fifteen (15) days of receipt of the due process hearing request, that the receiving party believes the due process hearing request does not meet the requirements in paragraph (d) of this subsection. Within five (5) days of receipt of the notification of insufficiency, the ALJ must make a determination on the face of the due process hearing request of whether it meets the requirements of paragraph (d) of this subsection, and must immediately notify the parties in writing of that determination.

(h) A party may amend its due process hearing request only if the other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a resolution session held pursuant to paragraph (l) of this subsection or the ALJ grants permission, except that the ALJ may only grant permission to amend at any time not later than five (5) days before the due process hearing begins. If a party files an amended due process hearing request, the timelines for the resolution session in paragraph (l) of this subsection and the thirty (30) day time period to resolve the request as set forth in paragraph (o) of this subsection begin again with the filing of the amended due process hearing request.

(i) School district response to a due process hearing request. If the school district has not sent a prior written notice under Rules 6A-6.03011 through 6A-6.0361, FAC., to the parent regarding the subject matter contained in the parent's due process hearing request, the school district must, within ten (10) days of receiving the due process hearing request, send to the parent a response that includes:

1. An explanation of why the school district proposed or refused to take the action raised in the due process hearing request;

2. A description of other options that the IEP team considered and the reasons why those options were rejected;

3. A description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action; and

4. A description of the other factors relevant to the school district's proposed or refused action.

(j) A response by a school district under paragraph (i) of this subsection shall not be construed to preclude the school district from asserting that the parent's due process hearing request was insufficient, where appropriate.

(k) Other party response to a due process hearing request. Except as provided in paragraph (i) of this subsection, the party receiving a due process hearing request must, within ten (10) days of receiving the due process hearing request, send to the other party a response that specifically addresses the issues raised in the due process hearing request.

(l) Resolution session. Within fifteen (15) days of receiving notice of a parent's due process hearing request and prior to convening a due process hearing, the school district must convene a meeting with the parents and the relevant member or members of the IEP team who have specific

knowledge of the facts identified in the due process hearing request that:

1. Includes a representative of the school district who has decision-making authority on behalf of that district; and

2. May not include an attorney of the school district, unless the parent is accompanied by an attorney.

(m) The purpose of the resolution meeting is for the parents to discuss their due process hearing request and the facts that form the basis of the due process hearing request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request. The resolution meeting need not be held if:

1. The parent and the school district agree in writing to waive the meeting; or

2. The parent and the school district agree to use the mediation process described in this rule.

(n) The parent and the school district determine the relevant members of the IEP team to attend the meeting.

(o) Resolution period. If the school district has not resolved the due process hearing request to the satisfaction of the parents within thirty (30) days of the receipt of the due process hearing request, the due process hearing may occur and, except as provided in paragraph (r) of this subsection, the forty-five (45)-day timeline for issuing a final decision begins at the expiration of this thirty (30)-day period.

(p) Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of a parent filing a due process hearing request to participate in the resolution meeting will delay the thirty (30)-day resolution timeline and the forty-five (45)-day due process hearing timeline until the meeting is held. If the school district is unable to obtain the

participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the school district may, at the conclusion of the thirty (30)-day period, request that the ALJ dismiss the parent's due process hearing request.

(q) If the school district fails to hold the resolution meeting within fifteen (15) days of receiving notice of a parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of an ALJ to begin the due process hearing timeline.

(r) Adjustments to the thirty (30)-day resolution period. The forty-five (45)-day timeline for the due process hearing starts the day after one of the following events:

1. Both parties agree in writing to waive the resolution meeting;
2. After either the mediation or resolution meeting starts but before the end of the thirty (30)-day period, the parties agree in writing that no agreement is possible; or
3. If both parties agree in writing to continue the mediation at the end of the thirty (30)-day resolution period, but later, the parent or school district withdraws from the mediation process.

(s) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraph (l) of this subsection, the parties must execute a legally binding agreement that is:

1. Signed by both the parent and a representative of the school district who has the authority to bind the school district; and
2. Enforceable in any State court of competent jurisdiction or in a district court of the United States.

(t) Agreement review period. If the parties execute an agreement pursuant to paragraph(s) of this subsection, a party may void the agreement within three (3) business days of the agreement's

execution.

(u) Should a hearing be required, it shall be conducted by an ALJ appointed as required by Section 120.65, Florida Statutes, from the Division of Administrative Hearings (DOAH), Department of Management Services, on behalf of the Department of Education. At a minimum, an ALJ must not be an employee of the Department of Education or the school district that is involved in the education or care of the student or have a personal or professional interest that conflicts with the person's objectivity in the hearing. In addition, an ALJ must possess knowledge of, and the ability to understand, the provisions of the IDEA, federal and state regulations pertaining to the IDEA, and legal interpretations of the IDEA by federal and state courts; must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. A person who otherwise qualifies to conduct a hearing under this paragraph is not an employee of the agency solely because he or she is paid by the agency to serve as an ALJ. The Florida Department of Education will keep a list of the persons who serve as ALJs, which must include a statement of the qualifications of each of those persons.

(v) An ALJ shall use the provisions of Rules 6A-6.03011 through 6A-6.0361, FAC., for conducting due process hearings and shall conduct such hearings in accordance with the Uniform Rules for Administrative Proceedings, Chapter 28-106, FAC. Minimum procedures for due process hearings shall include the following:

1. Hearing rights. Any party to a due process hearing 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 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 ALJ may bar any party that fails to comply with sub-subparagraph (9)(v)2.1. of this rule from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

3. Additional parental rights at hearings. In addition to the rights already identified in this rule, parents involved in hearings must be given the right to:

a. Have their student who is the subject of the hearing present;

b. Open the hearing to the public; and

c. Have the record of the hearing and the findings of fact and decisions described above

provided at no cost to the parents.

4. Hearing decisions. An ALJ's determination of whether a student received FAPE must be based on substantive grounds. In matters alleging a procedural violation, an ALJ may find that a student did not receive FAPE only if the procedural inadequacies impeded the student's right to FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the student; or caused a deprivation of educational benefit. This shall not be construed to preclude an ALJ from ordering a school district to comply with the procedural safeguards set forth in Rules 6A-6.03011 through 6A-6.0361, FAC. In addition, nothing in Rules 6A-6.03011 through 6A-6.0361, FAC., shall be construed to preclude a parent from filing a separate request for due process on an issue separate from a request for due process already filed.

5. Findings and decision to advisory panel and general public. The state educational agency (SEA), after deleting any personally identifiable information, must transmit the findings and decisions of the ALJ to the State Advisory Committee for the Education of Exceptional Students and make those findings and decisions available to the public.

6. Timelines and convenience of hearings and reviews. The SEA must ensure that not later than forty-five (45) days after the expiration of the thirty (30) day period for resolution pursuant to paragraph (9)(o) of this rule, or the adjusted time period described in this rule, a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties. An ALJ may grant specific extensions of time beyond these time periods at the request of either party. Each hearing must be conducted at a time and place that is reasonably convenient to the parents and the student involved.

(w) Civil Action. A decision made in a due process hearing shall be final, unless, within

ninety (90) days from the date of the decision of the ALJ, 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 additional evidence at the request of a party; and basing its decision on the preponderance of the evidence, grant the relief it determines appropriate. 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 students 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 related to due process hearings must be exhausted to the same extent as would be required had the action been brought under the IDEA.

(x) Attorneys' Fees.

1. In any due process hearing or subsequent judicial proceeding brought under this rule, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

a. The prevailing party who is the parent of a student with a disability;

b. To a prevailing party who is the Department of Education or school district against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

c. To the prevailing Department of Education or school district against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay,

or to needlessly increase the cost of litigation.

2. Prohibition on use of funds. Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under Rules 6A-6.03011 through 6A-6.0361, FAC. However, this does not preclude a school district from using funds under Part B of the IDEA for conducting a due process hearing or subsequent judicial proceedings under the IDEA.

3. Award of fees. A court awards reasonable attorneys' fees under this paragraph consistent with the following:

a. Fees awarded must be based on rates prevailing in the community in which the due process hearing or judicial proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

b. Attorneys' fees may not be awarded and related costs may not be reimbursed in any due process hearing or judicial proceeding for services performed subsequent to the time of a written offer of settlement to a parent if the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing, at any time more than ten (10) days before the hearing begins; the offer is not accepted within ten (10) days; and the court or ALJ finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. An award of attorneys' fees and related costs may be made, however, to a parent who is the prevailing party and was substantially justified in rejecting the settlement offer.

c. Attorneys' fees may not be awarded relating to any meeting of the IEP team, unless the meeting is convened as a result of a due process hearing or judicial proceeding. For purposes of this section, a resolution session/meeting conducted pursuant to this rule is not considered a

meeting convened as a result of a due process hearing or judicial proceeding or a due process hearing or judicial proceeding.

4. Except as provided in paragraph (e) of this subsection, the court reduces, accordingly, the amount of the attorneys' fees awarded, if the court finds that:

a. The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

d. The attorney representing the parent did not provide to the school district the appropriate information in the due process request in accordance with this rule.

e. The provisions of paragraph (4) of this subsection do not apply in any action or proceeding if the court finds that the Department of Education or the school district unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 1415 of the IDEA.

(y) Student's status during proceedings. Except as provided in Rule 6A-6.03312, FAC., which addresses discipline of students with disabilities, 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 school 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 due process hearing involves an application for initial services under Rules 6A-6.03011 through 6A-6.0361, FAC., from a student who is transitioning from an IDEA Part C Early Intervention program to an IDEA Part B program and is no longer eligible for Part C services because the student has turned three (3), the school district is not required to provide the Part C services that the student had been receiving. If the student is found eligible for special education and related services under Part B and the parent consents to the initial provision of such services, then the school district must provide those special education and related services that are not in dispute between the parent and the school district. If the ALJ agrees with the parent that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of determining the stay-put placement for the student.

Specific Authority 1001.02(1)(2)(n), 1003.01(3), 1003.57, F.S. Law Implemented 1001.42(4)(l), 1003.01(3), 1001.03(8), 1101.62(1)(c), 1003.57, F.S. History New 7-13-83, 12-20-83, 4-26-84, Formerly 6A 6.3311, Amended 7-17-90, 9-20-04.