

STATE BOARD OF EDUCATION

Consent Item

September 14, 2018

SUBJECT: Amendments to Rules 6A-18.0401, 6A-18.042, 6A-18.0421, and 6A-18.045,
Pertaining to the Division of Blind Services

PROPOSED BOARD ACTION

For Approval

AUTHORITY FOR STATE BOARD ACTION

Section 1001.02, Florida Statutes

EXECUTIVE SUMMARY

The Division of Blind Services proposes to amend its rules to incorporate amended and new federal regulations, to update the Bureau of Business Enterprise licensure requirements for blind vendors, to streamline the blind vendor discipline rule, and describe the minor violations that have been designated by the Division of Blind Services pursuant to section 120.695, Florida Statutes.

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Supporting Documentation Included: Proposed Rules 6A-18.0401, 6A-18.042, 6A-18.0421, and 6A-18.045, F.A.C.

Facilitator/Presenter: Robert L. Doyle, III, Director, Division of Blind Services

6A-18.0401 Federal Regulations Adopted by Reference.

The Department adopts and incorporates by reference Title 34, Code of Federal Regulations, Parts 361, effective August 19, 2016 ~~January 17, 2001~~, (*DOS link*) 363, effective August 19, 2016, (*DOS link*) ~~and~~ 395, effective January 19, 1981 (<http://www.flrules.org/Gateway/reference.asp?No=Ref-07265>), and 397, effective August 19, 2016 (*DOS link*). The regulations may also be obtained by contacting the Division of Blind Services, 325 West Gaines Street, Suite 1114, Tallahassee, Florida 32399-0400.

Rulemaking Authority 413.011(3)(f) ~~(f)~~, 413.051(12) FS. Law Implemented 413.011(3)(l), 413.041, 413.051 FS. History—New 8-24-16, Amended.

6A-18.042 Issuance of License.

(1) In order to be eligible for and maintain a license to operate a Vending facility, an individual must be:

(a) A Blind person as defined in 34 CFR §395.1, Terms, and Section 413.033(1), F.S.;

(b) A citizen of the United States;

(c) Eighteen (18) years of age or older;

(d) Determined eligible to receive services as a client of the Division of Blind Services pursuant to Rule 6A-18.050, F.A.C.;

~~(e)(d)~~ Possess a high school diploma or equivalency;

~~(f)(e)~~ Must pass a security background investigation, which shall include fingerprinting, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement and federal criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies; and,

(2) No change.

(3) The Division may grant an exemption from disqualification from this section only as provided in section 435.07, F.S., except that the requirements of section 435.07(1)(a)1., F.S., shall apply to all disqualifying offenses described in Rule 6A-18.042(2), F.A.C.

(4) To apply for licensure, an individual must:

(a) Meet with his or her Division vocational rehabilitation counselor and express an interest in the Vending facility program;

(b) Complete a vocational assessment;

(c) Determine, as agreed to by his or her vocational rehabilitation counselor pursuant to 34 C.F.R. §§ 361.45 and 361.46, that Vending facility operator is an appropriate employment outcome, based on the results of of the vocational assessment and any other pertinent training received by the client within the past calendar year. The counselor may recommend further assessment and training as needed.

(5)(3) The Division shall issue a license to operate a Vending facility after an individual has satisfactorily completed; the Vending Facility Training Program Application (Form DBS-BBE-005) as incorporated by reference in Rule 6A-18.046, F.A.C., the subsequent Vending Facility Training Program, and the Licensure Examination.

(a) The Vending Facility Training Program Application (Form DBS-BBE 005) as incorporated by reference in Rule 6A-18.046, F.A.C.;

(b) An assessment interview before a panel comprised of Division employees and members of the State Committee of Vendors;

(c) A ten-day work experience in which the individual works with a local licensed Vendor to determine whether Vending facility operator is an appropriate employment goal;

(d) The Vending Facility Training Program at the Rehabilitation Center for the Blind in Daytona Beach, Florida, with scores of eighty (80) percent or higher on all testing;

(e) Four (4) to ten (10) weeks of on-the-job training at an existing Vending facility; and

(f) The Licensure Examination with a score of eighty (80) percent or higher.

(6)(4) The license shall be continuously valid, subject to:

(a) The Blind licensee's continuing to meet the requirements of licensure;

(b) The voluntary relinquishment of the license;

(c) Death of the Blind licensee;

(d) Revocation of the license as set forth in Rule 6A-18.00421, F.A.C.; or

(e) The Blind licensee failing, for a period of five (5) years, to actively hold either a Permanent or a Temporary L.O.F.A.

(7)(5) Any Blind licensee whose license becomes invalid under paragraph 6A-18.042(6)(4)(e), F.A.C., must complete the requirements of subsection 6A-18.042(5)(3), F.A.C., prior to participating in any future selection process.

Rulemaking Authority 413.011(3)(l), 413.051(12) FS. Law Implemented 413.011(3)(f), 413.041, 413.051 FS.

History—New 4-5-83, Amended 11-5-85, Formerly 6A-18.04, Amended 7-8-87, Formerly 6A-18.004, Amended 10-20-98, Formerly 38K-1.004, Amended 10-25-10, 8-24-16.

6A-18.0421 Conditions for Termination of a L.O.F.A.; Suspension or Revocation of License.

(1) A Blind licensee's ~~Vendor's~~ L.O.F.A. may be terminated or a license may be suspended or revoked for any one of the offenses listed in subsection (2) below. When the Division finds that a Blind licensee has committed any act for which the Division may impose discipline, the Division shall impose an appropriate penalty within the ranges set forth in subsection (2) unless, based upon consideration of aggravating and mitigating factors in the individual case that are among those set out in subsection (4) of this rule, the Division determines that a penalty outside the range in those guidelines but within statutory limitation is appropriate. In those cases in which the Division relies on aggravating or mitigating factors to depart from the ranges in the disciplinary guidelines, such aggravating and mitigating factors shall be stated in the written notice informing the Blind licensee of the penalty. ~~failing or refusing to comply with any one of the following:~~

~~(a) The rules of Chapter 6A-18, F.A.C.;~~

~~(b) The terms and conditions for licensure as set forth in subsection 6A-18.042(1), F.A.C.;~~

~~(c) The Permanent or Temporary L.O.F.A.; or~~

~~(d) The terms and conditions of any permit or lease for property on which a Vending facility is located.~~

(2) A ~~Vendor's~~ L.O.F.A. may also be terminated, or a license may be suspended or revoked for any of the following reasons:

~~(a) Misuse or unauthorized use of Vending facility or equipment, in violation of the L.O.F.A., including damage or destruction due to negligence or the failure to use ordinary or reasonable care;~~

~~(b) Removal of state property or state funds from a Vending facility without the prior written approval of the Division;~~

~~(c) Misuse or misappropriation of state funds;~~

~~(d) Falsification of facility records or reports relating to the selection for or the operation of a Vending facility;~~

~~(e) The use of threatening, discriminatory, harassing, or abusive language at the Vending facility;~~

~~(f) Being in possession of, selling or being under the influence of illegal drugs or alcohol at a Vending facility;~~

~~(g) Becoming incapacitated to such a degree that the Vendor can no longer manage the Vending facility in a~~

manner consistent with the requirements of subsection 6A-18.0421(1), F.A.C.;

~~(h) Failure to successfully complete, every two (2) years, three (3) continuing education units (CEUs) of courses approved by the Division;~~

~~(i) Conviction of or plea of guilty or nolo contendere to, whether or not adjudication of guilt is withheld, a crime that is a felony or a first degree misdemeanor;~~

~~(j) Unlicensed carrying of concealed weapons or concealed firearms, as set forth in Section 790.01, F.S., in a Vending facility by the Blind licensee, excluding tools typically used in the operation of a Vending facility;~~

~~(k) Failure by the Blind licensee to pay the Division for:~~

~~1. Initial working capital when due;~~

~~2. Set-aside funds.~~

~~(l) Failure by the Blind licensee to pay commissions or other financial obligations incurred in execution of the L.O.F.A., following due notice from the Division;~~

~~(m) Default on any repayment plan between the Blind licensee and the Division for initial working capital, Set-aside funds, or commission deficiencies. Default shall be determined as lack of satisfaction of the balance on said debt, following due notice from the Division;~~

~~(n) Failure by the Blind licensee on two (2) consecutive occasions to submit, under the L.O.F.A., the monthly business reports or Set-aside funds by the due date; or~~

~~(o) Failure on three (3) separate occasions during any calendar year to submit, under the L.O.F.A., the monthly business reports and Set-aside funds by the date due.~~

~~(3) When the Division finds that a Blind licensee has committed any act for which the Division may impose discipline, the Division shall impose an appropriate penalty within the ranges set forth for various acts or violations in the following disciplinary guidelines unless, based upon consideration of aggravating and mitigating factors in the individual case that are among those set out in subsection (5) of this rule, the Division determines that a penalty outside the range in those guidelines but within statutory limitation is appropriate. In those cases in which the Division relies on aggravating or mitigating factors to depart from the ranges in the discipline guidelines, such aggravating and mitigating factors shall be stated in the written notice informing the Vendor of the penalty.~~

~~(2)(4) The table below includes the acts for which the Division may impose discipline, along with the applicable following disciplinary guidelines shall apply to the below listed rule violations and to the described action that may~~

be a basis for determining violations of particular rule provisions. Each of the following disciplinary guidelines shall be interpreted to include the following range of disciplinary actions: “letter of warning;” “letter of sanction;” “termination of L.O.F.A.,” “suspension;” and “revocation.” The term “letter of sanction” shall mean a written communication from the Division to the Blind licensee ~~Vendor~~ outlining a violation as described in this subsection and carrying such penalty as described in subparagraph 6A-18.0425(3)(b)4., F.A.C. The terms “suspension” and “revocation” shall mean any length of suspension or revocation of a license to operate a Vending facility, including permanent revocation, and shall include a comparable period of denial of an application for a license.

(a) Violation of the rules set forth laid out in Chapter 6A-18, F.A.C.	Letter of Warning – Revocation
(b) Violation of the requirements for licensure as set forth in <u>Rule subsection</u> 6A-18.042(1), F.A.C.	Termination of L.O.F.A. – Revocation
(c) Non-compliance with Breach of the terms of a L.O.F.A. in violation of paragraph 6A-18.0421(1)(c), F.A.C.	Letter of Warning – Termination of L.O.F.A.
(d) Non-compliance with the terms and conditions of any permit or lease for property on which a Vending facility is located in violation of paragraph 6A-18.0421(1)(d), F.A.C.	Letter of Warning – Termination of L.O.F.A.
(e) Misuse or unauthorized use of Vending facility or equipment, including damage or destruction due to negligence or the failure to use ordinary or reasonable care in violation of paragraph 6A-18.0421(2)(a), F.A.C.	Letter of Warning – Termination of L.O.F.A.
(f) Removal of state property or state funds from a Vending facility without the prior written approval of the Division in violation of paragraph 6A-18.0421(2)(b), F.A.C.	Termination of L.O.F.A. – Revocation
(g) Misuse or misappropriation of state funds in violation of paragraph 6A-18.0421(2)(c), F.A.C.	Termination of L.O.F.A. – Revocation

<p>(h) Falsification of facility records or reports in violation of paragraph 6A-18.0421(2)(d), F.A.C.</p>	<p>Letter of Warning – Revocation</p>
<p>(i) The use of threatening, discriminatory, harassing, or abusive language at the Vending facility in violation of paragraph 6A-18.0421(2)(e), F.A.C.</p>	<p>Letter of Sanction – Revocation</p>
<p>(j) Being in possession of, selling or being under the influence of illegal drugs or alcohol at a Vending facility in violation of paragraph 6A-18.0421(2)(f), F.A.C.</p>	<p>Letter of Sanction – Revocation</p>
<p>(k) Becoming incapacitated to such a degree that the Blind licensee can no longer manage the Vending facility in a manner consistent with the requirements of subsection 6A-18.0421(1), F.A.C.</p>	<p>Termination of L.O.F.A. – Revocation</p>
<p>(l) Failure to successfully complete, every two (2) years, three (3) continuing education units (CEUs) of courses approved by the Division in violation of paragraph 6A-18.0421(2)(h), F.A.C.</p>	<p>Suspension – Revocation</p>
<p>(m) Conviction of or plea of guilty or nolo contendere to, whether or not adjudication of guilt is withheld, a crime that is a felony or a first degree misdemeanor in violation of paragraph 6A-18.0421(2)(i), F.A.C.</p>	<p>Termination of L.O.F.A. – Revocation</p>
<p>(n) Unlicensed carrying of concealed weapons or concealed firearms, as set forth in Section 790. 01, F.S., in a Vending facility by the Blind licensee, excluding tools typically used in the operation of a Vending facility, in violation of paragraph 6A-18.0421(2)(j), F.A.C.;</p>	<p>Termination of L.O.F.A. – Revocation</p>
<p>(o) Failure by the Blind licensee to pay the Division for initial working capital when due, or Set-aside funds, in violation of paragraph 6A-18.0421(2)(k), F.A.C.</p>	<p>Termination of L.O.F.A. – Revocation</p>
<p>(p) Failure by the Blind licensee to pay commissions or other financial obligations incurred in execution of the L.O.F.A., following due notice from the Division, in violation of paragraph 6A-18.0421(2)(l), F.A.C.</p>	<p>Termination of L.O.F.A. – Revocation</p>

<p>(q) Default on any repayment plan between the Blind licensee and the Division for initial working capital, Set-aside funds, or commission deficiencies. Default shall be determined as lack of satisfaction of the balance on said debt, following due notice from the Division, in violation of paragraph 6A-18.0421(2)(m), F.A.C.</p>	<p>Termination of L.O.F.A. – Revocation</p>
<p>(r) Failure by the Blind licensee on two (2) consecutive occasions to submit, under the L.O.F.A., the monthly business reports or Set-aside funds by the due date in violation of paragraph 6A-18.0421(2)(n), F.A.C.</p>	<p>Termination of L.O.F.A. – Revocation</p>
<p>(s) Failure on three (3) separate occasions during any calendar year to submit, under the L.O.F.A., the monthly business reports or Set-aside funds by the date due in violation of paragraph 6A-18.0421(2)(o), F.A.C.</p>	<p>Termination of L.O.F.A. – Revocation</p>
<p><u>(t) Failure to pass the security background investigation required by Rule 6A-18.042(1)(f), F.A.C., subject to the exemption criteria in Rules 6A-18.042(2) and 6A-18.042(3), F.A.C.</u></p>	<p><u>Suspension – Revocation</u></p>

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(3) Pursuant to section 120.695, F.S., the Division designates the first violation of the following rules as minor violations for which the Division shall issue a Notice of Noncompliance, allowing the Blind licensee fifteen (15) days to correct the violation prior to application of the discipline outlined in Rule 6A-18.0421(2), F.A.C.:

- (a) Rule 6A-18.0421(2)(l), F.A.C.;
- (b) Rule 6A-18.0421(2)(o), F.A.C.;
- (c) Rule 6A-18.0421(2)(p), F.A.C.; and
- (d) Rule 6A-18.0421(2)(q), F.A.C.

~~(4)(5)~~ Based upon consideration of aggravating and mitigating factors present in an individual case, the Division may deviate from penalties recommended in subsection (2) of this rule. The Division may consider the following as aggravating or mitigating factors:

- (a) The severity of the offense;
- (b) The danger to the public;
- (c) The number of repetitions of offenses;
- (d) Length of time since the violation;

- (e) The number of times the Blind licensee has been previously disciplined by the Division;
- (f) The length of time the Blind licensee has been licensed and contributions to the program;
- (g) The actual damage, physical or otherwise, caused by the violation;
- (h) The deterrent effect of the penalty imposed;
- (i) The effect of the penalty on the Blind licensee's livelihood;
- (j) Any effort of rehabilitation by the Blind licensee;
- (k) The actual knowledge of the Blind licensee pertaining to the violation;
- (l) Attempts by the Blind licensee to correct or stop the violation or refusal by the Blind licensee to correct or stop the violation;
- (m) Actual negligence related to the Blind licensee in any violation;
- (n) Penalties imposed for related offenses under subsection (4) of this rule;
- (o) Monetary or other benefit to the Blind licensee;
- (p) Present status of physical and/or mental condition contributing to the violation including recovery from addiction;
- (q) Any other relevant mitigating or aggravating factors under the circumstances.

~~(6) A vendor's license to operate a Vending facility may be revoked for failure to pass the security background investigation required by Rule 6A-18.042, F.A.C., subject to the exemption criteria in subsection 6A-18.042(2), F.A.C.~~

~~(5)(7)~~ The Division shall serve written notice of its intent to remove a Blind licensee Vendor from a Vending facility or to suspend or revoke a license by hand delivery or certified mail, to the Blind licensee's Vendor's last known address. Such action shall be governed by Rule 6A-18.0423, F.A.C., and Chapter 120, F.S.

Rulemaking Authority 413.011(3)(l), 413.051(12) FS. Law Implemented 413.011(3)(f), 413.041, 413.051 FS.

History—New 10-20-98, Formerly 38K-1.0041, Amended 10-25-10, 8-24-16.

6A-18.045 Newspaper Vending Sales.

(1) through (5) No change.

(6) Pursuant to section 120.695, F.S., the Division has designated the first violation of Rule 6A-18.045(2), F.A.C., as a minor violation for which the Division shall issue a Notice of Noncompliance, allowing the vendor

fifteen (15) days to correct the minor violation prior to application of other appropriate discipline.

Rulemaking Authority 413.011(3)(l), 413.051(12) FS. Law Implemented 413.011(3)(f), 413.041, 413.051 FS.

History—New 3-1-93, Formerly 6A-18.012, 38K-1.012, Amended 8-24-16.

