

Proposed Administrative Rules

**Florida Department of Education
Bureau of Exceptional Education and Student Services
2008**

6A-6.03028. Provision of Free Appropriate Public Education (FAPE) and Development of Individual Educational Plans for Students with Disabilities

(1) Entitlement to FAPE. All students with disabilities aged three (3) through twenty-one (21) residing in the state have the right to FAPE consistent with the requirements of the Individuals with Disabilities Education Act, 20 USC Section 1400, et. seq (IDEA), its implementing federal regulations, and under Rules 6A-6.03011 through 6A-6.0361, FAC. FAPE shall be made available to students with disabilities, including students who have been suspended or expelled, and any individual student with a disability who needs special education and related services, even though the student has not failed or been retained in a course or grade, and is advancing from grade to grade. The obligation to make FAPE available to all students with disabilities does not apply with respect to the following:

(a) Students with disabilities who have graduated from high school with a standard diploma. A standard diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate of completion or a general educational development credential (GED); and

(b) Students aged eighteen (18) through twenty-one (21) who, in the last educational placement prior to their incarceration in an adult correctional facility:

1. Were not actually identified as being a child with a disability pursuant to Rules 6A-6.03011 through 6A-6.0361, FAC.; and

2. Did not have an individual educational plan (IEP) under Rules 6A-6.03011 through 6A-6.0361, FAC.

(c) The exception in paragraph (b) of this section does not apply to students with disabilities, aged eighteen (18) through twenty-one (21), who:

1. Had been identified as a student with a disability under Rules 6A-6.03011 through 6A-6.0361, FAC., and had received services in accordance with an IEP, but who left school prior to their incarceration; or

2. Did not have an IEP in their last educational setting, but who had actually been identified as a student with a disability under Rules 6A-6.03011 through 6A-6.0361, FAC.

(2) Treatment of charter school students. Students with disabilities who attend public charter schools and their parents retain all rights under Rules 6A-6.03011 through 6A-6.0361, FAC. In carrying out Part B of the IDEA and Rules 6A-6.03011 through 6A-6.0361, FAC., with respect to charter schools that are public schools of the school district, the school district must serve students with disabilities attending those charter schools in the same manner as the district serves students with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the school district has a policy or practice of providing such services on the site to its other public schools and provide funds under Part B of the IDEA to those charter schools on the same basis as the school district provides funds to the school district's other public schools, including proportional distribution based on relative enrollment of students with disabilities and at the same time as the school district distributes other Federal funds to its other public schools.

(3) IEP Requirements. An IEP or individual family support plan (IFSP) must be developed, reviewed, and revised for each eligible student or child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, in accordance with this rule. Parents are partners with schools and school district personnel in developing, reviewing, and revising the IEP for

their student.

(a) Role of parents. The role of parents in developing IEPs includes, but is not limited to:

1. Providing critical information regarding the strengths of their student;
2. Expressing their concerns for enhancing the education of their student so that their student can receive FAPE;
3. Participating in discussions about the student's need for special education and related services;
4. Participating in the determination of how the student will be involved and progress in the general curriculum, including participation in the statewide assessment program and in district-wide assessments;
5. Participating in the determination of what services the school district will provide to the student and in what setting; and
6. Participating in the determination of whether the student is pursuing a course of study leading towards a standard diploma, consistent with Sections 1003.43 and 1004.428, Florida Statutes, or a special diploma, consistent with Section 1003.438, Florida Statutes.

(b) Parent participation in meetings. Each school district shall establish procedures that provide the opportunity for one or both of the student's parents to participate in meetings and decisions concerning the IEP for the student. Parents of each student with a disability must be members of any group that makes decisions on the educational placement of their student. Procedures to ensure participation in meetings shall include the following:

1. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
2. Scheduling the meeting at a mutually agreed on time and place.
3. A written notice of the meeting must be provided to the parents and must indicate the purpose, time, and location of the meeting, and who, by title or position, will be attending. The notice must also include a statement informing the parents that they have the right to invite individuals with special knowledge or expertise about their student and that they may request that a Part C service coordinator or other representative of the Part C system be invited to attend the initial IEP Team meeting for a child previously receiving early intervention services under Part C of the IDEA.
4. No later than the first IEP to be in effect when the student turns fourteen (14), or younger if determined appropriate by the IEP Team, the notice must also indicate that a purpose of the meeting will be identifying transition services needs of the student and that the district will invite the student.
5. Not later than the first IEP to be in effect when the student turns sixteen (16), or younger if determined appropriate by the IEP Team, the notice must also indicate that a purpose of the meeting will be consideration of the postsecondary goals and transition services for the student, that the district will invite the student, and identify any other agency that will be invited to send a representative to the meeting.
6. If neither parent can attend, the school district shall use other methods to ensure parent participation, including individual or conference telephone calls or video conferencing.
7. A meeting may be conducted without a parent in attendance if the school district is unable to obtain the attendance of the parents. In this case, the district must have a record of its attempts to arrange a mutually agreed on time and place, such as:
 - a. Detailed records of telephone calls made or attempted and the results of those calls;
 - b. Copies of correspondence sent to the parents and any responses received; and

c. Detailed records of visits made to the parents' home or place of employment and the results of those visits.

8. The district shall take whatever action is necessary to ensure that the parents and the student, beginning at age fourteen (14), understand the proceedings at a meeting, which may include arranging for an interpreter for parents and students who are deaf or whose native language is a language other than English.

9. 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. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

10. The district shall give the parents a copy of the IEP at no cost to the parents.

(c) IEP Team participants. The IEP Team, with a reasonable number of participants, shall include:

1. The parents of the student;

2. Not less than one (1) regular education teacher of the student, if the student is or may be participating in the regular education environment. The regular education teacher of a student with a disability, as a member of the IEP Team, must to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of:

a. Appropriate positive behavioral interventions and supports and other strategies for the student; and

b. Supplementary aids and services, classroom accommodations, modifications or supports for school personnel that will be provided for the student consistent with this rule.

3. Not less than one (1) special education teacher of the student, or where appropriate, not less than one special education provider of the student;

4. A representative of the school district who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the school district. At the discretion of the school district, the student's special education teacher may be designated to also serve as the representative of the school district if the teacher meets the requirements described in this paragraph;

5. An individual who can interpret the instructional implications of evaluation results who may be a member of the IEP Team as described in subparagraphs (3)(c)3., or (3)(c)4., of this rule;

6. At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate. The determination of the knowledge or special expertise of any such individual shall be made by the party who invited the individual to be a member of the IEP Team; and

7. The student, if appropriate, and in all cases where a purpose of the meeting will be the identification of the student's transition services needs or consideration of postsecondary goals for the student and the transition services needed to assist the student in reaching those goals. If the student does not attend the IEP meeting to identify transition services needs or consider postsecondary goals and transition services, the school district shall take other steps to ensure that the student's preferences and interests are considered.

8. To the extent appropriate and with the consent of the parents or a student who has

reached the age of majority, the school district shall invite a representative of any participating agency that may be responsible for providing or paying for transition services. Parental consent or the consent of the student who has reached the age of majority must also be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

9. In the case of a child who was previously served and received early intervention services under Part C of the IDEA, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

(d) IEP Team member excusal. A member of the IEP Team described in subparagraph (3)(c)2., or (3)(c)3., or (3)(c)4., or (3)(c)5. above is not required to attend an IEP Team meeting, in whole or in part, if the parent of a student with a disability and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. Any such member of the IEP Team may also be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent, in writing, and the school district consent to the excusal and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(e) Transition of children with disabilities from the infants and toddlers early intervention program.

1. By the third (3rd) birthday of a child who has been participating in the early intervention program for infants and toddlers with disabilities, an IEP consistent with this rule or an individual family support plan consistent with these rules, must be developed and implemented.

2. For the purpose of implementing the requirement of this rule, each school district will participate in transition planning conferences arranged by the state lead agency for the infants and toddlers with disabilities early intervention program.

3. If the child's third (3rd) birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or individual family support plan will begin.

(f) IEP and meeting timelines. Timelines for IEPs for students with disabilities shall include the following:

1. An IEP, which has been reviewed, and if appropriate, revised periodically, but not less than annually, must be in effect at the beginning of each school year for each eligible student with a disability within its jurisdiction.

2. An IEP must be developed within thirty (30) calendar days following the determination of a student's eligibility for special education and related services and be in effect prior to the provision of these services.

3. Meetings shall be held to develop, review and revise the IEP. A meeting shall be held at least annually to review each IEP and, as appropriate, revise its provisions in accordance with all aspects of this rule.

(g) Considerations in IEP development, review, and revision for students with disabilities. The IEP team shall consider the following in IEP development, review, and revision:

1. The strengths of the student and the concerns of the parents for enhancing the education of their student;

2. The results of the initial or most recent evaluation or reevaluation of the student;

3. As appropriate, the results of the student's performance on any general statewide or

districtwide assessment;

4. The academic, developmental, and functional needs of the student;
5. In the case of a student whose behavior impedes the student's learning or the learning of others, strategies, including the use of positive behavioral interventions, supports, and other strategies to address that behavior;
6. In the case of a student with limited English proficiency, the language needs of the student as those needs relate to the student's IEP;
7. In the case of a student who is blind or visually impaired, provision of instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the student's reading and writing skills, needs, including future needs, and appropriate reading and writing media (including an evaluation of the student's future need for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;
8. The communication needs of the student;
9. In the case of a student who is deaf or hard-of-hearing, the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode;
10. Whether the student requires assistive technology devices and services. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the IEP Team determines that the student needs access to those devices in order to receive a free appropriate public education; and
11. At least annually, whether extended school year services are necessary for the provision of a free appropriate public education to the student consistent with the following:
 - a. Extended school year services (ESY) must be provided if a student's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the student.
 - b. School districts may not limit ESY to particular categories of disability or unilaterally limit the type, amount, or duration of those services.
12. If, after consideration of the factors in paragraph (3)(g) the IEP Team determines that a student needs a particular device or service, including an intervention, accommodation or other program modification, in order for the student to receive a free appropriate public education, the IEP must include a statement to that effect.
 - (h) Contents of the IEP. The IEP for each student with a disability must include:
 1. A statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general curriculum, or for prekindergarten children, as appropriate, how the disability affects the student's participation in appropriate activities;
 2. A statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general curriculum or for preschool children, as appropriate, to participate in appropriate activities and meeting each of the student's other educational needs that result from the student's disability;
 3. A description of benchmarks or short-term objectives for:
 - a. Students with disabilities who take alternate assessments aligned to alternate achievement

standards; or

b. Any other student with a disability, at the discretion of the IEP Team.

4. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the classroom accommodations, modifications or supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals; to be involved and progress in the general curriculum; to participate in extracurricular and other nonacademic activities; and to be educated and participate with other students with disabilities and nondisabled students in the activities described in this section. A parent must provide signed consent for a student to receive instructional accommodations that would not be permitted on the statewide assessments and must acknowledge in writing that he or she understands the implications of such accommodations. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in the activities described in subparagraph (3)(h)4., of this rule;

5. A statement of any individual appropriate accommodations in the administration of state or district assessments of student achievement that are necessary in order to measure the academic achievement and functional performance of the student on the assessments. Accommodations that negate the validity of a statewide assessment are not allowable in accordance with Section 1008.22(3)(c)6., Florida Statutes. If the IEP Team determines that the student will take an alternate assessment instead of the regular state or district assessment of student achievement or part of an assessment, the IEP must include a statement of why the student can not participate in the regular assessment and why the particular alternate assessment selected is appropriate for the student. If a student does not participate in the regular state assessment, the district must notify the student's parent and provide the parent with information regarding the implications of such nonparticipation in accordance with Section 1008.22(3)(c)6., Florida Statutes.

6. The projected date for the beginning of the special education, services, accommodations and modifications described in subparagraph (3)(h)4., of this rule and the anticipated frequency, location, and duration of those services;

7. A statement of how the student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

8. In accordance with Commissioner of Education Rule 6-1.0996, FAC., during the student's eighth (8th) grade year or during the school year of the student's fourteenth (14th) birthday, whichever comes first, a statement of whether the student is pursuing a course of study leading to a standard diploma or a special diploma.

9. In order to ensure quality transition planning and services, IEP Teams shall begin the process of identifying transition services needs of students with disabilities beginning no later than age fourteen (14), so that needed postsecondary goals may be identified and in place by age sixteen (16). Beginning not later than the first IEP to be in effect when the student turns sixteen (16), or younger, if determined appropriate by the IEP Team and updated annually:

a. A statement of appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and the transition services (including courses of study) needed to assist

the student in reaching those goals.

b. Consideration of instruction or the provision of information in the area of self-determination to assist the student to be able to actively and effectively participate in IEP meetings and self-advocate, if appropriate.

c. If a participating agency responsible for transition services, other than the school district, fails to provide the transition services described in the IEP, the school district shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the student set out in the IEP. However, this does not relieve any participating agency, including Division of Vocational Rehabilitation Services, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

10. Beginning at least one (1) year before the student's eighteenth (18th) birthday, a statement that the student has been informed of his or her rights under Part B of the IDEA, if any, that will transfer from the parent to the student on reaching the age of majority, which is eighteen (18) years of age.

(i) Least restrictive environment (LRE) and placement determinations. Placement determinations shall be made in accordance with the least restrictive environment provisions of the IDEA and Rules 6A-6.03011 through 6A-6.0361, FAC., as follows:

1. To the maximum extent appropriate, students with disabilities, including those in public or private institutions or other facilities, are educated with students who are not disabled;

2. Special classes, separate schooling or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and

3. A continuum of alternative placements must be available to meet the needs of students with disabilities for special education and related services, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions and a school district must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

4. In determining the educational placement of a student with a disability, including a preschool child with a disability, each school district must ensure that:

a. The placement decision:

(I) Is made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and

(II) Is made in conformity with the LRE provisions of this rule.

b. The student's placement:

(I) Is determined at least annually;

(II) Is based on the student's IEP; and

(III) Is as close as possible to the student's home.

c. Unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that he or she would attend if nondisabled;

d. In selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that he or she needs; and

e. A student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

5. In providing or arranging for the provision of nonacademic and extracurricular services and activities (including meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available), each school district must ensure that each student with a disability participates with students who are not disabled to the maximum extent appropriate to the needs of the student. The school district must ensure that each student with a disability has the supplementary aids and services determined by the student's IEP Team to be appropriate and necessary for the student to participate in nonacademic settings.

(j) Review and revision of the IEP. The school district shall ensure that the IEP Team:

1. Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

2. Revises the IEP as appropriate to address:

a. Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate,

b. The results of any reevaluation conducted,

c. Information about the student provided to, or by, the parents,

d. The student's anticipated needs or other matters,

e. Consideration of the factors described in paragraph (3)(g) of this rule, and

3. Responds to the parent's right to ask for revision of the student's IEP.

4. Encourages the consolidation of reevaluation meetings for the student and other IEP Team meetings for the student, to the extent possible.

(k) Changes to the IEP. Generally, changes to the IEP must be made by the entire IEP Team at an IEP Team meeting and may be made by amending the IEP rather than by redrafting the entire IEP. However, in making changes to a student's IEP after the annual IEP meeting for a school year, the parent and the school district may agree not to convene an IEP Team meeting for purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP without a meeting, the school district must ensure that the student's IEP Team is informed of those changes. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(l) Students with disabilities in adult prisons. The requirements of this rule relating to participation in general assessments do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons. In addition, the requirements relating to transition planning and services do not apply with respect to those students whose eligibility for services under Part B of the IDEA and Rules 6A-6.03011 through 6A-6.0361, FAC., will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release. The IEP Team of a student with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated, and the requirements relating to IEP content and LRE do not apply with respect to such modifications made.

(m) IEP implementation and accountability. The school district, or other state agency that provides special education either directly, by contract, or through other arrangements, is responsible for providing special education to students with disabilities in accordance with the

students' IEPs. However, it is not required that the school district, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives. An IEP must be in effect before special education and related services are provided to an eligible student and must be implemented as soon as possible following the IEP meeting. In addition:

1. The student's IEP shall be accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.

2. All teachers and providers shall be informed of their specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

3. The school district must make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed on the IEP.

4. Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures.

(n) IEPs and meetings for students with disabilities placed in private schools or community facilities by the school district.

1. If a student with a disability is placed in a private school by the school district, in consultation with the student's parents, the school district shall:

a. Ensure that the student has all of the rights of a student with a disability who is served by a school district.

b. Before the school district places the student, initiate and conduct a meeting to develop an IEP for the student, in accordance with this rule or for children ages three (3) through five (5), an IEP or an IFSP in accordance with Rules 6A-6.03011 through 6A-6.0361, FAC.; and

c. Ensure the attendance of a representative of the private school at the meeting. If the representative cannot attend, the school district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

2. After a student with a disability enters a private school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the private school or facility at the discretion of the school district but the school district must ensure that the parents and a school district representative are involved in decisions about the IEP and agree to proposed changes in the IEP before those changes are implemented by the private school.

3. Even if a private school or facility implements a student's IEP, responsibility for compliance with these rules remains with the school district.

4. Subparagraphs (3)(n)1. through 3. of this rule apply only to students who are or have been placed in or referred to a private school or facility by a school district as a means of providing FAPE.

(o) If placement in a public or private residential program is necessary to provide special education to a student with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the student.

(p) Procedures for routine checking of hearing aids and external components of surgically implanted medical devices. Each school district must ensure that hearing aids worn in school by students with hearing impairments, including deafness, are functioning properly and must ensure that the external components of surgically implanted medical devices are functioning properly. For a student with a surgically implanted medical device who is receiving special education and related services under Rules 6A-6.03011 through 6A-6.0361, FAC., a school district is not

responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

(q) Procedures for students with disabilities who are covered by public benefits or insurance. A school district may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under Rules 6A-6.03011 through 6A-6.0361, FAC., as permitted under the public benefits or insurance program, except as provided herein.

1. With regard to services required to provide FAPE to an eligible student under the IDEA, the school district:

a. May not require parents to sign up for or enroll in public insurance programs in order for their student to receive FAPE under Part B of the IDEA;

b. May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to the IDEA, but pursuant to subparagraph (3)(q)3. of this rule, may pay the cost that the parent otherwise would be required to pay;

c. May not use a student's benefits under a public insurance program if that use would:

(I) Decrease available lifetime coverage or any other insured benefit;

(II) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

(III) Increase premiums or lead to the discontinuation of benefits or insurance; or

(IV) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

d. Must obtain informed written parental consent each time that access to public benefits or insurance is initially sought and notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents. Parental consent must be obtained each time services are changed.

2. With regard to students with disabilities who are covered by private insurance, a school district may access a parent's private insurance proceeds to provide services required under the IDEA only if the parent provides written informed consent. Each time the school district proposes to access the parent's private insurance proceeds, the agency must obtain parental consent and inform the parents that their refusal to permit the school district to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

3. Use of Part B funds if parent does not give consent. If a school district is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required to ensure FAPE, the school district may use its IDEA Part B funds to pay for the service. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the school district may use its IDEA Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

(r) Access to Instructional Materials. Each school district must take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

(s) Physical education. Physical education services, specially designed if necessary, must be made available to every student with a disability receiving FAPE, unless the school district enrolls students without disabilities and does not provide physical education to students without disabilities in the same grades. Each student with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled students unless the student is enrolled full time in a separate facility or the student needs specially designed physical education, as prescribed in the student's IEP. If specially designed physical education is prescribed in a student's IEP, the school district responsible for the education of that student must provide the services directly or make arrangements for those services to be provided through other public or private programs. The school district responsible for the education of a student with a disability who is enrolled in a separate facility must ensure that the student receives appropriate physical education services in compliance with this section.

(t) Program options. Each school district must take steps to ensure that its students with disabilities have available to them the variety of educational programs and services available to nondisabled students in the area served by the school district, including art, music, industrial arts, consumer and homemaking education, and vocational education.

Specific Authority 1001.02(1)(2)(n), 1003.01(3)(a)(b), 1003.57, F.S. Law Implemented 1001.42(4)(l), 1003.01(3)(a)(b), 1003.57, 1011.62(1)(c)(e), 1001.03(8), F.S. History - New 7-13-93, Amended 10-17-2004.

6A-6.030281. Provision of Equitable Services to Parentally-Placed Private School Students with Disabilities

School districts must maintain policies and procedures in accordance with this rule to ensure the provision of equitable services to students with disabilities who have been placed in private schools by their parents where the provision of free appropriate public education (FAPE) is not at issue.

(1) Definition of parentally-placed private school students with disabilities. For purposes of this rule, parentally-placed private school students with disabilities means students with disabilities enrolled by their parents in private, including religious, non-profit schools or facilities that meet the definition of elementary school or secondary school under Rules 6A-6.03011 through 6A-6.0361, FAC., and does not include students with disabilities who have been placed in private schools by their parents when FAPE is at issue.

(2) Child find for parentally-placed private school students with disabilities. Each school district must locate, identify, and evaluate all students with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district's jurisdiction, in accordance with this rule and the child find provisions of these rules. The child find process must be designed to ensure the equitable participation of parentally-placed private school students and an accurate count of those students.

(a) Activities. In carrying out the requirements of this section, the school district must undertake activities similar to the activities undertaken for the school district's public school students.

(b) Cost. The cost of carrying out the child find requirements in this rule, including individual evaluations, may not be considered in determining if a school district has met its obligation under subsection (4) of this rule.

(c) Completion period. The child find process must be completed in a time period comparable to that for other students attending public schools in the school district.

(d) Out-of-State students. Each school district in which private, including religious, elementary and secondary schools are located must, in carrying out the child find requirements in this rule, include parentally-placed private school students who reside in a State other than Florida.

(3) Confidentiality of personally identifiable information. If a student is enrolled, or is going to enroll in a private school that is not located in the school district of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the private school is located and officials in the school district of the parent's residence.

(4) Provision of services for parentally-placed private school students with disabilities - basic requirement. To the extent consistent with the number and location of students with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district's jurisdiction, provision is made for the participation of those students in the program assisted or carried out under Part B of the Individuals with Disabilities Education Act (IDEA) by providing them with special education and related services, including direct services determined in accordance with subsections (12) and (13) of this rule, unless the U.S. Secretary of Education has arranged for services to those students under the by-pass provisions in 34 C.F.R. §§300.190 through 300.198.

(a) Services plan for parentally-placed private school students with disabilities. In accordance with subsections (12) and (13) of this rule, a services plan must be developed and implemented for each private school student with a disability who has been designated by the school district in which the private school is located to receive special education and related services under this rule.

(b) Record keeping. Each school district must maintain in its records, and provide to the Department of Education, the following information related to parentally-placed private school students covered under this rule:

1. The number of students evaluated;
2. The number of students determined to be students with disabilities; and
3. The number of students served.

(5) Expenditures. To meet the requirements of this rule, each school district must spend the following on providing special education and related services (including direct services) to parentally-placed private school students with disabilities:

(a) For children and students aged three (3) through twenty-one (21), an amount that is the same proportion of the school district's total subgrant under Section 611(f) of the IDEA as the number of private school students with disabilities aged three (3) through twenty-one (21) who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district's jurisdiction, is to the total number of students with disabilities in its jurisdiction aged three (3) through twenty-one (21).

(b) For children aged three (3) through five (5), an amount that is the same proportion of the school district's total subgrant under Section 619(g) of the IDEA as the number of parentally-placed private school students with disabilities aged three (3) through five (5) who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district's jurisdiction, is to the total number of students with disabilities in its jurisdiction aged three (3) through five (5).

(c) Children aged three (3) through five (5) are considered to be parentally-placed private school students with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school under Florida law.

(d) If a school district has not expended for equitable services all of the funds described in paragraphs (5)(a) and (b) above by the end of the fiscal year for which Congress appropriated the funds, the school district must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school students with disabilities during a carry-over period of one additional year.

(6) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school students with disabilities, the school district, after timely and meaningful consultation with representatives of private schools, must conduct a thorough and complete child find process to determine the number of parentally-placed students with disabilities attending private schools located in the school district. (See Appendix B to the IDEA regulations for an example of how proportionate share is calculated).

(7) Annual count of the number of parentally-placed private school students with disabilities. Each school district must, after timely and meaningful consultation with representatives of parentally-placed private school students with disabilities (consistent with this rule), determine the number of parentally-placed private school students with disabilities attending private schools located in the school district and ensure that the count is conducted on any date between

October 1 and December 1, inclusive, of each year. The count must be used to determine the amount that the school district must spend on providing special education and related services to parentally-placed private school students with disabilities in the next fiscal year.

(8) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school students with disabilities under this rule.

(9) Consultation with private school representatives. To ensure timely and meaningful consultation, a school district must consult with private school representatives and representatives of parents of parentally-placed private school students with disabilities during the design and development of special education and related services for the students regarding the following:

(a) The child find process, including how parentally-placed private school students suspected of having a disability can participate equitably and how parents, teachers, and private school officials will be informed of the process;

(b) The determination of the proportionate share of Federal funds available to serve parentally-placed private school students with disabilities, including the determination of how the proportionate share of those funds was calculated;

(c) The consultation process among the school district, private school officials, and representatives of parents of parentally-placed private school students with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed students with disabilities identified through the child find process can meaningfully participate in special education and related services;

(d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school students with disabilities, including a discussion of:

1. The types of services, including direct services and alternate service delivery mechanisms; and

2. How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school students; and

3. How and when those decisions will be made.

(e) How, if the school district disagrees with the views of private school officials on the provision of services or the types of services (whether provided directly or through a contract) the school district will provide to such private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

(10) Written affirmation. When timely and meaningful consultation, as required by subsection (9) of this rule has occurred, the school district must obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, the school district must forward the documentation of the consultation process to the Department of Education.

(11) Compliance. A private school official has the right to submit a complaint to the Department of Education that the school district did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official. If the private school official wishes to submit a complaint, the official must provide to the Department of Education the basis of the noncompliance by the school district with the applicable private school provisions in this rule and the school district must forward the appropriate documentation to the Department of Education. If the private school official is

dissatisfied with the decision of the Department of Education, the official may submit a complaint to the U.S. Secretary of Education by providing the information on noncompliance, and the Department of Education must forward the appropriate documentation to the U.S. Secretary of Education.

(12) Equitable services determined. No parentally-placed private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. Decisions about the services that will be provided to parentally-placed private school students with disabilities under this rule must be made in accordance with this rule. The school district will make the final decisions with respect to the services to be provided to eligible parentally-placed private school students with disabilities.

(13) Services plan for each student served. If a student with a disability is enrolled in a religious or other private school by the student's parents and will receive special education or related services from a school district, the school district must initiate and conduct meetings to develop, review, and revise a services plan for the student and ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the school district shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. Each parentally-placed private school student with a disability who has been designated by the school district to receive services must have a services plan that describes the specific direct special education services that the school district will provide to the student in light of the services that the school district has determined it will make available to parentally-placed private school students with disabilities. The services plan must be developed, reviewed, and revised consistent with the requirements for IEP development, review and revision.

(14) Equitable services provided. The provision of equitable services must be by employees of the school district or through contract by the school district with an individual, association, agency, organization, or other entity. The services provided to parentally-placed private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary and secondary school teachers who are providing equitable services to parentally-placed private school students with disabilities do not have to meet the highly qualified special education teacher requirements under Florida law. Parentally-placed private school students with disabilities may receive a different amount of services than students with disabilities in public schools. Special education and related services provided to parentally-placed private school students with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

(15) Location of services and transportation. Equitable services to parentally-placed private school students with disabilities may be, but are not required to be, provided on the premises of private, including religious, schools. If necessary for the student to benefit from or participate in the services provided under this rule, a parentally-placed private school student with a disability must be provided transportation from the student's school or the student's home to a site other than the private school and from the service site to the private school, or to the student's home, depending on the timing of the services. School districts are not required to provide transportation from the student's home to the private school. The cost of any transportation provided under this section may be included in calculating whether the school district has expended its proportionate share.

(16) Due process hearings and procedural safeguards. Except as provided herein, the procedures related to procedural safeguards, mediation and due process hearings do not apply to complaints that a school district has failed to meet the requirements of this rule, including the provision of services indicated on the student's services plan. However, such procedures do apply to complaints that a school district has failed to meet the requirements of this rule related to child find, including the requirements related to conducting appropriate evaluations of students with disabilities. Any request for due process hearing regarding the child find requirements must be filed with the school district in which the private school is located and a copy must be forwarded to the Department of Education.

(17) State complaints. Any complaint that a school district has failed to meet the requirements of this rule related to the provision of equitable services, services plans, expenditures, consultation with private school representatives, personnel, or equipment and supplies must be filed in accordance with the State Complaint procedures described in Rules 6A-6.03011 through 6A-6.0361, FAC. A complaint filed by a private school official under this section must be filed with the Department of Education in accordance with its State Complaint procedures as prescribed in Rule 6A-6.03311(5), FAC.

(18) Requirement that funds not benefit a private school. A school district may not use funds provided under the IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school. The school district must use funds provided under Part B of the IDEA to meet the special education and related services needs of parentally-placed private school students with disabilities, but not for the needs of a private school or the general needs of the students enrolled in the private school.

(19) Use of personnel. A school district may use funds available under the IDEA to make public school personnel available in other than public facilities to the extent necessary to provide equitable services under this rule for parentally-placed private school students with disabilities if those services are not normally provided by the private school. A school district may use funds available under the IDEA to pay for the services of an employee of a private school to provide equitable services under this rule if the employee performs the services outside of his or her regular hours of duty and the employee performs the services under public supervision and control.

(20) Separate classes prohibited. A school district may not use funds available under the IDEA for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site and the classes include students enrolled in public schools and students enrolled in private schools.

(21) Property, equipment, and supplies. A school district must control and administer the funds used to provide special education and related services under this rule and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in this rule. The school district may place equipment and supplies in a private school for the period of time needed for the provision of equitable services. The school district must ensure that the equipment and supplies placed in a private school are used only for IDEA purposes and can be removed from the private school without remodeling the private school facility. The school district must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for IDEA purposes or removal is necessary to avoid unauthorized use of the equipment and supplies for other than IDEA purposes. No funds under IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

Specific Authority 1001.02(1)(2)(n), 1003.01(3)(a)(b), 1003.57, F.S. Law Implemented
1001.42(4)(l), 1003.01(3)(a)(b), 1003.57, 1011.62(1)(c)(e), 1001.03(8) F.S. History - New 9-20-
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6A-6.0331. General Education Intervention Procedures, Identification, Evaluation, Reevaluation and the Initial Provision of Exceptional Education Services

The state's goal is to provide full educational opportunity and a free appropriate public education (FAPE) to all students with disabilities ages three (3) through twenty-one (21) and to school age students who are gifted. School districts have the responsibility to ensure that students suspected of having a disability are subject to general education intervention procedures, and that all students with disabilities or who are gifted, including those who are homeless or are wards of the state or who attend private schools, regardless of the severity of their disability, and who are in need of specially designed instruction and related services, are identified, located, and evaluated, and appropriate exceptional student education is made available to them if it is determined that the student meets the eligibility criteria specified in Rules 6A-6.03011 through 6A-6.0361, FAC. Additionally, school districts may elect to serve children with disabilities below the age of three (3) years in collaboration with the Part C Early Steps Program. The procedures and criteria for general education interventions, identification, evaluation, and determination of eligibility of students with disabilities and gifted students by school districts shall be set forth in the school district's Exceptional Student Education (ESE) Policies and Procedures document consistent with the following requirements.

(1) General education intervention procedures for kindergarten through grade twelve (12) students suspected of having a disability. It is the local school district's responsibility to develop and implement coordinated general education intervention procedures for students who need additional academic and behavioral support to succeed in the general education environment. In implementing such procedures, a school district may carry out activities that include the provision of educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction and professional development for teachers and other school staff to enable them to deliver scientifically based academic and behavioral interventions and, where appropriate, instruction on the use of adaptive and instructional software. The general education intervention requirements set forth in sections (a) through (e) of this paragraph are not required of students suspected of being gifted or who are being considered for eligibility for specially designed instruction for students who are homebound or hospitalized. The general education interventions requirements set forth in paragraphs (a), (b), and (e) of this subsection may not be required for students suspected of having a disability if a team that comprises qualified professionals and the parent determines that these general education interventions are not appropriate for a student who demonstrates a speech disorder or severe cognitive, physical or sensory disorders, or severe social/behavioral deficits that require immediate intervention to prevent harm to the student or others, or for students who are not enrolled in a public school.

(a) Parent involvement in general education intervention procedures. Opportunities for parents to be involved in the process to address the student's areas of concern must be made available. In addition, there must be discussion with the parent of the student's responses to interventions, supporting data and potential adjustments to the interventions and of anticipated future action to address the student's learning and/or behavioral areas of concern. Documentation of parental involvement and communication must be maintained.

(b) Observations of the student must be conducted in the educational environment and, as appropriate, other settings to document the student's learning or behavioral areas of concern. At least one (1) observation must include an observation of the student's performance in the general classroom.

(c) Review of existing data, including anecdotal, social, psychological, medical, and achievement (including classroom, district and state assessments) shall be conducted. Attendance data shall be reviewed and used as one indicator of a student's access to instruction.

(d) Vision and hearing screenings shall be conducted for the purpose of ruling out sensory deficits that may interfere with the student's academic and behavioral progress, and additional screenings or assessments to assist in determining interventions may be conducted, as appropriate. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(e) Evidence-based interventions addressing the identified areas of concern must be implemented in the general education environment. The interventions selected for implementation should be developed through a process that uses student performance data to, among other things, identify and analyze the area of concern, select and implement interventions, and monitor the effectiveness of the interventions. Interventions shall be implemented as designed for a reasonable period of time and with a level of intensity that matches the student's needs. Pre-intervention and ongoing progress monitoring measures of academic and/or behavioral areas of concern must be collected and communicated to the parents in an understandable format.

(f) Nothing in this section should be construed to either limit or create a right to FAPE under Rules 6A-6.03011 through 6A-6.0361, FAC., or to delay appropriate evaluation of a student suspected of having a disability.

(g) A school district may not use more than fifteen (15) percent of the amount it receives under Part B of the IDEA for any fiscal year to develop and implement coordinated general education intervention procedures for students in kindergarten through grade twelve (12) who are not currently identified as needing special education or related services but who need additional support to succeed in the general education environment. Funds made available to carry out this section may be used to carry out general education intervention procedures aligned with activities funded by and carried out under the Elementary and Secondary Education Act (ESEA), if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section. For IDEA Part B funds used in this way, the school district must annually report to the Florida Department of Education on the number of students served under this section who received general education interventions and the number of students who received such services and subsequently receive special education and related services under Part B of the IDEA during the preceding two (2) year period.

(2) Procedures prior to initial evaluation for prekindergarten children. For children who are below mandatory school attendance age and who are not yet enrolled in kindergarten, the activities specified in subsection (1) of this rule are not required. The following requirements apply to this population:

(a) A review of existing social, psychological, and medical data with referral for a health screening when the need is indicated; and

(b) Vision and hearing screenings shall be conducted for the purpose of ruling out sensory deficits. Additional screenings to assist in determining interventions may be conducted as appropriate.

(3) Initial evaluation. Each school district must conduct a full and individual initial evaluation before the initial provision of ESE. Either a parent of a student or a school district may initiate a request for initial evaluation to determine if the student is a student with a

disability or is gifted.

(a) Prior to a school district request for initial evaluation, school personnel must make one (1) of the following determinations and include appropriate documentation in the student's educational record to the effect that:

1. For a student suspected of being a student with a disability, the general education intervention procedures have been implemented as required under this rule and indicate that the student should be considered for eligibility for ESE; or

2. The nature or severity of the student's areas of concern make the general education intervention procedures inappropriate in addressing the immediate needs of the student.

(b) If the parents of the child receiving general education interventions requests, prior to the completion of these interventions, that the school conduct an evaluation to determine the student's eligibility for specially designed instruction and related services as a student with a disability, the school district:

1. Must obtain consent for and conduct the evaluation; and

2. Complete the activities described in subsection (1) of this rule concurrently with the evaluation but prior to the determination of the student's eligibility for specially designed instruction; or

3. Must provide the parent with written notice of its refusal to conduct the evaluation that meets the requirements of Rule 6A-6.03311, FAC.

(c) The school district shall be responsible for conducting all initial evaluations necessary to determine if the student is eligible for ESE and to determine the educational needs of the student. Such evaluations must be conducted by examiners, including physicians, school psychologists, psychologists, speech-language pathologists, teachers, audiologists, and social workers who are qualified in the professional's field as evidenced by a valid license or certificate to practice such a profession in Florida. Educational evaluators not otherwise covered by a license or certificate to practice a profession in Florida shall either hold a valid Florida teacher's certificate or be employed under the provisions of Rule 6A-1.0502, FAC.

1. Tests of intellectual functioning shall be administered and interpreted by a professional person qualified in accordance with Rule 6A-4.0311, FAC., or licensed under Chapter 490, Florida Statutes.

2. Standardized assessment of adaptive behavior shall include parental input regarding their student's adaptive behavior.

(d) The school district shall ensure that initial evaluations of students suspected of having a disability are completed within sixty (60) school days (cumulative) that the student is in attendance after the school district's receipt of parental consent for the evaluation. For prekindergarten children, initial evaluations must be completed within sixty (60) school days after the school district's receipt of parental consent for evaluation.

(e) The sixty (60)-day timeframe for evaluation does not apply to a school district if:

1. The parent of the student repeatedly fails or refuses to produce the student for the evaluation; or

2. A student enrolls in a school served by the school district after the timeframe has begun, and prior to a determination by the student's previous school district as to whether the student is a student with a disability. This exception applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

Assessments of students with disabilities who transfer from one school district to another school

district in the same school year must be coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(f) The school district shall ensure that students suspected of being gifted are evaluated within a reasonable period of time.

(4) Parental consent for initial evaluation.

(a) The school district must provide notice to the parent that describes any evaluation procedures the school district proposes to conduct. In addition, the school district proposing to conduct an initial evaluation to determine if a student is a student with a disability or is gifted must obtain informed consent from the parent of the student before conducting the evaluation.

(b) Parental consent for initial evaluation must not be construed as consent for initial provision of ESE.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability or is gifted.

(d) For initial evaluations only, if the child is a ward of the State and is not residing with the student's parent, the school district is not required to obtain informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability if:

1. Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the student;

2. The rights of the parents of the student have been terminated in accordance with Chapter 39, Part XI, Florida Statutes; or

3. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for initial evaluation has been given by an individual appointed by the judge to represent the student.

(e) If the parent of a student suspected of having a disability who is enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue initial evaluation of the student by using the mediation or due process procedures contained in Rules 6A-6.03011 through 6A-6.0361, FAC. The school district does not violate its child find or evaluation obligations if it declines to pursue the evaluation.

(f) A school district may not use a parent's refusal to consent to initial evaluation to deny the parent or the student any other service, benefit, or activity of the school district, except as provided by this rule.

(5) Evaluation procedures.

(a) In conducting an evaluation, the school district:

1. Must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining whether the student is eligible for ESE and the content of the student's IEP or EP, including information related to enabling the student with a disability to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), or for a gifted student's needs beyond the general curriculum;

2. Must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE and for determining an appropriate educational program for the student; and

3. Must use technically sound instruments that may assess the relative contribution of

cognitive and behavioral factors, in addition to physical or developmental factors.

(b) Each school district must ensure that assessments and other evaluation materials used to assess a student are:

1. Selected and administered so as not to be discriminatory on a racial or cultural basis;
2. Provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
3. Are used for the purposes for which the assessments or measures are valid and reliable;
and
4. Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments .

(c) Assessments and other evaluation materials shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(d) Assessments shall be selected and administered so as to best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's sensory, manual, or speaking skills, unless those are the factors the test purports to measure.

(e) The school district shall use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

(f) A student shall be assessed in all areas related to a suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(g) An evaluation shall be sufficiently comprehensive to identify all of a student's ESE needs, whether or not commonly linked to the disability category in which the student is classified.

(6) Determination of eligibility for exceptional students.

(a) A group of qualified professionals determines whether the student is an exceptional student in accordance with this rule and the educational needs of the student. The parents of a student being considered for eligibility as a student with a disability shall be invited and encouraged to participate as equal members of the group. The school district must provide a copy of the evaluation report and the documentation of the determination of eligibility at no cost to the parent. If a determination is made that a student is an exceptional student and needs ESE, an IEP or EP must be developed for the student in accordance with these rules.

(b) In interpreting evaluation data for the purpose of determining if a student is an exceptional student and the educational needs of the student, each school district shall:

1. Draw upon data and information from a variety of sources, such as aptitude and achievement tests, the student's response to interventions/instruction implemented, parent input, student input as appropriate, teacher recommendations, and information about the student's physical condition, social or cultural background, and adaptive behavior;
2. Ensure that information obtained from all of these sources is documented and carefully considered; and
3. Determine eligibility in accordance with the criteria and procedures specified in these rules.

(c) If a determination is made that a student has a disability and needs special education and related services, an IEP shall be developed for the student in accordance with Rules 6A-6.03011 through 6A-6.0361, FAC. For children ages three (3) through five (5) years, an individual family support plan (IFSP) may be developed in lieu of an IEP.

(d) A student may not be determined eligible as a student with a disability if the determinant factor is:

1. Lack of appropriate instruction in reading, including the essential components of reading instruction, including explicit and systematic instruction in (a) phonemic awareness; (b) phonics; (c) vocabulary development; (d) reading fluency, including oral reading skills; and (e) reading comprehension strategies;

2. Lack of appropriate instruction in math; or

3. Limited English proficiency; and

4. The student does not otherwise meet the eligibility criteria specified in Rules 6A-6.03011 through 6A-6.0361, FAC.

(e) A student may not be denied eligibility as a student who is gifted if the determinant factor is limited English proficiency.

(f) For students identified as gifted, an educational plan (EP) in accordance with Rule 6A-6.030191, FAC., shall be developed.

(7) Reevaluation Requirements.

(a) A school district must ensure that a reevaluation of each student with a disability is conducted in accordance with Rules 6A-6.03011 through 6A-6.0361, FAC., if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation or if the student's parent or teacher requests a reevaluation.

(b) A reevaluation may occur not more than once a year, unless the parent and the school district agree otherwise and must occur at least once every three (3) years, unless the parent and the school district agree that a reevaluation is unnecessary.

(c) Each school district must obtain informed parental consent prior to conducting any reevaluation of a student with a disability.

(d) If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the consent override provisions of mediation or due process. The school district does not violate its child find, evaluation or reevaluation obligations if it declines to pursue the evaluation or reevaluation.

(e) The informed parental consent for reevaluation need not be obtained if the school district can demonstrate that it made reasonable efforts to obtain such consent and the student's parent has failed to respond.

(8) Additional requirements for evaluations and reevaluations. As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must take the following actions:

(a) Review existing evaluation data on the student, including:

1. Evaluations and information provided by the student's parents;

2. Current classroom-based, local, or State assessments and classroom-based observations;

and

3. Observations by teachers and related services providers.

(b) Identify, on the basis of that review and input from the student's parents, what additional data, if any, are needed to determine the following:

1. Whether the student is a student with a disability or, in case of a reevaluation of the student, whether the student continues to have a disability;
2. The educational needs of the student;
3. The present levels of academic achievement and related developmental needs of the student;
4. Whether the student needs special education and related services or, in the case of a reevaluation of the student, whether the student continues to need special education and related services; and
5. Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general curriculum.

(c) The group conducting this review may do so without a meeting.

(d) The school district shall administer tests and other evaluation measures as may be needed to produce the data that is to be reviewed under this section.

(e) If the determination under this section is that no additional data are needed to determine whether the student continues to be a student with a disability and to determine the student's educational needs, the school district shall notify the student's parents of:

1. That determination and the reasons for the determination; and
2. The right of the parents to request an assessment to determine whether the student continues to be a student with a disability and to determine the student's educational needs. The school district is not required to conduct the assessment unless requested to do so by the student's parents.

(f) Reevaluation is not required for a student before the termination of eligibility due to graduation with a standard diploma or exiting from school upon reaching the student's twenty-second (22nd) birthday. For a student whose eligibility terminates under these circumstances, a school district must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

(g) Parental consent is not required before reviewing existing data as part of an evaluation or reevaluation or 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.

(h) If a parent of a student who is home schooled or placed in private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school district may not use the consent override provisions of mediation or due process and the school district is not required to consider the student eligible for services under Rules 6A-6.03011 through 6A-6.0361, FAC.

(i) To meet the reasonable efforts requirements to obtain parental consent in Rules 6A-6.03011 through 6A-6.0361, FAC., the school district must document its attempts to obtain parental consent using procedures such as those used to obtain parental participation in meetings.

(9) Parental Consent for Services.

(a) A school district responsible for making FAPE available to an exceptional student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the

parent for the initial provision of ESE services to the student.

(c) If the parent of a student fails to respond or refuses to consent to the initial provision of services, the school district may not use mediation or due process hearing procedures in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district will not be considered to be in violation of the requirement to make FAPE available to the student for the failure to provide the student with the special education and related services for which the school district requests consent. In addition, the school district is not required to convene an IEP Team meeting or develop an IEP for the student for the special education and related services for which the school district requests such consent.

Specific Authority 1001.02(1)(2)(n), 1003.01(3)(a)(b), 1003.57, F.S. Law Implemented 1001.42(4)(l), 1003.01(3)(a)-(b), 1001.02(2)(n), 1003.57 F.S. History New 6-17-74, Repromulgated 12-5-74, Amended 7-1-77, 3-28-78, 7-12-78, 8-31-78, 11-29-78, 10-7-81, 7-13-83, 6-2-85, Formerly 6A 6.331, Amended 7-13-93, 1-2-95, 9-20-04.

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.

6A-6.03312. Discipline Procedures for Students with Disabilities

For students with disabilities whose behavior impedes their learning or the learning of others, strategies, including positive behavioral interventions and supports to address that behavior must be considered in the development of their individual educational plans (IEPs). School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements and procedures in this rule, is appropriate for a student with a disability who violates a code of student conduct.

(1) Definitions applicable to discipline of students with disabilities. For purposes of this rule, the following definitions apply:

(a) Change of placement because of disciplinary removals. For the purpose of removing a student with a disability from the student's current educational placement as specified in the student's IEP under this rule, a change of placement occurs when:

1. The removal is for more than ten (10) consecutive school days, or
2. The student has been subjected to a series of removals that constitutes a pattern that is a change of placement because the removals cumulate to more than ten (10) school days in a school year, because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals, and because of additional factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another. A school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement, and this determination is subject to review through due process and judicial proceedings.

(b) Controlled substance. A controlled substance is a drug or other substance identified under schedules I, II, III, IV, or V of the Controlled Substances Act, 21 U.S.C. 812(c) and Section 893.02(4), Florida Statutes.

(c) Illegal drug. An illegal drug means a controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 U.S.C. 812(c) or under any other provision of federal law.

(d) Serious bodily injury. Serious bodily injury means bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty

(e) Weapon. Weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade that is less than two and one half (2½) inches in length.

(f) Manifestation determination. A manifestation determination is a process by which the relationship between the student's disability and a specific behavior that may result in disciplinary action is examined.

(g) Interim alternative educational setting. An interim alternative educational setting (IAES) is a different location where educational services are provided for a specific time period due to disciplinary reasons and that meets the requirements of this rule.

(2) Authority of school personnel. Consistent with the school district's Code of Student Conduct and to the extent that removal would be applied to students without disabilities, school personnel may:

- (a) Remove a student with a disability who violates a code of student conduct from the

student's current placement for not more than ten (10) consecutive school days.

(b) Further remove a student with a disability for not more than ten (10) consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change in placement as defined in this rule.

(3) Manifestation determination. A manifestation determination, consistent with the following requirements, must be made within ten (10) days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct.

(a) In conducting the review, the school district, the parent, and relevant members of the IEP Team (as determined by the parent and the school district) must:

1. Review all relevant information in the student's file, including any information supplied by the parents of the student, any teacher observations of the student, and the student's current IEP; and

2. Determine whether the conduct in question was caused by, or had a direct and substantial relationship to the student's disability or whether the conduct in question was the direct result of the school district's failure to implement the IEP.

(b) If the school district, the parent, and relevant members of the IEP Team determine that a condition in subparagraph (a)2. above was met, the conduct must be determined to be a manifestation of the student's disability and the school district must take immediate steps to remedy those deficiencies.

(c) If the school district, the parent, and relevant members of the IEP Team determine that the conduct was a manifestation of the student's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

2. If a behavioral intervention plan already has been developed, review it and modify it, as necessary, to address the behavior; and

3. Except as provided in subsection (6) of this rule, return the student to the placement from which the student was removed, unless the parent and the school district agree to a change in placement as part of the modification of the behavior intervention plan.

(d) For disciplinary changes of placement, if the behavior that gave rise to the violation of a code of student conduct is determined not to be a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner and for the same duration in which they would be applied to students without disabilities, except that services consistent with subsection (5) of this rule must be provided to the student with a disability.

(e) If a parent disagrees with the manifestation determination decision made by the IEP Team pursuant to this rule, the parent may appeal the decision by requesting an expedited due process hearing as described in subsection (7) of this rule.

(4) On the date on which a decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the school district must notify the parent of the removal decision and provide the parent with a copy of the notice of procedural safeguards as referenced in these rules.

(5) Free appropriate public education for students with disabilities who are suspended or expelled or placed in an IAES.

(a) A school district is not required to provide services to a student with a disability during removals totaling ten (10) school days or less in that school year, if services are not provided to

students without disabilities who are similarly removed.

(b) Students with disabilities who are suspended or expelled from school or placed in an IAES must continue to receive educational services, including homework assignments in accordance with Section 1003.01, Florida Statutes, so as to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP and receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.

(c) After a student with a disability has been removed from the current placement for ten (10) school days in the school year, if the current removal is not more than ten (10) consecutive school days and is not a change of placement under this rule, school personnel, in consultation with at least one of the student's special education teacher(s), shall determine the extent to which services are needed so as to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP.

(d) If the removal is a change of placement under this rule, the student's IEP Team determines appropriate services under paragraph (b) of this subsection.

(6) Special Circumstances and Interim Alternative Educational Setting (IAES).

(a) School personnel may remove a student to an IAES for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

1. Carries a weapon to or possesses a weapon at school, on school premises, or to a school function under the jurisdiction of a state education agency or a school district;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a state education agency or a school district; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state education agency or a school district.

(b) On the date on which a decision is made to make a removal that constitutes a change of placement because of a violation of a code of student conduct, the school district must notify the parent of that decision and provide the parent with a copy of the notice of procedural safeguards as referenced in Rules 6A-6.03011 through 6A-6.0361, FAC.

(7) Appeal and Expedited Hearings.

(a) An expedited hearing may be requested:

1. By the student's parent if the parent disagrees with a manifestation determination or with any decision not made by an administrative law judge (ALJ) regarding a change of placement under this rule, or
2. By the school district if it believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(b) The school district may repeat the procedures for expedited hearings if it believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(c) Expedited due process hearings requested under this subsection shall be conducted by an ALJ for the Division of Administrative Hearings, Department of Management Services, on behalf of the Department of Education, and shall be held at the request of either the parent or the

school district regarding disciplinary actions. These hearings must meet the requirements prescribed in Rules 6A-6.03011 through 6A-6.0361, FAC., except that the hearing must occur within twenty (20) school days of the date the request for due process is filed and an ALJ must make a determination within ten (10) school days after the hearing. In addition, unless the parents and the school district agree in writing to waive the resolution meeting described herein or agree to use the mediation process set forth in these rules:

1. A resolution meeting must occur within seven (7) days of receiving notice of the request for expedited due process hearing; and

2. The expedited due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the request for expedited due process hearing.

(d) The decision of the ALJ rendered in an expedited hearing may be appealed by bringing a civil action in a federal district or state circuit court, as provided in Section 1003.57(5), Florida Statutes.

(8) Authority of an ALJ. An ALJ hears and makes a determination regarding an appeal and request for expedited due process hearing under this subsection and, in making the determination:

(a) An ALJ may return the student with a disability to the placement from which the student was removed if the ALJ determines that the removal was a violation of this rule or that the student's behavior was a manifestation of the student's disability; or

(b) Order a change of placement of the student with a disability to an appropriate IAES for not more than forty-five (45) school days if the ALJ determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(c) The procedures under this subsection may be repeated, if a school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(9) Student's Placement During Appeals/Expedited Due Process Proceedings.

When an appeal under subsection (7) has been made by either the parent or the school district, the student must remain in the IAES determined by the IEP team pending the decision of the ALJ or until the expiration of the time period specified by school personnel, including expulsion for a student where no manifestation was found, unless the parent and the Department of Education or school district agree otherwise.

(10) Protections for Students not Determined Eligible for Special Education and Related Services. A regular education student who has engaged in behavior that violated a code of student conduct may assert any of the protections afforded to a student with a disability under this rule if the school district had knowledge of the student's disability before the behavior that precipitated the disciplinary action occurred.

(a) Basis of knowledge. A school district is deemed to have knowledge that a student is a student with a disability if:

1. The parent has expressed concern in writing to supervisory or administrative personnel of the appropriate school district, or a teacher of the student, that the student needs special education and related services;

2. The parent has requested an evaluation to determine whether the student is in need of special education and related services; or

3. The teacher of the student, or other school district personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the school district's special

education director or to other supervisory school district personnel.

(b) Exception. A school district would not be deemed to have knowledge of a disability under paragraph (a) if:

1. The parent of the student has not allowed an evaluation pursuant to Rules 6A-6.03011 through 6A-6.0361, FAC., or has refused special education and related services under Rules 6A-6.03011 through 6A-6.0361, FAC.; or

2. The school district conducted an evaluation in accordance with Rules 6A-6.03011 through 6A-6.0361, FAC., and determined that the student was not a student with a disability.

(c) Conditions that Apply if No Basis of Knowledge.

1. If the school district has no knowledge that the student is a student with a disability prior to disciplinary action, the student may be disciplined in the same manner as a student without a disability who engages in comparable behaviors.

2. If an evaluation request is made for the student during the time period of the disciplinary action, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability, taking into consideration information from the evaluation and information provided by the parents, the school district shall provide special education and related services consistent with the requirements of this rule.

(11) Nothing in this rule prohibits a school district from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.

(12) Student Records in Disciplinary Procedures. School districts shall ensure that the special education and disciplinary records of students with disabilities are transmitted, consistent with the provisions of Section 1002.22, Florida Statutes, and Rule 6A-1.0955, FAC.:

(a) For consideration by the person making the final determination regarding the disciplinary action; and

(b) For consideration by the appropriate authorities to whom school districts report crimes.

(13) Disciplinary Records of Students with Disabilities. School districts shall include in the records of students with disabilities a statement of any current or previous disciplinary action that has been taken against the student and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students.

(a) The statement may be a description of any behavior engaged in by the student that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the student and other individuals involved with the student.

(b) If the student transfers from one school to another, the transmission of any of the student's records must include both the student's current IEP and any statement of current or previous disciplinary action that has been taken against the student.

(14) Suspension and expulsion rates.

(a) The Florida Department of Education, will examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities:

1. Among school districts in the state; or

2. Compared to the rates for non-disabled children within the school districts.

(b) If the discrepancies described in paragraph (a) of this subsection are occurring, the Department of Education will review and, if appropriate, revise (or require the affected school district to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the IDEA.

Specific Authority 1001.02(1)(2)(n), 1003.01(3), 1003.57, 1006.09, F.S. Law Implemented 1001.03(8), 1001.42(4)(1), 1003.01(3), 1003.57, 1006.09, F.S. History New 09-20-04, Amended

6A-6.0333. Surrogate Parents

A surrogate parent is an individual appointed to act in the place of a parent in safeguarding a student's rights in the exceptional education decision-making process, when the student's parent, after reasonable efforts, cannot be located by the school district, the student is a ward of the state under State law, or the student is an unaccompanied homeless youth.

(1) Minimum qualifications of a surrogate parent. The person qualified as a surrogate parent shall, at a minimum:

(a) Be a citizen of the United States, a resident of the State of Florida, and above the age of eighteen (18);

(b) Not be an employee of any agency involved in the education or care of the student;

(c) Have knowledge and skills acquired by successfully completing training and utilizing training materials developed and approved by the Department of Education to ensure adequate representation of the student; and

(d) Have no personal or professional interest which conflicts with the interest of the student that the surrogate represents.

(2) Appointment of surrogate parent.

(a) Surrogate parents for students who are eligible for or who are suspected of being eligible for special programs made available through a school district or agency under contract with the school district shall be appointed by the district's school superintendent not more than thirty (30) days after the school district determines that the student needs a surrogate parent. Surrogate parents for students who are eligible for or who are suspected of being eligible for special programs made available through a contract from the Department of Education shall be appointed by the individual specified in the contract. In the case of a student who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, provided the surrogate meets the qualifications in subsection (1) above.

(b) The surrogate parent shall continue in the appointed role until one of the following circumstances occurs:

1. The student is determined to no longer be eligible or in need of special programs, except when termination of special programs is being contested;

2. The legal guardianship for the student is assigned to a person who is able to carry out the role of the parent;

3. The parent, who was previously unknown becomes known; or the whereabouts of a parent which was previously undiscovered, is discovered;

4. The appointed surrogate parent no longer wishes to represent or is unable to represent the student;

5. The superintendent or Department of Education contract designee determines that the appointed surrogate parent no longer adequately represents the student; or

6. The student moves to a geographic location which is not reasonably accessible to the appointed surrogate.

(c) The appointments and termination of appointments of surrogate parents shall be in writing. Terminations initiated by the superintendent or Department of Education contract designee or a request for termination initiated by the surrogate shall list the reasons for such request.

(d) Either party may request a hearing under Chapter 120, Florida Statutes, regarding the termination of a surrogate.

(e) Nothing in this rule shall prohibit the continuance of a surrogate parent appointment when the responsibility for the student's educational placement moves among and between public and private agencies.

(3) Responsibilities of a surrogate parent. The person appointed as a surrogate parent:

(a) Must become acquainted with the student and be knowledgeable about his or her disability and educational needs;

(b) May represent the student in all matters relating to the identification, evaluation, and educational placement of the student and the provision of FAPE to the student; and

(c) Represent the interests and safeguard the rights of the student in educational decisions which affect the student. .

(4) Limits to the surrogate parent's responsibilities. The responsibilities of a person appointed as a surrogate parent shall not extend to the care, maintenance, custody, residential placement or any other area not specifically related to the education of the student .

(5) Rights of the surrogate parent. A person appointed as a surrogate parent shall enjoy all of the procedural safeguards afforded a parent with respect to the identification, evaluation and placement of a student with a disability or a student who is suspected of having a disability as prescribed in Rule 6A-6.0331, FAC.

(6) Liability of the surrogate parent. A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the student in protecting the special education rights of the student.

(7) Compensation of surrogate parent. A school district may compensate persons appointed as surrogate parents. A person acting as a surrogate parent is not an employee of the district or Department of Education contracted program solely because he or she is paid by the district or Department of Education contracted program to serve as a surrogate parent.

(8) Unaccompanied homeless youth. In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency or transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the requirements in subsection (1), until a surrogate can be appointed that meets all of the requirements in subsection (1).

Specific Authority 1001.02(1), 1003.01(3), 1003.57, 1006.09, F.S. Law Implemented 1001.03(8), 1001.42(4)(1), 1003.01(3), 1003.57, F.S. History - New 6-28-83, Formerly 6A-6.333, Amended

6A-6.0334. Individual Educational Plans (IEPs) and Educational Plans (EPs) for Transferring Exceptional Students

(1) Individual Educational Plans (IEPs) and Educational Plans (EPs) for students who transfer school districts within Florida. If an exceptional education student who had an IEP or EP that was in effect in a previous Florida school district transfers to a new Florida school district and enrolls in a new school, the new Florida school district (in consultation with the parents) must provide free and appropriate public education (FAPE) to the student, which includes services comparable to those described in the child's IEP or EP from the previous Florida school district, until the new Florida school district either:

- (a) Adopts the child's IEP or EP from the previous school district; or
- (b) Develops, adopts, and implements a new IEP or EP that meets the applicable requirements of Rules 6A-6.03011 through 6A-6.0361, FAC.

(2) IEPs or EPs for students who transfer from outside Florida. If an exceptional education student who had an IEP or EP that was in effect in a previous school district in another State transfers to a Florida school district and enrolls in a new school within the same school year, the new Florida school district (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP or EP from the previous school district), until the new Florida school district:

- (a) Conducts an initial evaluation pursuant to Rule 6A-6.0331(4) and (5), FAC., (if determined to be necessary by the new Florida school district); and
- (b) Develops, adopts, and implements a new IEP or EP, if appropriate, that meets the applicable requirements of Rules 6A-6.03011 through 6A-6.0361, FAC.
- (c) The new school district is not required to obtain parental consent for the initial provision of services for transferring exceptional students determined eligible for services in Florida under this rule.

(3) Transmittal of records. To facilitate the transition for a child described in subsections (1) and (2) above:

- (a) The new school district in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP or EP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school district in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and

(b) The previous school district in which the child was enrolled must take reasonable steps to promptly respond to the request from the new school district.

Specific Authority 1001.02(1), 1003.01(3), 1003.57, 1006.09, F.S. Law Implemented 1001.03(8), 1001.42(4)(1), 1003.01(3), 1003.57, F.S. History - New 7-13-83, Formerly 6A-6.334. Amended 3-19-92.

6A-6.03411. Definitions, ESE Policies and Procedures, and ESE Administrators

Definitions. As used in Rules 6A-6.03011 through 6A-6.0361, FAC., regarding the education of exceptional students, the following definitions apply:

(a) Accommodations. Accommodations are changes that are made in how the student accesses information and demonstrates performance.

(b) Assistive technology device. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device.

(c) Assistive technology service. Assistive technology service means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for a student with a disability or, if appropriate, that student's family; and
6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.

(d) Behavioral intervention plan (BIP). Behavioral intervention plan means a plan for a student which uses positive behavior interventions, supports and other strategies to address challenging behaviors and enables the student to learn socially appropriate and responsible behavior in school and/or educational settings.

(e) Charter school. Charter school means a school that is a public school created under Florida's charter school law, Section 1002.33, Florida Statutes.

(f) Child/student with a disability.

1. Student with a disability means a student, including a child aged three (3) through five (5), who has been evaluated in accordance with Rules 6A-6.03011 through 6A-6.0361, FAC., and determined to have a disability as defined under Rules 6A-6.03011 through 6A-6.03027, FAC., but does not include students who are gifted as defined under Rules 6A-6.03019 through 6A-6.030191, FAC.; and

2. Who, by reason thereof, needs special education and related services. If it is determined, through an appropriate evaluation, that a student has a disability but only needs a related service and not special education, the student is not a student with a disability under Rules 6A-6.03011 through 6A-6.0361, FAC. If, however, the related service required by the student is considered special education rather than a related service under Rules 6A-6.03011 through 6A-6.0361, FAC., the student would be a student with a disability under this subsection.

(g) Consent. Consent means that:

1. The parent has been 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;

2. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(h) Day; business day; school day. Day means calendar day unless otherwise indicated as business day or school day. Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day). School day means any day, including a partial day, that students are in attendance at school for instructional purposes. School day has the same meaning for all students in school, including students with and without disabilities.

(i) Early intervention. Early intervention means developmental services that are designed to meet the developmental needs of an infant or toddler with a disability in any one (1) or more of the following areas:

1. Physical development;

2. Cognitive development;

3. Communication development;

4. Social or emotional development; or

5. Adaptive development.

(j) Educational plan (EP). EP is a plan that is developed for students identified solely as gifted and is developed pursuant to Rule 6A-6.030191, FAC.

(k) Elementary school. Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education as determined under Florida law.

(l) Evaluation. Evaluation means procedures used in accordance with Rules 6A-6.03011 through 6A-6.0361, FAC., to determine whether a student has a disability or is gifted and the nature and extent of the ESE that the student needs.

(m) Exceptional student. Exceptional student means any student who has been determined eligible for a special program in accordance with these rules. The term includes students who are gifted and students with disabilities as defined in these rules.

(n) Exceptional student education (ESE). ESE means specially designed instruction and related services that are provided to meet the unique needs of exceptional students who meet the eligibility criteria described in Rules 6A-6.03011 through 6A-6.0361, FAC.

(o) Extended school year services. Extended school year services means special education and related services that are provided to a student with a disability beyond the normal school year of the school district; in accordance with the student's IEP; at no cost to the parents of the student; and meet the standards of the Florida Department of Education.

(p) Free appropriate public education (FAPE). FAPE means special education or specially designed instruction and related services for students ages three (3) through twenty-one (21) and for students who are gifted and in kindergarten through grade twelve that:

1. Are provided at public expense, under public supervision and direction, and without charge to the parent;
2. Meet the standards of the Florida Department of Education, including the requirements of 6A-6.03011 through 6A-6.0361, FAC.;
3. Include an appropriate preschool, elementary school, or secondary school education in the State; and
4. Are provided in conformity with an individual educational plan (IEP) that meets the requirements of rule 6A-6.03028, FAC., an educational plan (EP) for students who are gifted that meet the requirements of Rule 6A-6.030191, FAC., or an individual family support plan (IFSP) (if used as an IEP) for children ages three (3) through (5) in accordance with Rule 6A-6.03929, FAC.

(q) Functional behavioral assessment (FBA). A FBA is a systematic process for defining a student's specific behavior and determining the reason why (function or purpose) the behavior is occurring. The FBA process includes examination of the contextual variables (antecedents and consequences) of the behavior, environmental components, and other information related to the behavior. The purpose of conducting an FBA is to determine whether a behavioral intervention plan should be developed.

(r) General curriculum. The general curriculum is a curriculum or course of study based upon state educational standards that address the state and school district requirements for a standard diploma.

(s) Homeless student or youth. Homeless student or youth means an individual who lacks a fixed, regular, and adequate nighttime residence and includes:

1. Students and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
2. Students and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
3. Students and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
4. Migratory students who qualify as homeless for the purposes of 6A-6.03011 through 6A-6.0361, FAC., because they are living in circumstances described in paragraphs (a) through (c) of this subsection.

(t) Include/including. Include or including means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(u) Individual educational plan (IEP). IEP means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Rules 6A-6.03011 through 6A-6.0361, FAC.

(v) Individual educational plan (IEP) team. IEP team means a group of individuals as described in 6A-6.03011 through 6A-6.0361, FAC., that is responsible for developing, reviewing, or revising an IEP for a student with a disability.

(w) Individualized family support plan (IFSP). IFSP is a written plan identifying the specific concerns and priorities of a family related to enhancing their child's development and the resources to provide early intervention services to an infant or toddler with a disability.

(x) Infant or toddler with a disability. Infant or toddler with a disability means a child under three (3) years of age who needs early intervention services because the child is experiencing

developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(y) Limited English proficient. Limited English proficient, when used in reference to an individual, means an individual who was not born in the United States and whose native language is a language other than English; an individual who comes from a home environment where a language other than English is spoken in the home; or an individual who is an American Indian or Alaskan native and who comes from an environment where a language other than English has had a significant impact on his or her level of English language proficiency; and who, by reason thereof, has sufficient difficulty speaking, reading, writing, or listening to the English language that would deny such individual the opportunity to learn successfully in classrooms where the language of instruction is English.

(z) Modifications. Modifications are changes in what a student is expected to learn and may include changes to content, requirements, and expected level of mastery.

(aa) Native language. Native language, when used with respect to an individual who is limited English proficient, means the language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student, and in all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

(bb) Parent.

1. Parent means:

- a. A biological or adoptive parent of a student;
- b. A foster parent;
- c. A guardian generally authorized to act as the student's parent, or authorized to make educational decisions for the student (but not the state if the student is a ward of the State);
- d. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the student lives, or an individual who is legally responsible for the student's welfare; or
- e. A surrogate parent who has been appointed in accordance with 6A-6.03011 through 6A-6.0361, FAC.

2. The biological or adoptive parent, when attempting to act as the parent under this section and when more than one (1) party is qualified under paragraph (a) of this subsection to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the student. However, if a judicial decree or order identifies a specific person or persons under subparagraphs (bb)1.a. through 1.d. of this subsection to act as the "parent" of a student or to make educational decisions on behalf of a student, then such person or persons shall be determined to be the "parent" for purposes of this subsection.

(cc) Personally identifiable. Personally identifiable means information that contains:

1. The name of the student, the student's parent, or other family member;
2. The address of the student;
3. A personal identifier, such as the student's social security number or student number; or

4. A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

(dd) Related services.

1. General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

2. Exception; services that apply to students with surgically implanted devices, including cochlear implants. Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. However, nothing in this section limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this subsection) that are determined by the IEP Team to be necessary for the student to receive FAPE; limits the responsibility of a school district to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly.

3. Individual related services terms defined. The terms used in this definition are defined as follows:

a. Audiology includes identification of students with hearing loss; determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; creation and administration of programs for prevention of hearing loss; counseling and guidance of students, parents, and teachers regarding hearing loss; and determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

b. Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

c. Early identification and assessment of disabilities in students means the implementation of a formal plan for identifying a disability as early as possible in a student's life.

d. Interpreting services include the following, when used with respect to students who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, such as communication access real-time translation (CART), C-Print, and TypeWell; and special interpreting services for students who are deaf-blind.

e. Medical services means services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

f. Occupational therapy means services provided by a licensed occupational therapist or a licensed occupational therapy assistant pursuant to the provisions of Section 486.203, Florida Statutes, that include improving, developing or restoring functions impaired or lost through illness, injury, or deprivation; improving ability to perform tasks for independent functioning if functions are impaired or lost; and preventing, through early intervention, initial or further impairment or loss of function.

g. Orientation and mobility services means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community and includes teaching students the following, as appropriate:

(I) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(II) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(III) To understand and use remaining vision and distance low vision aids; and

(IV) Other concepts, techniques, and tools.

h. Parent counseling and training means assisting parents in understanding the special needs of their student; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their student's IEP or IFSP.

i. Physical therapy means services provided by a qualified physical therapist. Physical therapy must be provided in accordance with Chapter 486, Florida Statutes.

j. Psychological services includes administering psychological and educational tests, and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about student behavior and conditions relating to learning; consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; planning and managing a program of psychological services, including psychological counseling for students and parents; and assisting in developing positive behavioral intervention strategies.

k. Recreation includes assessment of leisure function; therapeutic recreation services; recreation programs in schools and community agencies; and leisure education.

l. Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

m. School health services and school nurse services means health services that are designed to enable a student with a disability to receive FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

n. Social work services in schools includes preparing a social or developmental history on a student with a disability; group and individual counseling with the student and family; working in partnership with parents and others on those problems in a student's living situation (home,

school, and community) that affect the student's adjustment in school; mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and assisting in developing positive behavioral intervention strategies.

o. Speech-language pathology services includes identification of students with speech or language impairments; diagnosis and appraisal of specific speech or language impairments; referral for medical or other professional attention necessary for the habilitation of speech or language impairments; provision of speech and language services for the habilitation or prevention of communicative impairments; and counseling and guidance of parents, students, and teachers regarding speech and language impairments.

p. Transportation includes travel to and from school and between schools; travel in and around school buildings; and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.

(ee) School district/local education agency. As used in Rules 6A-6.03011 through 6A-6.0361, FAC., school district means a public board of education or other public authority legally constituted within the State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of the State, or for a combination of school districts or counties as are recognized in the State as an administrative agency for its public elementary schools or secondary schools. The term also includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(ff) Scientifically based research. Scientifically based research means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs, and includes research that:

1. Employs systematic, empirical methods that draw on observation or experiment;
2. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
3. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
4. Is evaluated using experimental or quasi-experimental designs;
5. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication; and
6. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

(gg) Secondary school. Secondary school means a nonprofit institutional day or residential school, including a public charter school that provides secondary education, as determined under Florida law, except that it does not include any education beyond grade twelve (12).

(hh) Services plan. Services plan means a written statement that has been developed and implemented in accordance with Rule 6A-6.030281, FAC., describes the special education and related services that a school district will provide to a parentally-placed student with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary.

(ii) Secretary. Secretary means the U.S. Secretary of Education.

(jj) Specially designed instruction. Specially designed instruction means adapting, as appropriate to the needs of an eligible exceptional student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability

or giftedness and to ensure access of the student to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the school district that apply to all students.

(kk) Special education for students with disabilities.

1. Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including:

a. Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

b. Instruction in physical education.

2. Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a) of this subsection:

a. Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

b. Travel training; and

c. Vocational education.

3. Individual special education terms defined. The terms in this definition are defined as follows:

a. At no cost means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

b. Physical education means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term also includes special physical education, adapted physical education, movement education, and motor development.

c. Travel training means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

d. Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(ll) State educational agency (SEA). SEA means the Florida Department of Education.

(mm) Supplementary aids and services. Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, or other education-related settings, and in extracurricular and nonacademic settings, to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate in accordance with Rules 6A-6.03011 through 6A-6.0361, FAC.

(nn) Transition services. Transition services means a coordinated set of activities for a student with a disability that:

1. Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; and

2. Is based on the individual student's needs, taking into account the student's strengths, preferences and interests; and

3. Includes:

a. Instruction;

b. Related services;

c. Community experiences;

d. The development of employment and other post-school adult living objectives; and

e. If appropriate, acquisition of daily living skills and the provision of a functional vocational evaluation, and

4. Transition services for students with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a student with a disability to benefit from special education.

(oo) Ward of the State. Ward of the State means a student who is a foster child, a ward of the State or in the custody of a public child welfare agency. However, ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in this rule.

(2) ESE Policies and Procedures Document. For a school district to be eligible to receive state or federal funding for special education and related services for exceptional students, it shall: develop a written statement of policies and procedures for providing appropriate ESE in accordance with and as required by Rules 6A-6.03011 through 6A-6.0361, FAC., and as required by Section 1003.57(1)(d) , Florida Statutes; submit its written statement to the Bureau of Exceptional Education and Student Services, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400; and report the total number of exceptional students in the manner prescribed by the Department. Applicable state statutes, State Board of Education rules, and federal laws and regulations relating to the provision of ESE to exceptional students shall serve as criteria for the review and approval of the procedures documents. This procedures document is intended to provide district and school-based personnel, parents of exceptional students, and other interested persons information regarding the implementation of the State's and school district's policies regarding ESE programs. The procedures document shall be submitted in accordance with timelines required by the Department.

(3) ESE Administrator.

(a) Each school district shall designate a staff member to serve as administrator of exceptional student education who shall be responsible for the following:

1. Coordinating all school district services for exceptional students;

2. Ensuring that parents have been appropriately informed of their student's eligibility determination and their procedural safeguards in accordance with Rules 6A-6.03011 through 6A-6.0361, FAC.

3. Informing, in writing, all appropriate school personnel, including the principal, of the student's eligibility for special education and related services; and

4. Ensuring the implementation of services to exceptional students.

(b) The ESE Administrator is authorized to delegate the responsibilities of this rule.

Specific Authority 1001.02(1)(2)(n), 1003.01(3), 1003.57, F.S. Law Implemented 1001.42(4)(1), 1003.01(3), 1002.38, 1001.03(8), 1003.57, 1011.62(1)(c) F.S. History - New 11-18-84, Amended 10-1-85, Formerly 6A-6.3411, Amended 12-14-93, 10-17-2004,