

## **6A-6.03311 Procedural Safeguards and Due Process Procedures for Parents and Students with**

### **Disabilities.**

Each public agency, including a school district, must establish, maintain and implement procedural safeguards that meet the requirements of this rule. A public agency means local educational agencies (LEAs), educational services agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(1) Prior written notice. The public agency, including a 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 public agency, including a school district, shall ensure:

1. through 3. No change.

(c) The notice to the parents shall include:

1. A description of the action proposed or refused by the public agency, including a school district;

2. An explanation of why the public agency, including a school district, proposes or refuses to take the action;

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

4. through 6. No change.

7. A description of other factors that are relevant to the public agency's, including a 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 this rule relating to:

1. through 4. No change.

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 public agency, including a 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 subsection 6A-6.03311(5), F.A.C.;

6. through 11. No change.

(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 ~~s~~State complaint and upon receipt of the first request for a due process hearing in a school year;

4. Upon request by a parent; and,

5. In accordance with the provisions of Section 1008.212, F.S., upon the public agency, including a school district, superintendent's recommendation to the Commissioner of Education that an extraordinary exemption for a given state assessment be granted or denied.

(c) A public agency, including a school district, may place a current copy of the procedural safeguards on its internet website, if a website 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 public agency, including a 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 ~~education~~ 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, F.A.C., Section

1002.22, F.S., 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 of public agencies, including school districts, the opportunity to resolve disputes involving any matters arising under Part B of the Individuals with Disabilities Education Act (IDEA) 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 (9) of this rule, or any other rights under this rule; and,
3. Be conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is Florida Supreme Court certified with no reported sanctions.

(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 public agency, including a 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, including an option for virtual mediation, that is convenient to both the parent and the public agency, including a 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 public agency, including a school district, who had the authority to bind the public agency, including a school 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 public agency, including a 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 public agency, including 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 public agency, including a local school district, has violated a requirement of Part B of the IDEA Individuals with Disabilities Education Act (IDEA) or its implementing regulations, or a state requirement, regarding the education of students with disabilities through its state complaint procedures. The Department of Education shall disseminate its state complaint procedures, which may be accessed at <http://www.fldoe.org/academics/exceptional-student-edu/dispute-resolution/> ~~<http://www.fldoe.org/ese/resolution.asp>~~ 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 onsite 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 public agency, including a 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 public agency, including a school district; and,

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

4. Review all relevant information and make an independent determination as to whether the public agency, including a school district, is violating a federal or state 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 public agency, including a 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. through 4. No change.

5. If there remain disputed issues after the Department of Education issues its written decision, either the public agency or the person filing the complaint may, if they have not already done so, use mediation or file a request for a due process hearing on the disputed issues, provided the aggrieved party has the right to file due process as specified in subsection (9) of this rule.

(c) Relationship to due process hearings.

1. No change.

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 (ALJ) 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 public agency, including 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 public agency, including a 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 public agency, including 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. No change.

(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 public agency, including a school district, may require the use of the model form. Parents, public agencies, including 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.

(f) Proposals to resolve the complaint. If a public agency, including a school district, submits a proposal to resolve the complaint, the complainant shall be provided the opportunity to review the proposal and provide voluntary written agreement to withdraw the complaint. Absent the voluntary written agreement of the complainant to withdraw the complaint, the Department of Education shall:

1. Review all relevant information and make an independent determination as to whether the public agency, including a school district, is violating a requirement of the IDEA or state statute or rule related to the education of students with disabilities; and

2. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

a. Findings of fact and conclusions; and

b. The reasons for the Department of Education's decision.

(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 public agency, including a 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

public agency's, including a school district's, 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 public agency, including a school district, responsible for the education of the student in question.

(d) Public expense is defined to mean that the public agency, including a 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 public agency, including a 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 public agency, including a 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 public agency, including a 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 public agency's, including a school district's, criteria. If the public agency, including a 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 public agency, including a school district, may ask the parent to give a reason why he or she objects to the public agency's, including a school district's, evaluation. However, the explanation by the parent may not be required and the public agency, including a school district, may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public agency's, including a school district's, evaluation.

(i) A parent is entitled to only one (1) independent educational evaluation at public expense each time the public agency, including a 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 public agency, including a school district, an evaluation obtained at private expense:

1. The public agency, including a 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 ~~ALJ 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 public agency, including 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 public agency, including a 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 public agency, including a school district, must include that student in the population whose needs are addressed consistent with Rule 6A-6.030281, F.A.C.

(b) Disagreements between a parent and a public agency, including 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 public agency, including a school district, enroll the student in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, including a school district, a court or an ~~ALJ administrative law judge~~ may require the public agency, including a school district, to reimburse the parents for the cost of that enrollment if the court or ~~ALJ administrative law judge~~ finds that the public agency, including a 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 ~~ALJ 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 public agency, including a 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 public

agency, including a 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 public agency, including a school district, of the information described herein;

2. Prior to the parents' removal of the child from the public school, the public agency, including a school district, informed the parents, through the notice requirements described in this rule, 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. through 5. No change.

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

(a) through (b) No change.

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

(d) through (e) No change.

(9) Due process Hearings and Resolution Sessions.

(a) A due process hearing request may be initiated by a parent or a public agency, including a school district, as to matters related to the identification, evaluation, eligibility determination, or educational placement of a student or the provision of FAPE to the student. In addition, in accordance with Section 1008.212, F.S., in the event that a school district school superintendent requests an extraordinary exemption from participation in a statewide standardized assessment and the Commissioner of Education denies such request, the parent may request an expedited due process hearing. In this event, the Department of Education must inform the parent of any free or low-cost legal services and other relevant services available. The Department of Education shall arrange a hearing on this matter with the Division of Administrative Hearings. The hearing must begin within twenty (20) school days following the receipt of the parent's request by the Department of Education. The ALJ administrative law judge (~~ALJ~~) must make a determination within ten (10) school days after the expedited hearing is completed.

(b) A due process hearing request must allege a violation that occurred not more than two (2) years before the date the parent or public agency, including a 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 public agency, including a school district, that it had resolved the problem forming the basis of the due process hearing request; or

2. The public agency's, including a school district's, withholding of information from the parent that was required under Rules 6A-6.03011-.0361, F.A.C., to be provided to the parent.

(c) Information for parents. The public agency, including a 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 public agency, including a school district, files a due process hearing request.

(d) The due process hearing request. The public agency, including a 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 by mail to the Florida Department of Education at 325 West Gaines Street, Room 614, Tallahassee, Florida 32399 or via fax transmission to (850)245-0953. A due process hearing request must contain the following:

1. through 6. No change.

(e) No change.

(f) The Department of Education will develop a model form to assist parents and public agencies, including school districts, in filing a due process hearing request. However, neither the Department of Education nor a public agency, including a school district, may require the use of the model form. Parents and public agencies, including 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 ALJ 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) No change.

(i) Public agency, including a school district, response to a due process hearing request. If the public agency, including a school district, has not sent a prior written notice under this rule, to the parent regarding the subject matter contained in the parent's due process hearing request, the public agency, including a 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 public agency, including a 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 public agency, including a school district, used as the basis for the proposed or refused action; and,
4. A description of the other factors relevant to the public agency's, including a school district's, proposed or refused action.

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

(k) No change.

(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 public agency, including a 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 public agency, including a school district, who has decision-making authority on behalf of that district or agency; and,
2. May not include an attorney of the public agency, including a 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 public agency, including a 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 public agency, including a school district, agree in writing to waive the meeting; or

2. The parent and the public agency, including a school district, agree to use the mediation process described in this rule.

(n) The parent and the public agency, including a school district, determine the relevant members of the IEP team to attend the meeting.

(o) Resolution period. If the public agency, including a 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 public agency, including a school district, is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the public agency, including a 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 public agency, including a 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 public agency, including a 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 public agency, including a school district, who has the authority to bind the public agency, including a 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, F.S., 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 public agency, including a 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-.0361, F.A.C., for conducting due process hearings and shall conduct such hearings in accordance with the Uniform Rules for Administrative Proceedings, Chapter 28-106, F.A.C. Minimum procedures for due process hearings shall include the following:

1. through 3. No change.

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 public agency, including a school district, to comply with the procedural safeguards set forth in Rules 6A-6.03011-.0361, F.A.C. In addition, nothing in Rules 6A-6.03011-.0361, F.A.C., 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 SEA ~~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. No change.

(w) No change.

(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 public agency, including a 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 public agency, including a 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 this rule. However, this does not preclude a public agency, including 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. No change.

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. through c. No change.

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

e. The provisions of subsection (4) of this subsection do not apply in any action or proceeding if the court finds

that the Department of Education or the public agency, including a 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, F.A.C., 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 public agency, including a school district, agree otherwise, the student involved in the proceeding must remain in the then-current 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-.0361, F.A.C., 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 public agency, including a 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 public agency, including a school district, must provide those special education and related services that are not in dispute between the parent and the public agency, including a 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.

*Rulemaking Authority 1001.02(1), (2)(n), 1003.01(3), 1003.57, 1003.571, 1003.5715, 1008.212 FS. Law Implemented 1003.01(3), 1003.57, 1003.571, 1003.5715, 1008.212 FS. History--New 7-13-83, Amended 12-20-83, 4-26-84, Formerly 6A-6.3311, Amended 7-17-90, 9-20-04, 12-22-08, 3-25-14.*