

Conduct from candidates resulting in the exclusion from an examination shall be grounds for denial of licensure by the Office of Financial Regulation.

~~(6)(5)~~ Candidates failing the examination will be notified of the review procedures and will be responsible for rescheduling another mortgage broker examination through the REAL System. Candidates will not be permitted to schedule an examination that will be conducted on a date beyond the candidate's will automatically be rescheduled for the next examination date provided that date is within their ninety (90) day application period. Candidates who fail the examination may review their examination one time, for a \$30 fee, and must do so at the time and place designated. Requests for a review of an examination and the examination review fee must be filed with the Office of Financial Regulation through the REAL System. Candidates reviewing shall have the right to have access to the examination questions, their examination responses, and the correct answers. Rules of examinee conduct during the review are the same as those for the examination.

~~(7)(6)~~ Examinations will be written and composed of 100 multiple choice questions. Examinations will be written according to the weight content area as provided in the candidate Study Guide. The following conditions shall apply:

(a) Candidates must use a number 2 lead pencil to mark their choices on the answer sheet provided.

(b) The examination will be scored on the basis of 100 points.

(c) An applicant who receives a grade of 75 points or higher shall be passed. A passing score will be valid for a period of 2 years from the date of passing the examination.

(d) Candidates will be allowed 3 hours to complete the examination, provided the candidate was not admitted to the examination late in which case the candidate will be limited to the time remaining in the original 3 hour period.

(e) Candidates may use a non-programmable hand held or battery type calculator.

(f) Test scores will be derived from the number of correct responses.

(g) Candidates will not be permitted to refer to any notes, books or memoranda.

~~(8)(7)~~ Candidates will be allowed 3 hours to complete the examination, provided the candidate was not admitted to the examination late in which case the candidate will be limited to the time remaining in the original 3 hour period. Candidates will be permitted to use a non-programmable hand held or battery type calculator.

~~(9)(8)~~ Notification of results. The applicant will be notified of the results of the examination by the Office of Financial Regulation or its designee.

Specific Authority 494.0011(2) FS. Law Implemented 494.0033(2)(b) FS. History—New 10-1-91, Amended 6-8-92, Formerly 3D-40.025, Amended 3-23-08,_____.

Section II Proposed Rules

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Aquaculture

RULE NOS.:	RULE TITLES:
5L-1.003	Shellfish Harvesting Area Standards
5L-1.007	Container Identification, Terminal Sale Date; Prohibitions

PURPOSE AND EFFECT: This amendment proposes to reclassify the shellfish harvesting area #37 Citrus County. A sanitary survey has been conducted that evaluated current information on pollution sources and bacteriological water quality, and recommended reclassification of the Citrus County shellfish harvesting area.

SUMMARY: The proposed reclassification of the Citrus County shellfish harvesting area will, for Winter months, increase the size of the conditionally approved area by 30,222 acres, from 34,250 acres to 64,472 acres, increase the size of conditionally restricted area by 1,939 acres, from 2,065 acres to 4,004 acres, and decrease the size of the prohibited area by 320 acres, from 7,700 acres to 7,380. For the Spring/Summer months, reclassification of the shellfish harvesting area will establish an approved area of 66,608 acres which will increase the size of the previous conditionally approved area by 32,358 acres, from 34,250 acres, establish a restricted area of 1,867 acres which will decrease the size of the previous conditionally restricted area by 198 acres, from 2,065 acres, and decrease the size of prohibited area by 320 acres, from 7,700 acres to 7,380. The current management of the Citrus County shellfish harvesting area is based on local rainfall. Proposed management of the Citrus County shellfish harvesting area is based on local rainfall. The average closure frequency of Citrus County Conditionally Approved Winter area is expected to decrease 4.4 days per month from 6.8 days per month to 2.4 days per month, and decrease for the conditionally restricted area by 5.0 days per month from 6.8 to 1.8 days per month. The Spring/Summer approved area only closes during emergency conditions such as red tides, hurricanes and sewage spills. A sanitary survey has been conducted that evaluated current information on pollution sources and bacteriological water quality, and recommends reclassification of the Citrus County shellfish harvesting area. This amendment places descriptions, references to shellfish harvesting area map numbers and operating criteria for the Citrus County shellfish harvesting area #37 in the document Shellfish Harvesting Area Classification Boundaries and Management Plans. These

documents are hereby incorporated in subsection 5L-1.003(1), F.A.C. Additionally, this amendment provides illustrations of the Citrus County shellfish harvesting area classification boundaries in the shellfish harvesting area map #37. This map is hereby incorporated by reference in subsection 5L-1.003(1), F.A.C. Furthermore, information listed in Table 2, which was incorporated herein, is now placed into the text of Rule 5L-1.003, F.A.C., to make it more obvious to the regulated industry member.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: There is no anticipated regulatory cost.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 597.020 FS.

LAW IMPLEMENTED: 597.020 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: June 13, 2008, 12:00 Noon – 1:00 p.m.

PLACE: 1203 Governor’s Square Boulevard, 5th Floor, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 7 days before the workshop/meeting by contacting: Chris Brooks, Division of Aquaculture, at (850)488-4033. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Chris Brooks, Division of Aquaculture, 1203 Governor’s Square Boulevard, 5th Floor, Tallahassee, Florida 32301, phone: (850)488-4033

THE FULL TEXT OF THE PROPOSED RULE IS:

5L-1.003 Shellfish Harvesting Area Standards.

(1) The Department shall describe and/or illustrate harvesting areas and provide harvesting area classifications as approved, conditionally approved, restricted, conditionally restricted, prohibited, or unclassified as defined herein, including criteria for opening and closing shellfish harvesting areas in accordance with Chapters II and IV of the National Shellfish Sanitation Program Model Ordinance. Copies of the document Shellfish Harvesting Area Classification Maps, revised April 14, 2008, and the document Shellfish Harvesting Area Classification Boundaries and Management Plans, revised April 14, 2008, containing shellfish harvesting area descriptions, references to shellfish harvesting

area map numbers, and operating criteria herein incorporated by reference may be obtained by writing to the Department at 1203 Governor’s Square Boulevard, 5th Floor, Tallahassee, Florida 32301.

(2) through (10) No change.

(11) Shellfish harvesting area numbers are as follows:

<u>AREA NUMBER</u>	<u>HARVEST AREA NAME</u>
<u>0212</u>	<u>Pensacola Bay Conditionally Approved Escambia Bay Shellfish Aquaculture Lease Areas managed during the Summer months of Jul – Sep</u>
<u>0222</u>	<u>Pensacola Bay Conditionally Approved Escambia Bay</u>
<u>0232</u>	<u>Pensacola Bay Conditionally Approved East Bay</u>
<u>0216</u>	<u>Pensacola Bay Conditionally Restricted Escambia Bay</u>
<u>0226</u>	<u>Pensacola Bay Conditionally Restricted East Bay</u>
<u>0622</u>	<u>Choctawhatchee Bay Conditionally Approved Central</u>
<u>0632</u>	<u>Choctawhatchee Bay Conditionally Approved Eastern</u>
<u>0806</u>	<u>West Bay Conditionally Restricted Spring/Fall Apr – Jun, Oct – Nov</u>
<u>0812</u>	<u>West Bay Conditionally Approved Winter Dec – Mar</u>
<u>0822</u>	<u>West Bay Conditionally Approved Spring/Fall Apr – Jun, Oct – Nov</u>
<u>1012</u>	<u>North Bay Conditionally Approved Western</u>
<u>1022</u>	<u>North Bay Conditionally Approved Eastern</u>
<u>1006</u>	<u>North Bay Conditionally Restricted Eastern</u>
<u>1206</u>	<u>East Bay Conditionally Restricted</u>
<u>1212</u>	<u>East Bay Conditionally Approved Section 1</u>
<u>1222</u>	<u>East Bay Conditionally Approved Section 2</u>
<u>1401</u>	<u>St. Joe Bay Approved</u>
<u>1506</u>	<u>Indian Lagoon Conditionally Restricted</u>
<u>1512</u>	<u>Indian Lagoon Conditionally Approved Spring/Fall Mar – Jun, Oct</u>
<u>1542</u>	<u>Indian Lagoon Conditionally Approved Zone A Winter Nov – Feb</u>
<u>1552</u>	<u>Indian Lagoon Conditionally Approved Zone B Winter Nov – Feb</u>
<u>1572</u>	<u>Indian Lagoon Conditionally Approved Summer Jul – Sep</u>
<u>1611</u>	<u>Apalachicola Bay Approved Winter Jan – May, Sept – Dec</u>
<u>1621</u>	<u>Apalachicola Bay Approved Summer June – Aug</u>
<u>1631</u>	<u>Apalachicola Bay Approved, Shellfish lease numbers 525, 551, 551B, 580, 582, 609, 672, and 981 Summer June – Aug</u>
<u>1612</u>	<u>Apalachicola Bay Conditionally Approved West 1 Winter Jan – May, Sept – Dec</u>
<u>1622</u>	<u>Apalachicola Bay Conditionally Approved West 2 Winter Jan – May, Sept – Dec</u>
<u>1632</u>	<u>Apalachicola Bay Conditionally Approved West 3 Winter Jan – May, Sept – Dec</u>
<u>1642</u>	<u>Apalachicola Bay Conditionally Approved East Winter Jan – May, Sept – Dec or Apalachicola Bay Approved East Hole Summer June – Aug</u>
<u>1652</u>	<u>Apalachicola Bay Conditionally Approved North Summer June – Aug</u>
<u>1662</u>	<u>Apalachicola Bay Conditionally Approved South Summer June – Aug</u>

1606 Apalachicola Bay Conditionally Restricted
1802 Alligator Harbor Conditionally Approved
2002 Ochlockonee Bay Conditionally Approved
2006 Ochlockonee Bay Conditionally Restricted
2206 Wakulla County Conditionally Restricted
2212 Wakulla County Conditionally Approved Zone 1 Winter
2222 Wakulla County Conditionally Approved Zone 2 Winter
2232 Wakulla County Conditionally Approved Zone 1 Spring
2242 Wakulla County Conditionally Approved Zone 2 Spring
2501 Horseshoe Beach Approved Summer Apr – Sep
2502 Horseshoe Beach Conditionally Approved Winter Oct – Mar
2506 Horseshoe Beach Conditionally Restricted Winter Oct – Mar
2802 Suwannee Sound Conditionally Approved Spring Summer Feb-May and Sept or Suwannee Sound Conditionally Approved Winter Oct-Jan
2806 Suwannee Sound Conditionally Restricted Spring Summer Feb-May and Sept or Suwannee Sound Conditionally Restricted Winter Oct-Jan
3012 Cedar Key Conditionally Approved Zone A
3022 Cedar Key Conditionally Approved Zone B
3006 Cedar Key Conditionally Restricted
3202 Waccasassa Bay Conditionally Approved
3206 Waccasassa Bay Conditionally Restricted
3402 Withlacoochee Bay Conditionally Approved
3406 Withlacoochee Bay Conditionally Restricted
3701 Citrus County Approved Spring / Fall Mar. – June and Oct.
3702 Citrus County Conditionally Approved Winter Nov. – Feb.
3705 Citrus County Restricted Spring / Fall Mar. – June and Oct.
3706 Citrus County Conditionally Restricted Winter Nov. – Feb.
4202 Boca Ciega Bay Conditionally Approved
4802 Lower Tampa Bay Conditionally Approved
5402 Sarasota Bay Conditionally Approved
5602 Lemon Bay Conditionally Approved
5802 Gasparilla Sound Conditionally Approved
6002 Myakka River Conditionally Approved
6006 Myakka River Conditionally Restricted
6212 Pine Island Sound Conditionally Approved Western Section
6222 Pine Island Sound Conditionally Approved Eastern Section
6602 Ten Thousand Islands Conditionally Approved
7001 Indian River/St. Lucie Approved
7006 Indian River/St. Lucie Restricted
7202 North Indian River Conditionally Approved
7206 North Indian River Conditionally Restricted
7412 Body F Conditionally Approved
7416 Body F Conditionally Restricted
7506 Body E Conditionally Restricted
7602 Body D Conditionally Approved
7606 Body D Conditionally Restricted
7712 Body C Conditionally Approved Zone 1 Spring/Summer/Fall Mar – Nov

7722 Body C Conditionally Approved Zone 2 Spring/Summer/Fall Mar – Nov
7732 Body C Conditionally Approved Winter Dec – Feb
7716 Body C Conditionally Restricted Winter Dec – Feb
7726 Body C Conditionally Restricted Spring/Summer/Fall Mar – Nov
7812 Body B Conditionally Approved Zone 1
7822 Body B Conditionally Approved Zone 2
7902 South Banana River Conditionally Approved
7906 South Banana River Conditionally Restricted
8001 Body A Approved
8005 Body A Restricted
8201 South Volusia Approved
8212 South Volusia Conditionally Approved Zone 1
8222 South Volusia Conditionally Approved Zone 2
8206 South Volusia Conditionally Restricted
8802 St. Johns South Conditionally Approved
8806 St. Johns South Conditionally Restricted
9202 St. Johns North Conditionally Approved
9206 St. Johns North Conditionally Restricted

Specific Authority 597.020 FS. Law Implemented 597.020 FS. History—New 1-4-87, Amended 8-10-88, 7-9-89, 12-23-91, Formerly 16R-7.004, Amended 7-3-95, 6-18-97, 7-1-97, 7-22-97, 10-12-97, 12-16-97, 12-28-97, 2-12-98, 2-25-98, 7-1-98, 7-20-98, 11-13-98, 12-28-98, 3-18-99, 7-1-99, Formerly 62R-7.004, Amended 6-19-00, 8-9-00, 10-14-01 (1), 10-14-01 (1), 8-17-04, 9-28-04, 9-5-05, 6-11-06, 3-11-07, 10-2-07, 4-14-08,_____.

5L-1.007 Container Identification, Terminal Sale Date; Prohibitions

(1) through (2) No change.

(3) The commercial harvester’s tags shall contain legible waterproof indelible information arranged in the specific order as follows:

(a) The harvester’s saltwater product license number or aquaculture certificate number;

(b) The date of harvesting;

(c) The time of harvest;

(d) The time of refrigeration, if applicable;

(e) The identification of the harvest area using the four digit area number or name of the harvest area listed in ~~Table 2, subsection 5L-1.003(11), F.A.C. which is incorporated herein and appears at the end of this chapter,~~ as well as the most precise identification within that area as practicable;

(f) Common name of shellfish and quantity of shellfish;

(g) The following statement will appear in bold capitalized type “THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS.”

(4) through (12) No change.

Specific Authority 597.020 FS. Law Implemented 597.020 FS. History—New 1-4-87, Amended 5-21-87, 8-10-88, 7-9-89, 8-30-89, 5-6-93, 9-14-93, 8-21-94, Formerly 16R-7.010, Amended 9-1-95, 5-8-96, 2-6-97, 10-12-97, 2-12-98, 2-25-98, 7-1-98, 11-13-98, 12-28-98, 3-18-99, 7-1-99, Formerly 62R-7.010, Amended 6-19-00, 8-9-00, 10-14-01, 5-29-02, 8-17-04, 9-28-04,_____.

AREA NUMBER	HARVEST AREA NAME		
		2206	Wakulla County Conditionally Restricted
		2212	Wakulla County Conditionally Approved Zone 1 Winter
0212	Pensacola Bay Conditionally Approved Escambia Bay Shellfish Aquaculture Lease Areas managed during the Summer months of Jul—Sep	2222	Wakulla County Conditionally Approved Zone 2 Winter
0222	Pensacola Bay Conditionally Approved Escambia Bay	2232	Wakulla County Conditionally Approved Zone 1 Spring
0232	Pensacola Bay Conditionally Approved East Bay	2242	Wakulla County Conditionally Approved Zone 2 Spring
0216	Pensacola Bay Conditionally Restricted Escambia Bay	2501	Horseshoe Beach Approved Summer Apr—Sep
0226	Pensacola Bay Conditionally Restricted East Bay	2502	Horseshoe Beach Conditionally Approved Winter Oct—Mar
0622	Choctawhatchee Bay Conditionally Approved Central	2506	Horseshoe Beach Conditionally Restricted Winter Oct—Mar
0632	Choctawhatchee Bay Conditionally Approved Eastern	2802	Suwannee Sound Conditionally Approved Spring Summer Feb—May and Sept or Suwannee Sound Conditionally Approved Winter Oct—Jan
0806	West Bay Conditionally Restricted Spring/Fall Apr—Jun, Oct—Nov	2806	Suwannee Sound Conditionally Restricted Spring Summer Feb—May and Sept or Suwannee Sound Conditionally Restricted Winter Oct—Jan
0812	West Bay Conditionally Approved Winter Dec—Mar		
0822	West Bay Conditionally Approved Spring/Fall Apr—Jun, Oct—Nov	3012	Cedar Key Conditionally Approved Zone A
1012	North Bay Conditionally Approved Western	3022	Cedar Key Conditionally Approved Zone B
1022	North Bay Conditionally Approved Eastern	3006	Cedar Key Conditionally Restricted
1006	North Bay Conditionally Restricted Eastern	3202	Waccasassa Bay Conditionally Approved
1206	East Bay Conditionally Restricted	3206	Waccasassa Bay Conditionally Restricted
1212	East Bay Conditionally Approved Section 1	3402	Withlacoochee Bay Conditionally Approved
1222	East Bay Conditionally Approved Section 2	3406	Withlacoochee Bay Conditionally Restricted
1401	St. Joe Bay Approved	3702	Citrus County Conditionally Approved
1506	Indian Lagoon Conditionally Restricted	3706	Citrus County Conditionally Restricted
1512	Indian Lagoon Conditionally Approved Spring/Fall Mar—Jun, Oct	4202	Boea Ciega Bay Conditionally Approved
1542	Indian Lagoon Conditionally Approved Zone A Winter Nov—Feb	4802	Lower Tampa Bay Conditionally Approved
1552	Indian Lagoon Conditionally Approved Zone B Winter Nov—Feb	5402	Sarasota Bay Conditionally Approved
1572	Indian Lagoon Conditionally Approved Summer Jul—Sep	5602	Lemon Bay Conditionally Approved
1611	Apalachicola Bay Approved Winter Jan—May, Sept—Dec	5802	Gasparilla Sound Conditionally Approved
1621	Apalachicola Bay Approved Summer June—Aug	6002	Myakka River Conditionally Approved
1631	Apalachicola Bay Approved, Shellfish lease numbers 525, 551, 551B, 580, 582, 609, 672, and 981 Summer June—Aug	6006	Myakka River Conditionally Restricted
1612	Apalachicola Bay Conditionally Approved West 1 Winter Jan—May, Sept—Dec	6212	Pine Island Sound Conditionally Approved Western Section
1622	Apalachicola Bay Conditionally Approved West 2 Winter Jan—May, Sept—Dec	6222	Pine Island Sound Conditionally Approved Eastern Section
1632	Apalachicola Bay Conditionally Approved West 3 Winter Jan—May, Sept—Dec	6602	Ten Thousand Islands Conditionally Approved
1642	Apalachicola Bay Conditionally Approved East Winter Jan—May, Sept—Dec or Apalachicola Bay Approved East Hole Summer June—Aug	7001	Indian River/St. Lucie Approved
1652	Apalachicola Bay Conditionally Approved North Summer June—Aug	7006	Indian River/St. Lucie Restricted
1662	Apalachicola Bay Conditionally Approved South Summer June—Aug	7202	North Indian River Conditionally Approved
1606	Apalachicola Bay Conditionally Restricted	7206	North Indian River Conditionally Restricted
1802	Alligator Harbor Conditionally Approved	7412	Body F Conditionally Approved
2002	Ochlockonee Bay Conditionally Approved	7416	Body F Conditionally Restricted
2006	Ochlockonee Bay Conditionally Restricted	7506	Body E Conditionally Restricted
		7602	Body D Conditionally Approved
		7606	Body D Conditionally Restricted
		7712	Body C Conditionally Approved Zone 1 Spring/Summer/Fall Mar—Nov
		7722	Body C Conditionally Approved Zone 2 Spring/Summer/Fall Mar—Nov
		7732	Body C Conditionally Approved Winter Dec—Feb
		7716	Body C Conditionally Restricted Winter Dec—Feb
		7726	Body C Conditionally Restricted Spring/Summer/Fall Mar—Nov
		7812	Body B Conditionally Approved Zone 1

7822	Body B Conditionally Approved Zone 2
7902	South Banana River Conditionally Approved
7906	South Banana River Conditionally Restricted
8001	Body A Approved
8005	Body A Restricted
8201	South Volusia Approved
8212	South Volusia Conditionally Approved Zone 1
8222	South Volusia Conditionally Approved Zone 2
8206	South Volusia Conditionally Restricted
8802	St. Johns South Conditionally Approved
8806	St. Johns South Conditionally Restricted
9202	St. Johns North Conditionally Approved
9206	St. Johns North Conditionally Restricted

INDEX OF SHELLFISH HARVESTING AREA
CLASSIFICATION MAPS, BOUNDARIES AND
MANAGEMENT PLANS
Revised April 14, 2008

Shellfish Harvesting Area Name	Area Number	Map Number(s)	Effective date
Apalachicola Bay System	16	16A, 16B	March 11, 2007
Alligator Harbor	18	18	October 14, 2001
Boca Ciega Bay	42	42	September 28, 2004
Body A	80	80	December 28, 1997
Body B	78	78	April 14, 2008
Body C	77	77A, 77B	January 1, 1994
Body D	76	76	August 1, 1996
Body E	75	75	January 1, 1994
Body F	74	74	April 5, 2000
Cedar Key	30	30	September 28, 2004
Choctawhatchee Bay	06	06	October 2, 2007
Citrus County	37	37A, 37B	May 6, 1996
Duval County	96	96	January 31, 1996
East Bay	12	12	June 11, 2006
Gasparilla Sound	58	58	January 25, 1996
Horseshoe Beach	25	25A, 25B	September 28, 2004
Indian Lagoon	15	15A, 15B	September 5, 2005
Indian River/St. Lucie Counties	70	70	June 18, 1997
Lemon Bay	56	56	July 20, 1998
Lower Tampa Bay	48	48	September 28, 2004
Myakka River	60	60	October 28, 1998
North Bay	10	10	August 17, 2004
North Indian River	72	72	June 18, 1997
North St. Johns	92	92	March 11, 2007
Ochlockonee Bay	20	20	August 17, 2004
Pensacola Bay	02	02	August 17, 2004
Pine Island Sound	62	62	December 28, 1998
Sarasota Bay	54	54	September 28, 2004
South Banana River	79	79	July 22, 1997
South St. Johns	88	88	December 16, 1997
South Volusia	82	82A, 82B	August 9, 2000
St. Joseph Bay	14	14	November 1986
Suwannee Sound	28	28 A, 28 B	March 11, 2007
Ten Thousand	66	66	September 28, 2004
Waccasassa Bay	32	32	September 28, 2004
Wakulla County	22	22A, 22B	August 17, 2004
West Bay	08	08A, 08B	December 28, 1998
Withlacoochee Bay	34	34	September 28, 2004

NAME OF PERSON ORIGINATING PROPOSED RULE:
Chris Brooks

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Sherman Wilhelm, Director, Division of Aquaculture

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 7, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 28, 2008

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Aquaculture

RULE NOS.:	RULE TITLES:
5L-1.007	Container Identification, Terminal Sale Date; Prohibitions
5L-1.008	Shellfish Handling
5L-1.013	Plant Operation

PURPOSE AND EFFECT: This amendment proposes to allow DACS to implement the National Shellfish Sanitation Program Vibrio parahaemolyticus Control Plan by: a) modifying the time limit harvesters have to deliver oysters to a certified shellfish dealer, b) adjusting container identification language, and c) modifying processing plant operation language.

SUMMARY: The proposed amendment will decrease the time limit harvesters have to deliver oysters to a certified shellfish dealer during the months of June, July, August, and September from the existing limit of within six (6) hours of the time of harvest to a proposed limit of within five (5) hours of time of harvest. The proposed amendment adds the option for a certified shellfish dealer to label shellfish "For Cooking Only" if the time and temperature requirements of this rule are not met. Additionally, this rule adds the option of Post Harvest Processing if the time and temperature requirements of this rule are not met.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 597.020 FS.

LAW IMPLEMENTED: 597.020 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: June 13, 2008, 11:00 a.m. – 12:00 Noon

PLACE: 1203 Governor’s Square Boulevard, 5th Floor, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 7 days before the workshop/meeting by contacting: Chris Brooks, Division of Aquaculture, at (850)488-4033. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Chris Brooks, Division of Aquaculture, 1203 Governor's Square Boulevard, 5th Floor, Tallahassee, Florida 32301, phone: (850)488-4033

THE FULL TEXT OF THE PROPOSED RULES IS:

5L-1.007 Container Identification, Terminal Sale Date; Prohibitions.

(1) Shucked shellfish container – The packer's or repacker's shellfish processing plant certification license number preceded by the state abbreviation must be embossed, imprinted, lithographed, or otherwise permanently and legibly recorded on the external body of containers or on the lid if the lid becomes an integral part of the container during the sealing process (Example: FL-872-SP). Containers shall permanently indicate type of product, quantity, and name and address of packer, repacker, or distributor. Containers of fresh shellfish, with a capacity of less than 64 ounces, shall further clearly and permanently bear the terminal sale date, by the numerical month, day, and last digit of the year. Containers of fresh shellfish with a capacity of 64 ounces or more, bears the actual shucking date by numerical month, day, and last digit of the year, in that order (Example: 01015). Reusable bulk storage containers shall be identified with state of origin, harvest date, and shuck date. Containers of frozen or previously frozen shellfish shall further clearly and permanently bear the date of shucking by numerical month, day, and last digit of the year, in that order (Example: 02097). Previously frozen shucked shellfish shall also have the freeze date and the thaw date following the same format. The terminal sale date for previously frozen shucked shellfish will be calculated by adding the day of shucking plus amount of time under refrigeration if not frozen, and adding the days that the product has been held thawed. Repacked shellfish containers shall also bear an appropriate code identifying the original packer. If oysters exceed the time limit for refrigeration found in subsections 5L-1.008(5) and (6), F.A.C., the shucked shellfish container may be identified with the language "FOR COOKING ONLY".

(2) through (5) No change.

(6) The dealer's tag shall contain legible, waterproof, indelible information arranged in the specific order as follows:

(a) The shellfish shipper, shucker-packer, repacker, depurator, or distributors name, address, processing plant certification number;

(b) The original shipper's certification number including the state abbreviation;

(c) The date of harvesting;

(d) The identification of the harvest area, and for Florida harvest areas the four digit code or name of the harvest area found in paragraph (3)(e) above;

(e) Common name of shellfish and quantity of shellfish; and

(f) The following statement will appear in bold capitalized type "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

(g) For oyster shellstock harvested from the Gulf of Mexico, the terminal sale date as a numeric date depicting month, day, and last digit of the year, not to exceed 14 days after the harvest date, or the statement "Sell Within 14 days of the Harvest Date".

(h) If shellstock exceeds the time limit for refrigeration found in subsections 5L-1.008(5) and (6), F.A.C., the shellstock dealer tag shall be identified with the language "FOR SHUCKING ONLY BY A CERTIFIED DEALER" or "FOR COOKING ONLY".

(i) For depuration processors, paragraphs (a), (d), (e), and (f) are required as well as the date of processing, and the depuration cycle number.

(j) For shellstock wet stored the following statement: "This product was wet stored on or at (Lease # or Facility certification number) from (date) to (date)".

(7) through (12) No change.

Specific Authority 597.020 FS. Law Implemented 597.020 FS. History—New 1-4-87, Amended 5-21-87, 8-10-88, 7-9-89, 8-30-89, 5-6-93, 9-14-93, 8-21-94, Formerly 16R-7.010, Amended 9-1-95, 5-8-96, 2-6-97, 10-12-97, 2-12-98, 2-25-98, 7-1-98, 11-13-98, 12-28-98, 3-18-99, 7-1-99, Formerly 62R-7.010, Amended 6-19-00, 8-9-00, 10-14-01, 5-29-02, 8-17-04, 9-28-04,_____.

5L-1.008 Shellfish Handling.

(1) through (4) No change.

(5) Throughout the year, it is harvester's responsibility that shellfish shall be harvested between sunrise and sunset as established by the U.S. Weather Service. During the months of November, December, January, February, and March, the harvester shall assure that shellfish shall be delivered to a certified shellfish dealer by 10:00 p.m. of the same day as harvest. During the months of April, May, and October, harvesters shall assure that oysters or clams shall be delivered to a certified shellfish dealer within twelve (12) hours of the time of harvest. During the months of June, July, August, and September, the harvesters shall assure that oysters shall be delivered to a certified shellfish dealer within five (5) six (6) hours of the time of harvest. During the months of June, July, August, and September, the harvester shall assure that clams shall be delivered to a certified shellfish dealer within ten (10)

hours of the time of harvest, or within the same day as harvest, whichever is earlier. All shellfish shall be delivered directly to a certified shellfish dealer possessing a shellfish processing plant certification license.

(6) through (7) No change.

Specific Authority 597.020 FS. Law Implemented 597.020 FS. History--New 1-4-87, Amended 5-21-87, 8-10-88, 7-9-89, Formerly 16R-7.011, Amended 7-3-95, 2-6-97, 3-18-99, 6-23-99, Formerly 62R-7.011, Amended 8-9-00, 5-29-02,_____.

5L-1.013 Plant Operation.

(1) through (2) No change.

(3) Upon acceptance of shellstock from a licensed harvester, certified aquaculturist or certified shellfish dealer, the receiving certified shellfish dealer shall determine the appropriate use of the shellfish through examination of shellfish labeling as follows:

(a) Shellfish which fails to meet the requirements of subsection 5L-1.008(5), F.A.C., or is labeled in compliance with paragraph 5L-1.007(6)(h), F.A.C., shall only be used for shucking by a certified shellfish dealer, or labeled "For Cooking Only", or shall undergo an alternative post harvest processing method to assure a safety level equivalent to product meeting subsection 5L-1.008(5), F.A.C.

(b) Tempering, as an alternative process shall consist of those methods which have demonstrated through verification studies that the process renders hard clams which are as safe as hard clams meeting subsection 5L-1.008(5), F.A.C. Prior to initiating tempering a certified shellfish dealer shall have written approval from the Department. The certified shellfish dealer must provide the following:

1. A description of all facilities, equipment and methods to be used in the alternative process. This process must be included in the firm's HACCP plan.
2. The source of hard clams and the maximum capacity of hard clams to undergo the process at any one time.
3. The process to be followed shall not exceed 16 hours total time between hard clam harvest and refrigeration at 45 degrees F or less. Product harvest, processing, tempering and food storage at 45 degrees F or less must be scheduled to occur as a continuous procedure.
4. Upon initiation, the tempering process must have temperature control of 68 degrees F or less and be maintained until hard clams are placed into refrigeration of 45 degrees F or less.
5. If facilities, equipment or methods change, the Department must be notified.

(c) Post Harvest Processing, including but not limited to such processes as frozen storage, hydrostatic high pressure, mild pasteurization, and irradiation, shall consist of those methods which have demonstrated through validation studies that the process renders shellfish at least as safe as shellfish meeting subsections 5L-1.008(5) and (6), F.A.C. Prior to

initiating post harvest processing, a certified shellfish dealer shall provide validation and obtain written approval from the Department.

(4) through (14) No change.

Specific Authority 597.020 FS. Law Implemented 597.020 FS. History--New 1-4-87, Amended 5-21-87, 8-10-88, Formerly 16R-7.016, Amended 7-3-95, 5-8-96, 2-6-97, 6-23-99, Formerly 62R-7.016, Amended 8-9-00, 5-29-02,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Chris Brooks

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Sherman Wilhelm, Director, Division of Aquaculture

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 8, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 4, 2008

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.:	RULE TITLE:
6A-4.0021	Florida Teacher Certification Examinations

PURPOSE AND EFFECT: The purpose of this rule amendment is to adopt changes to the competencies and skills for selected subject area examinations, effective October 1, 2008. Additionally, revisions to the registration form and to the procedures for reviewing failed examinations are proposed. The effect of these changes will be updated competencies and skills for the Florida Teacher Certification Examinations and examinees will have greater access to score verification sessions statewide.

SUMMARY: The rule is proposed for amendment to adopt the new edition of the Competencies and Skills Required for Teacher Certification in Florida, Thirteenth Edition, the revised registration form, and to improve the process for reviewing failed examinations.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 1012.56(8) FS.

LAW IMPLEMENTED: 1012.56(8) FS.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: June 17, 2008, 8:30 a.m.

PLACE: Tampa Airport Marriott, Tampa, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Dr. Mike Jones, Program Director, Postsecondary Assessment, Office of Assessment and School Performance, Accountability, Research, and Measurement, 325 W. Gaines Street, Suite 414, Tallahassee, FL 32399, (850)245-0513

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-4.0021 Florida Teacher Certification Examinations.

(1) Scope. This rule governs the written examinations for teacher certification. Additional requirements for certification are specified in Chapter 6A-4, F.A.C.

(2) Description of the examinations and competencies to be demonstrated.

(a) The Florida Teacher Certification Examinations shall be developed by the Commissioner of Education.

(b) The written examinations shall include subtests of reading, writing, mathematics, professional skills, and subject area specialty. These examinations may contain multiple-choice questions and questions requiring the examinee to write an answer or demonstrate a proficiency.

(c) The following competencies are to be demonstrated by means of the written examinations:

1. Before October 1, 2008 ~~July 21, 2007~~, the general knowledge competencies and skills as contained in the publication, "Competencies and Skills Required for Teacher Certification in Florida, Twelfth ~~Eleventh~~ Edition." Beginning with the October 1, 2008 ~~July 21, 2007~~ test administration, the general knowledge competencies and skills as contained in the publication "Competencies and Skills Required for Teacher Certification in Florida, Thirteenth ~~Twelfth~~ Edition." Copies of these publications may be obtained from Florida Teacher Examinations, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399, at a price to be established by the Commissioner not to exceed actual cost.

2. Before October 1, 2008 ~~July 21, 2007~~, the professional education test competencies and skills contained in the publication, "Competencies and Skills Required for Teacher Certification in Florida, Twelfth ~~Eleventh~~ Edition," which is hereby incorporated by reference and made a part of this rule. Beginning October 1, 2008 ~~July 21, 2007~~, the professional education test competencies and skills contained in the publication "Competencies and Skills Required for Teacher Certification in Florida, Thirteenth ~~Twelfth~~ Edition," which is hereby incorporated by reference and made a part of this rule. Copies of these publications may be obtained as described in subparagraph (2)(c)1. of this rule, and

3. Before October 1, 2008 ~~July 21, 2007~~, the subject area competencies and skills contained in the publication, "Competencies and Skills Required for Teacher Certification in Florida, Twelfth ~~Eleventh~~ Edition," which is hereby incorporated by reference and made a part of this rule.

Beginning October 1, 2008 ~~July 21, 2007~~, the subject area competencies and skills contained in the publication "Competencies and Skills Required for Teacher Certification in Florida, Thirteenth ~~Twelfth~~ Edition," which is hereby incorporated by reference and made a part of this rule. Copies of these publications may be obtained as described in subparagraph (2)(c)1. of this rule.

(d) Before July 1, 2002, the College Level Academic Skills Test or the Praxis I: Academic Skills Assessment as described in subsection (13) of this rule shall be used to demonstrate mastery of general knowledge for an individual who holds a bachelor's or higher degree as specified in Rules 6A-4.004, 6A-4.050, and 6A-4.066, F.A.C.

(3) Administration of the examinations.

(a) The examinations shall be administered by a test administration agency or agencies under contract with the Florida Department of Education.

(b) The examinations shall be administered at least four (4) times each year. The Commissioner of Education shall establish the examinations' dates each year which may include supplemental test administrations. The Commissioner of Education shall designate the registration deadlines, administration sites, and examinations available for the supplemental administrations.

(c) The examinations shall be administered at centers designated by the Commissioner of Education.

(d) An examinee may retake a failed examination provided at least thirty (30) days have elapsed since the previous administration of the failed examination.

(4) Registration, late registration and refunds.

(a) Registration for the examinations shall be for the initial examinations or for one (1) or more examinations not previously passed. To register to take the examinations, an applicant shall submit a completed application which shall be received by the test administration agency at least fifty (50) days preceding the examination date.

1. A completed application shall consist of the following:

a. A completed application Form CG-20-04, Registration Application: Certification Examinations for Florida Educators, which includes the applicant's signature. Form CG-20-04 is hereby incorporated by reference and made a part of this rule to become effective August 1, 2008 ~~October 1, 2004~~. This form may be obtained without cost from the Bureau of Educator Certification, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399 or may be submitted online via the Florida Teacher Certification Examinations/Florida Educational Leadership Examination Program Web site ~~website~~ at <http://www.fldoe.org/edcert/apply.asp>.

b. Before January 1, 2009, a twenty-five (25) dollar fee for each registration for a subject area specialty examination or any combination of subtests for a subject area specialty examination, each registration for the professional skills examination, and each registration for the general knowledge

test or any combination of subtests for the general knowledge test. Beginning January 1, 2009, a fifty (50) dollar fee for each first-time registration for a subject area specialty examination or any combination of subtests for a subject area specialty examination, each first-time registration for the professional skills examination, and each first-time registration for the general knowledge test or any combination of subtests for the general knowledge test. A fee of one hundred (100) dollars for each retake registration for a subject area specialty examination, the professional skills examination, or the general knowledge test, effective January 1, 2009.

c. A charge of one hundred (100) dollars in addition to the fees described in sub-subparagraph 6A-4.0021(4)(a)1.b., F.A.C., for certification applicants taking a supplemental examination.

2. An incomplete application shall be returned to the applicant. Applications which are completed and resubmitted to the test administration agency after the fifty (50) day deadline shall be acceptable only if the applicant complies with requirements specified in paragraph 6A-4.0021(4)(b), F.A.C.

(b) Late registration for the examinations shall be for the initial examinations or for one (1) or more examinations not previously passed. An applicant who did not submit a completed application to the test administration agency within the fifty (50) day deadline may register for the examinations by completing the requirements listed in subparagraph 6A-4.0021(4)(a)1.2., F.A.C., and submitting a fifteen (15) dollar late charge for each registration for a subject area specialty examination or any combination of subtests for a subject area specialty examination; each registration for the professional education examination; and each registration for the general knowledge examination or any combination of the general knowledge subtests. All items shall be received by the test administration agency at least thirty (30) days preceding the examination date. Late registrations shall be accepted on a space available basis.

(c) Refunds. Fees shall be refunded provided written requests for refunds are received by the test administration agency at least thirty (30) days preceding the examination date. Failure to appear for or to complete an examination shall result in forfeiture of fees.

(5) through (11) No change.

(12) Review.

(a) Requests for Manual Scoring and Verification. An examinee who fails one (1) or more examination(s) may file a written request with the test administration agency for manual scoring handscoring of the multiple-choice sections of the examination(s) failed. A written request may also be made to verify the scores for computer-based tests and performance components of failed examinations, including essays, short-answer sections, and verbal responses, to ensure that the scores assigned were recorded accurately. The request shall be filed within thirty (30) days of the date the score report was

mailed by the test administration agency. The fee for manual scoring, verification, or both, of handscoring one (1) or more examinations shall be that amount necessary for the test administration agency to perform the service as agreed in the contract between the agency and the Florida Department of Education. The test administration agency shall notify the examinee of the results of the request handscoring within thirty (30) days of receipt of the request and fee.

(b) Score Verification Sessions. An examinee who fails one (1) or more examination(s) may review only those incorrect test items contained within each examination that was failed and bring to the Florida Department of Education's attention any scoring errors which may result in a passing score. The procedures for test review are listed below:

1. The examinee shall register for a score verification session file a written request with Florida Teacher Examinations, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399, within thirty (30) days of the date the score report was mailed by the test administration agency.

2. A processing fee is required for each score verification session request to review certification examinations for Florida educators. The fee shall be that amount necessary for the test administration agency to perform the services as agreed in the contract between the agency and the Florida Department of Education.

3. ~~The examinee Florida Department of Education shall be provided an admission ticket that contains the location, date and time for the examinee's score verification session notify the examinee when a date has been scheduled for the examinee's review of the materials in Tallahassee.~~

4. During the score verification session ~~On the review day,~~ the examinee shall file with the Florida Department of Education via the test administration agency a statement of specific scoring errors which may result in a passing score.

5. The Florida Department of Education shall review test items, verify examination keys, and consult with field-specific subject matter experts as needed.

~~6.5.~~ The Commissioner of Education shall notify the individual of the action on the statement of scoring errors not later than thirty (30) days from receipt of the statement.

~~7.6.~~ An examinee may retake a failed examination that was reviewed provided at least thirty (30) days have elapsed since the date of the review. If an examinee takes an examination, including a computer-based examination, that was reviewed within thirty (30) days of the test date, the examination will be invalidated.

(13) Administration of the Praxis Series: Professional Assessments for Beginning Teachers before July 1, 2002. These examinations shall be administered as described in the Praxis Series Registration Bulletin which may be obtained from Educational Testing Service, Post Office Box 6051, Princeton, New Jersey 08541-6051.

(14) through (15) No change.

Specific Authority 1012.55(1), 1012.56, 1012.59 FS. Law Implemented 1012.56 FS. History—New 8-27-80, Amended 1-11-82, 1-6-83, 5-3-83, 10-5-83, 10-15-84, Formerly 6A-4.021, Amended 12-25-86, 4-26-89, 4-16-90, 7-10-90, 4-22-91, 10-3-91, 8-10-92, 11-28-93, 4-12-95, 7-1-96, 9-30-96, 10-1-99, 7-17-00, 7-16-01, 3-24-02, 7-16-02, 3-24-03, 7-21-03, 12-23-03, 7-13-04, 5-24-05, 5-23-06, 5-21-07, 5-19-08,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Cornelia Orr, Administrator, Office of Assessment and School Performance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jay Pfeiffer, Deputy Commissioner, Division of Accountability, Research and Measurement

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 2, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 7, 2008

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: 6A-4.00821
 RULE TITLE: Florida Educational Leadership Examination

PURPOSE AND EFFECT: The purpose of this rule amendment is to adopt changes to the competencies and skills for the Florida Educational Leadership Examination, effective January 1, 2009. Additionally, revisions to the registration form and to the procedures for reviewing failed examinations are proposed. The effect of these changes will be updated competencies and skills for the Florida Educational Leadership Examination and examinees will have greater access to score verification sessions statewide.

SUMMARY: The rule is proposed for amendment to adopt the new edition of the Competencies and Skills Required for Certification in Educational Leadership in Florida, the revised registration form, and to improve the process for reviewing failed examinations.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 1012.55(1) FS.

LAW IMPLEMENTED: 1012.55(1) FS.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: June 17, 2008, 8:30 a.m.

PLACE: Tampa Airport Marriott, Tampa, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Dr. Mike Jones, Program Director, Postsecondary Assessment, Office of Assessment and School Performance, Accountability, Research, and Measurement, 325 W. Gaines Street, Suite 414, Tallahassee, FL 32399, (850)245-0513

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-4.00821 Florida Educational Leadership Examination.

(1) Scope. This rule governs the written examination for certification in Education Leadership. Additional requirements for certification in Educational Leadership are specified in Rule 6A-4.0082, F.A.C.

(2) Description of the examination.

(a) The Florida Educational Leadership Examination shall be developed by the Commissioner of Education.

(b) Before January 1, 2009, ~~t~~The written examination shall contain questions in the areas of:

1. School communications. This subtest shall contain an essay and multiple-choice questions in communications.

2. School management. This subtest shall contain multiple-choice questions covering management, leadership, and personnel.

3. School operations. This subtest shall contain multiple-choice questions covering law, finance, curriculum, and technology.

(c) Beginning January 1, 2009, the written examination shall contain multiple-choice questions and a performance assessment associated with the Florida Principal Leadership Standards specified in Rule 6A-5.080, F.A.C., in the areas of:

1. Instructional Leadership.

2. Operational Leadership.

3. School Leadership.

(d) Before January 1, 2009, ~~t~~The competencies to be demonstrated by means of a written examination are contained in the publication “Competencies and Skills Required for Certification in Educational Leadership in Florida, Second Edition 2002,” which is hereby incorporated by reference and made a part of this rule. Copies of this publication may be obtained from the Department of Education, Office of Assessment and Evaluation Section, 325 West Gaines Street, Tallahassee, Florida 32399, at a price to be established by the Commissioner not to exceed actual cost.

(e) Beginning January 1, 2009, the competencies to be demonstrated by means of a written examination are contained in the publication “Competencies and Skills Required for Certification in Educational Leadership in Florida, Third Edition 2008,” which is hereby incorporated by reference and made a part of this rule. Copies of this publication may be obtained from the Department of Education, Office of

Assessment, 325 West Gaines Street, Tallahassee, Florida 32399, at a price to be established by the Commissioner not to exceed actual cost.

(3) Administration of the examination.

(a) The examination shall be administered by a test administration agency or agencies under contract with the Florida Department of Education.

(b) The examination shall be administered at least two (2) times each year. The Commissioner of Education shall establish the examination dates each year, which may include additional test administrations.

(c) The examination shall be administered at centers designated by the Commissioner of Education.

(d) An examinee may retake a failed examination provided at least thirty (30) calendar days have elapsed since the previous administration of the failed examination.

(4) Registration, late registration, and refunds.

(a) Registration for the examination shall be for the initial examination or for one (1) or more subtests not previously passed. To register to take the examination, an applicant shall submit a completed application to the test administration agency. The completed application shall be received by the test administration agency at least fifty (50) days preceding the examination date.

1. A completed application shall consist of the following:

a. A completed application Form CG-20-04, Registration Application: Certification Examinations for Florida Educators, which includes the applicant's signature. Form CG-20-04 is hereby incorporated by reference and made a part of this rule to become effective ~~August 1, 2008~~ ~~October 2004~~. This form may be obtained without cost from the Bureau of Educator Certification, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399 or may be submitted online via the Florida Teacher Certification Examinations/Florida Educational Leadership Examination Program Web site website at <http://www.fldoe.org/edcert/apply.asp>.

b. Before January 1, 2009, a fifty (50) dollar registration fee. Beginning January 1, 2009, an eighty-five (85) dollar first-time registration fee. A fee of one hundred (100) dollars for each retake registration, effective January 1, 2009.

c. A charge of one hundred (100) dollars in addition to the fees described in sub-subparagraph 6A-4.0021(4)(a)1.b., F.A.C., for certification applicants taking a supplemental examination.

2. An incomplete application shall be returned to the applicant. Applications which are completed and resubmitted to the test administration agency after the fifty (50) day deadline shall be acceptable only if the applicant complies with requirements specified in paragraph 6A-4.00821(4)(b), F.A.C.

(b) Late registration for the examination shall be for the initial examination or for one (1) or more subtests not previously passed. An applicant who did not submit a completed application to the test administration agency within

the fifty (50) day deadline may register for the examination by completing the requirements listed in subparagraph 6A-4.00821(4)(a)2., F.A.C., and submitting a thirty (30) dollar late charge. All items shall be received by the test administration agency at least thirty (30) days preceding the examination date. Late registration shall be accepted on a space available basis.

(c) Refunds. Fees shall be refunded provided written requests for refunds are received by the test administration agency at least thirty (30) days preceding the examination date. Failure to appear for or to complete an examination shall result in forfeiture of fees.

(5) Admission. The test administration agency shall provide each applicant with an admission ticket specifying the examination center and the time of the examination. The admission ticket and other identification are required for entrance into the examination center. The other identification shall be specified on the admission ticket. An applicant who arrives after the examination has begun shall not be admitted until the start of the next subtest of the examination.

(6) Examinee, handicapped. An applicant who is unable to complete the examination under standard testing conditions because of a handicap may request special arrangements. Such a request shall be made when the examination application is submitted. Lack of proficiency in the English language shall not be acceptable as a justifiable reason for requesting a reader for an examinee. Special arrangements shall be provided for applicants with handicapping conditions.

(7) Scoring of the examination.

~~(a) The examination shall be scored on a measurement scale which has an overall mean scale score of five hundred (500) and a standard deviation of one hundred (100). The Commissioner of Education shall designate the administration of the examination which shall be used as the base year for statistical calculations.~~

~~(b) The essay portion of the school communications subtest shall be scored by two (2) trained judges using a scale of one (1) which is an unsatisfactory score to four (4) which is an outstanding score. In the event the two (2) ratings are two (2) or more points different, or in the event the summed ratings equal three (3), the writing sample will be rated by a referee and the referee's score will replace the most discrepant of the original ratings.~~

~~(a)(e)~~ Prior to July 1, 1988, a score earned on the Florida Educational Leadership Examination shall be considered a passing score and shall be valid for Educational Leadership certification application for a period of two (2) years from the test administration date. Applicants for the Educational Leadership certificate shall be required to present a score report to the Florida Department of Education when applying for the certificate.

~~(b)(4)~~ Beginning July 1, 1988 through December 31, 2008, a passing score for each subtest of the Florida Educational Leadership Examination shall be:

1. School Communications. Examinee scores for the school communications subtest shall be reported as an average scaled score combining the scaled score from the essay test and the scaled score from the multiple-choice questions. The passing score shall be the scaled score equivalent to the combination of the essay total raw score of four (4) and a multiple-choice total raw score of fifteen (15) on the November, 1987 administration of the subtest.

2. School Management. Examinee scores for the school management subtest shall be reported as a scaled score. The passing score shall be the scaled score equivalent to a total raw score of sixty-nine (69) on the November, 1987 administration of the subtest.

3. School Operations. Examinee scores for the school operations subtest shall be reported as a scaled score. The passing score shall be the scaled score equivalent to a total raw score of ninety-one (91) on the November, 1987 administration of the subtest.

~~(c)(e)~~ The subtest score scales for administrations of the examination from after July 1, 1988 through December 31, 2008, shall be equated to the November, 1987 subtest administration.

~~(d)~~ Effective January 1, 2009, a passing score for each subtest of the Florida Educational Leadership Examination (Instructional Leadership, Operational Leadership, and School Leadership) shall be:

1. Instructional Leadership. Examinee scores for the instructional leadership subtest shall be reported as a scaled score. The passing score shall be a scaled score of two hundred (200).

2. Operational Leadership. Examinee scores for the operational leadership subtest shall be reported as a scaled score. The passing score shall be a scaled score of two hundred (200).

3. School Leadership. Examinee scores for the school leadership subtest shall be reported as a scaled score which is the combination of the scaled score from the written performance assessment and the scaled score from the multiple-choice questions. The written performance assessment shall be weighted thirty (30) percent and the multiple-choice questions shall be weighted seventy (70) percent when determining the combined scaled score. The passing score shall be a combined scaled score of two hundred (200).

~~(8)~~ Written Performance Assessment Essay performance standards.

(a) Judges. The test scoring agency shall appoint persons to judge the written performance assessment of the school leadership subtest who have demonstrated through prior experience unusual success as educational leaders,

instructional leaders, or school building administrators, portion of the school communications subtest who have the following minimum qualifications:

1. Academic preparation. At least a bachelor's degree with an emphasis in English, writing, and composition.

2. Experience. A minimum of two (2) years of experience in teaching and evaluating writing. Examples of qualifying experience are: teaching English or language arts in secondary schools, teaching college composition courses, serving as a teaching assistant for college classes in composition or working as a professional copy editor.

3. Specific training. Successful completion of a training program provided by the Florida Department of Education or its contractors.

(b) Referees. The referees shall be judges who have demonstrated in the training program and through prior experience unusual success as educational leaders, instructional leaders, or school building administrators composition teachers or raters.

~~(c)~~ Rating scale. The four-level scale for judging the written essays is defined as follows:

1. A rating of one (1) indicates the essay lacks unity and focus. It is distorted or ambiguous, and it fails to treat the topic in sufficient depth and breadth. There is little or no discernible organization and only scant development of ideas, if any at all. The essay betrays only sporadically a sense of paragraph and sentence structure, and it is syntactically slipshod. Usage is irregular and often questionable or wrong. There are serious errors in spelling, capitalization, and punctuation.

2. A rating of two (2) indicates the essay has some degree of unity and focus, but each could be improved. It is reasonably clear, though not invariably so, and it treats the topic with a marginal degree of sufficiency. The essay reflects some concern for organization and for some development of ideas, but neither is necessarily consistent nor fully realized. The essay reveals some sense, if not full command of paragraph and sentence structure. It is syntactically bland and, at times, awkward. Usage is generally accurate, if not consistently so. There are some errors in spelling, capitalization, and punctuation that detract from the essay's effect if not from its sense.

3. A rating of three (3) indicates the essay is focused and unified, and it is clearly if not distinctively written. It gives the topic an adequate though not always thorough treatment. The essay is well organized, and much of the time it develops ideas appropriately and sufficiently. It shows a good grasp of paragraph and sentence structure, and its usage is generally accurate and sensible. Syntactically, it is clear and reliable. There may be a few errors in spelling, capitalization, and punctuation, but they are not serious.

4. A rating of four (4) indicates the essay is unified, sharply focused, and distinctively effective. It treats the topic clearly, completely, and in suitable depth and breadth. It is

clearly and fully organized, and it develops ideas with consistent appropriateness and thoroughness. The essay reveals an unquestionably firm command of paragraph and sentence structure. Syntactically, it is smooth and often elegant. Usage is uniformly sensible, accurate, and sure. There are very few, if any, errors in spelling, capitalization, and punctuation.

(9) Score reports.

(a) A properly authenticated score report is defined as the original score report issued directly by the test administration agency without any qualification, reservation, or irregularity.

(b) The examinee shall be sent two (2) authenticated score reports. In addition, a copy of the score report may be issued by the test administration agency without a fee to one (1) Florida college or university and to one (1) Florida school district provided the examinee identifies the recipient or recipients of the score report on form either the CG-20-03A, Registration Application: Certification Examinations for Florida Educators or the CG-20-04, Registration Application: Certification Examinations for Florida Educators.

(c) Official documentation of scores earned on each subtest of the examination for an Educational Leadership certificate shall be the original authenticated score report or a duplicate authenticated score report as described in paragraphs 6A-4.00821(9)(a) and (e), F.A.C.

(d) After July 1, 1988, scores shall be reported as Pass or Fail for each subtest. The Commissioner of Education may provide additional score information to the examinee.

(e) An examinee may obtain a duplicate authenticated score report for a test administration by filing a written request and a fee. A fee is required for each score report that is requested. The fee shall be that amount necessary for the test administration agency to perform the service as agreed in the contract between the agency and the Florida Department of Education.

(10) Review.

(a) Requests for Manual Scoring and Verification. An examinee who fails one (1) or more subtests of the examination may file a written request with the test administration agency for manual scoring and scoring of the multiple-choice section of a subtest which was failed with the exception of the essay part of the communications subtest. A written request may also be made to verify the scores for computer-based tests and performance components to ensure that the scores assigned were recorded accurately. The request shall be filed no later than thirty (30) days after the date the score report was mailed by the test administration agency. The fee for manual scoring, verification, or both, of handscoring one (1) or more subtests shall be that amount necessary for the test administration agency to perform the service as agreed in the contract between the agency and the Florida Department of Education. The test administration agency shall notify the examinee of the results of the request handscoring within thirty (30) days of receipt of the request and fee.

(b) Score Verification Sessions. An examinee who fails one (1) or more subtests of the examination may review only those incorrect test items contained within each subtest that was failed and bring to the Florida Department of Education's attention any scoring errors which may result in a passing score. The procedures for test review are as follows:

1. The examinee shall register for a score verification session ~~mail a written request to the Florida Educational Leadership Examination Program, Assessment, Testing, and Evaluation Section, Florida Department of Education, The Florida Education Center, Tallahassee, Florida 32399~~ within thirty (30) sixty (60) days of the date the score report was mailed by the test administration agency. ~~The Florida Department of Education shall notify the examinee when a date has been scheduled for the examinee's review of the materials in Tallahassee. On the review day~~

2. A processing fee is required for each score verification session. The fee shall be the amount necessary for the test administration agency to perform the services agreed in the contract between the agency and the Florida Department of Education.

3. The examinee shall be provided an admission ticket that contains the location, date and time for the examinee's score verification session.

4. During the score verification session, the examinee shall file with the Florida Department of Education via the test administration agency a statement of specific scoring errors which may result in a passing score.

5. The Florida Department of Education shall review test items, verify examination keys, and consult with field-specific subject matter experts as needed.

6.2. The Commissioner of Education shall notify the individual of the action on the statement of scoring errors no later than thirty (30) days from receipt of the statement.

7. An examinee may retake a failed subtest that was reviewed provided at least thirty (30) days have elapsed since the date of the review. If an examinee takes a subtest, including computer-based administrations, that was reviewed within thirty (30) days of the test date, the subtest will be invalidated.

Specific Authority 1012.56, 1012.59 FS. Law Implemented 1012.56 FS. History—New 12-25-86, Amended 1-11-89, 5-19-98, 10-6-99, 7-17-00, 7-16-01, 3-24-02, 10-17-02, 3-24-03, 7-21-03, 6-22-04, 5-19-08,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Cornelia Orr, Administrator, Office of Assessment and School Performance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jay Pfeiffer, Deputy Commissioner, Division of Accountability, Research and Measurement

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 2, 2008
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 7, 2008

DEPARTMENT OF EDUCATION

State Board of Education

RULE NOS.:	RULE TITLES:
6A-6.03028	Provision of Free Appropriate Public Education (FAPE) and Development of Individual Educational Plans for Students with Disabilities
6A-6.030281	Provision of Equitable Services to Parentally-Placed Private School Students with Disabilities
6A-6.0331	General Education Intervention Procedures, Identification, Evaluation, Reevaluation and the Initial Provision of Exceptional Education Services
6A-6.03311	Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities
6A-6.03312	Discipline Procedures for Students with Disabilities
6A-6.03314	Procedural Safeguards for Students with Disabilities Enrolled in Private Schools by Their Parents
6A-6.0333	Surrogate Parents
6A-6.0334	Individual Educational Plans (IEPs) and Educational Plans (EPs) for Transferring Exceptional Students
6A-6.03411	Definitions, ESE Policies and Procedures and ESE Administrators

PURPOSE AND EFFECT: The purpose of the proposed amendments are to align Florida’s administrative rules related to the provision of services to students with disabilities with the 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations. The affect of these amendments will minimize the number of rules to which local education agencies (LEAs) and schools in Florida are subjected.

SUMMARY: Rule 6A-6.03028, F.A.C., is proposed for amendment to combine into a single rule all of the federal requirements related to the provision of a free appropriate public education (FAPE) and the development of individual educational plans (IEPs) for students with disabilities.

Rule 6A-6.030281, F.A.C., is proposed for amendment to incorporate the new federal regulations that contain extensive changes related to the provision of equitable services to parentally-placed students with disabilities. These amendments

reflect deletion of all existing language, with new language designed to mirror the federal regulations at 34 CFR 300.130 – 300.144.

Rule 6A-6.0331, F.A.C., is proposed for amendment to incorporate the procedures related to activities required prior to referral, referral and identification are collectively referred to as “general education intervention procedures” to conform with changes in the field related to ensuring highest student achievement for all students. These amendments align Florida’s rules with the federal regulations relative to early intervening services, identification of students who may be eligible students with disabilities, evaluation and reevaluation procedures, and the initial provision of ESE services. When appropriate, corresponding procedures relative to giftedness are included.

Rule 6A-6.03311, F.A.C., is proposed for amendment to align the requirements related to procedural safeguards and due process procedures for parents and students with disabilities with the requirements under IDEA and its implementing regulations. Specific details regarding pre-hearing and hearing procedures are proposed for deletion as they are not federal requirements and in order to provide more discretion to administrative law judges (ALJs) regarding how hearings are conducted while maintaining the minimum federal requirements.

Rule 6A-6.03312, F.A.C., is proposed for amendment to mirror the federal requirements at 34 CFR 300.530 – 300.536. This includes definitions that are contained in the federal regulations that supersede, for purposes of discipline of students with disabilities, definitions under state law.

Rule 6A-6.03314, F.A.C., is proposed for repeal as the procedural safeguards for students with disabilities enrolled in private schools by their parents are addressed in Proposed Rule 6A-6.030281(16), F.A.C.

Rule 6A-6.0333 is proposed for amendment to align the rule with the federal regulations at 34 CFR 300.519 and to include the assignment of surrogate parents to eligible gifted students.

Rule 6A-6.0334, F.A.C., is proposed for amendment to delete existing inapplicable language and add new language to align with federal regulations 34 CFR 300.323(e)-(g).

Rule 6A-6.03411, F.A.C., is proposed for amendment to incorporate a new “definitions” section to define all terms related to exceptional student education, and to align Florida’s definitions with those in IDEA and its implementing regulations. Old and out-dated provisions have been deleted.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 1001.02(1), (2)(n), 1003.01(3)(a), (b), 1003.57, 1006.09 FS.

LAW IMPLEMENTED: 1001.02(2)(n), 1001.03(8), 1001.42(4)(l), 1003.01(3)(a), (b), 1003.57, 1011.62(1)(c), (e) FS.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Dr. Kim Komisar, Administrator, Bureau of Exceptional Education and Student Services, 325 West Gaines Street, Room 614, Tallahassee, Florida 32339

THE FULL TEXT OF THE PROPOSED RULES IS:

(Substantial rewording of Rule 6A-6.03028 follows. See Florida Administrative Code for current text).

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, F.A.C. 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, F.A.C.; and

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

(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, F.A.C., 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, F.A.C.

(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, F.A.C. In carrying out Part B of the IDEA and Rules 6A-6.03011 through 6A-6.0361, F.A.C., 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, F.A.C., 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, F.A.C., 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, F.A.C., 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, F.A.C.; 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, F.A.C., 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, F.A.C., 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 FS. Law Implemented 1001.42(4)(l), 1003.01(3)(a), (b), 1003.57, 1011.62(1)(c), (e), 1001.03(8) FS. History—New 7-13-93, Amended 10-17-04.

(Substantial rewording of Rule 6A-6.030281 follows. See Florida Administrative Code for current text).

6A-6.030281 Provision of Equitable Services to Parentally-Placed Private School Students with Disabilities Development of Services Plans for Students with Disabilities Enrolled in Private School by their Parents and Provided with Specially Designed Instruction and Related Services by the Local School Board.

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, F.A.C., 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, F.A.C. 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 subsection 6A-6.03311(5), F.A.C.

(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 FS. Law Implemented 1001.42(4)(l), 1003.01(3)(a), (b), 1003.57, 1011.62(1)(c), (e), 1001.03(8) FS. History—New 9-20-04, Amended _____.

(Substantial rewording of Rule 6A-6.0331 follows. See Florida Administrative Code for current text).

6A-6.0331 General Education Intervention Procedures, Identification, Evaluation, Reevaluation and the Initial Provision of Exceptional Education Services ~~Identification and Determination of Eligibility of Exceptional Students for Specially Designed Instruction.~~

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, F.A.C. 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 paragraphs (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, F.A.C., 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, F.A.C.

(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, F.A.C.

1. Tests of intellectual functioning shall be administered and interpreted by a professional person qualified in accordance with Rule 6A-4.0311, F.A.C., 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, F.A.C. 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, F.A.C. 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, F.A.C.

(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, F.A.C., 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, F.A.C., 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, F.A.C.

(i) To meet the reasonable efforts requirements to obtain parental consent in Rules 6A-6.03011 through 6A-6.0361, F.A.C., 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 FS. Law Implemented 1001.42(4)(l), 1003.01(3)(a), (b), 1001.02(2)(n), 1003.57 FS. 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.

(Substantial rewording of Rule 6A-6.03311 follows. See Florida Administrative Code for current text).

6A-6.03311 Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities.

Each school district must establish, maintain and implement procedural safeguards that meet the requirements of this rule.

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

(a) The prior notice to the parents shall be written in language understandable to the general public and shall be provided in the native language or other mode of communication used by the parents, unless it is clearly not feasible to do so.

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

1. That the notice is translated orally or by other means to the parents in their native language or other mode of communication;

2. That the parents understand the content of the notice; and

3. That there is written documentation that these requirements have been met.

(c) The notice to the parents shall include:

1. A description of the action proposed or refused by the school district;

2. An explanation of why the school district proposes or refuses to take the action;

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

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

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

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, F.A.C., 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 subsection 6A-6.03311(5), F.A.C.;

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, F.A.C., 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, F.A.C.

(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, F.A.C., 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 subparagraph 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 subparagraph 1. of this section; or

c. Compliance with paragraph (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, F.A.C., 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, F.A.C., 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, F.A.C.; 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, F.A.C., 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, F.A.C., 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, F.A.C., 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, 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. 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, F.A.C., 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, F.A.C. In addition, nothing in Rules 6A-6.03011 through 6A-6.0361, 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 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, F.A.C. 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, 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 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, 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 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 FS. Law Implemented 1001.42(4)(l), 1003.01(3), 1001.03(8), 1101.62(1)(c), 1003.57 FS. History—New 7-13-83, 12-20-83, 4-26-84, Formerly 6A-6.3311, Amended 7-17-90, 9-20-04,_____.

(Substantially rewording of Rule 6A-6.03312 follows. See Florida Administrative Code for current text).

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 (2 1/2) 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, F.A.C.

(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, F.A.C., 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, F.A.C., or has refused special education and related services under Rules 6A-6.03011 through 6A-6.0361, F.A.C.; or

2. The school district conducted an evaluation in accordance with Rules 6A-6.03011 through 6A-6.0361, F.A.C., 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, F.A.C.:

(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 FS. Law Implemented 1001.03(8), 1001.42(4)(1), 1003.01(3), 1003.57, 1006.09 FS. History—New 9-20-04, Amended _____.

6A-6.03314 Procedural Safeguards for Students with Disabilities Enrolled in Private Schools by Their Parents.

Specific Authority 1001.02(1), (2)(n), 1003.01(3)(a), (b), 1003.57(5) FS. Law Implemented 1001.42(4)(1), 1003.01(3)(a), (b), 1003.57(5) FS. History—New 9-20-04, Repealed _____. C.f. P.L. 105-17, 20 USC 1414 and 1415

(Substantial rewording of Rule 6A-6.0333 follows. See Florida Administrative Code for current text).

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, F.A.C.

(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, FS. Law Implemented 1001.03(8), 1001.42(4)(1), 1003.01(3), 1003.57, FS. History—New 6-28-83, Formerly 6A-6.333, Amended _____.

(Substantial rewording of Rule 6A-6.0334 follows. See Florida Administrative Code for current text).

6A-6.0334 Individual Educational Plans (IEPs) and Educational Plans (EPs) for ~~Temporary Assignment of~~ 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, F.A.C.

(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 subsections 6A-6.0331(4) and (5), F.A.C., (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, F.A.C.

(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 FS. Law Implemented 1001.03(8), 1001.42(4)(l), 1003.01(3), 1003.57 FS. History—New 7-13-83, Formerly 6A-6.334, Amended 3-19-92,_____.

(Substantial rewording of Rule 6A-6.03411 follows. See Florida Administrative Code for current text).

6A-6.03411 Definitions, ESE Policies and Procedures, and ESE Administrators Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students.

(1) Definitions. As used in Rules 6A-6.03011 through 6A-6.0361, F.A.C., 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, F.A.C., and determined to have a disability as defined under Rules 6A-6.03011 through 6A-6.03027, F.A.C., but does not include students who are gifted as defined under Rules 6A-6.03019 through 6A-6.030191, F.A.C.; 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, F.A.C. 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, F.A.C., 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, F.A.C.

(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, F.A.C., 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, F.A.C.

(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 Rules 6A-6.03011 through 6A-6.0361, F.A.C.;

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, F.A.C., an educational plan (EP) for students who are gifted that meet the requirements of Rule 6A-6.030191, F.A.C., 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, F.A.C.

(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 Rules 6A-6.03011 through 6A-6.0361, F.A.C., 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, F.A.C.

(v) Individual educational plan (IEP) team. IEP team means a group of individuals as described in Rules 6A-6.03011 through 6A-6.0361, F.A.C., 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 Rules 6A-6.03011 through 6A-6.0361, F.A.C.

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 sub-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, F.A.C., 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, F.A.C., 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, F.A.C.

(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, F.A.C., 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, F.A.C.

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 FS. Law Implemented 1001.42(4)(l), 1003.01(3), 1002.38, 1001.03(8), 1003.57, 1011.62(1)(c) FS. History--New 11-18-84, Amended 10-1-85, Formerly 6A-6.3411, Amended 12-14-93, 10-17-04,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Bambi Lockman, Bureau Chief, Bureau of Exceptional Education and Student Services

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Frances Haithcock, Chancellor, K-12 Public Schools

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 12, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 21, 2007

DEPARTMENT OF EDUCATION

State Board of Education

RULE NOS.:	RULE TITLES:
6A-7.0422	Procedures for Food Service Companies to Qualify as Child Care Food Service Providers
6A-7.0424	Child Care Food Program Day Care Home Sponsoring Organizations

PURPOSE AND EFFECT: The purpose is to repeal rules for which there is no longer statutory authority to retain. The Department of Health now has the responsibility for programs relating to child care food service providers. The effect will be the repeal of rules which no longer have statutory authority under the State Board of Education.

SUMMARY: The rules are to be repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 228.195(2) FS.

LAW IMPLEMENTED: 228.195 FS.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: June 17, 2008, 8:30 a.m.

PLACE: Tampa Airport Marriott, Tampa, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Linda Champion, Deputy Commissioner for Finance and Operations, Department of Education, 325 West Gaines Street, Room 1514, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULES IS:

6A-7.0422 Procedures for Food Service Companies to Qualify as Child Care Food Service Providers.

Specific Authority 228.195(2), 229.053(1) FS. Law Implemented 228.195 FS. History--New 10-17-89, Repealed_____. Cf. 7 CFR Part 226, Sections 12, 16, 18.

6A-7.0424 Child Care Food Program Day Care Home Sponsoring Organizations.

Specific Authority 228.195(2), 229.053(1) FS. Law Implemented 228.195 FS. History--New 10-17-89, Repealed_____. Cf. 7 CFR Part 226, Sections 12, 16, 18.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Diana Santoro, Program Administrator, Food and Nutrition Management, Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Linda Champion, Deputy Commissioner for Finance and Operations

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 6, 2008

DEPARTMENT OF EDUCATION

Commission for Independent Education

RULE NO.:	RULE TITLE:
6E-4.001	Fees and Expenses

PURPOSE AND EFFECT: The purpose and effect is to restore the fee for the review that the Commission undertakes when an institution undergoes a substantive change.

SUMMARY: When an institution undergoes a substantive change, such as a change in control, location, or the level of credentials, the Commission reviews the change in order to ensure that the institution continues to meet standards for licensure. During the last rule amendment, the fee for a

substantive change review was inadvertently stricken. The proposed rule restores the fee, without any increase in the amount charged.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 1005.22(1)(e), 1005.35, 1005.37, 1005.38 FS.

LAW IMPLEMENTED: 1005.22, 1005.35, 1005.37, 1005.38 FS.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: June 17, 2008, 8:30 a.m.

PLACE: Tampa Airport Marriott, Tampa, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Samuel L. Ferguson, Executive Director, Commission for Independent Education, 325 West Gaines Street, Suite 1414, Tallahassee, Florida 32399-0400

THE FULL TEXT OF THE PROPOSED RULE IS:

6E-4.001 Fees and Expenses.

(1) through (2) No change.

(3) **Workload Fees.** Each licensed institution receives technical assistance from the Commission, along with help in developing and implementing institutional articulation agreements and achieving candidacy status with accrediting agencies; and significant amounts of staff and administrative time are spent on evaluating applications, traveling to institutions for onsite visits, assisting institutions which are experiencing problems with financial aid or financial stability, and other duties assigned by the Commission. The following workload fees are assessed in addition to the Base Fee, and must be received prior to Commission consideration of each action.

Initial Application for License, or Moving from Nondegree to Degree:

New Nondegree Institutions	\$2,000 + \$200 per program
New Degree-Granting Institutions	\$3,000 + \$200 per program

Annual Review of Licensure and License by Means of Accreditation Review:

Level 1 = \$1,500
Level 2 = \$2,000
Level 3 = \$5,000
Level 4 = \$7,000
Level 5 = \$8,500
Level 6 = \$10,000

Institutions not Licensed by Means of Accreditation shall pay \$50 per licensed program (not to exceed \$500) as part of the Annual Review of License.

<u>Substantive Change Review</u>	<u>\$1,000</u>
Provisional or Annual Licensure Extension (first)	\$500
Provisional or Annual Licensure Extension (second)	\$750
Provisional or Annual Licensure Extension (third)	\$1,500
New Program or Program Modifications, Less than Substantive Change or More than One Minor Modification per Year:	
Nondegree Programs	\$500
Degree Programs	\$1,000
Site Visits:	
One Visit per Year	Included in licensure fee
Subsequent Visits directed by Commission Approval to Use "College" or "University", First Time or Special Review	\$300 per day
Annual Licensure of Recruiting Agents (nontransferable)	\$500
Criminal Justice Information Investigation	\$200
Copy of Student Academic Transcript on File	\$50
	\$10

Specific Authority 1005.22(1)(e), 1005.35, 1005.37, 1005.38 FS. Law Implemented 1005.22, 1005.35, 1005.37, 1005.38 FS. History--New 1-7-03, Amended 7-27-04, 1-30-08,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Samuel L. Ferguson, Executive Director, Commission for Independent Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Commission for Independent Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 10, 2007

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 2, 2008

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE NOS.:	RULE TITLES:
40D-1.1010	Point of Entry into Proceedings
40D-1.1024	Processing Procedures for Noticed General Permits Under Chapter 40D-400, F.A.C
40D-1.603	Permit Application Procedures

PURPOSE AND EFFECT: The purpose of this rulemaking effort is to revise the District's procedures for providing notice of the receipt of applications for water use and environmental resource permits, and notice of agency action concerning such permit applications. The effect will be to make greater use of internet noticing of these activities, require applicants to undertake some of the noticing requirements in specific situations and to eliminate certain noticing practices not required by statute.

SUMMARY: District rules concerning permit application noticing and agency action noticing have remained largely unchanged since their inception in the 1980's. Current noticing rules do not reflect technological advances in disseminating public information, such as the internet and electronic mail. Special noticing practices have also evolved over the years, which are not required by statute and which can now be accomplished more efficiently through the District's website. Amendments to Rule 40D-1.603, F.A.C., will require applicants for individual water use and environmental resource permits to publish notice of the District's receipt of application and notice of agency action concerning such applications. Applications for general permits will be noticed on the District's website. Amendments will allow persons wishing to be notified of District receipt of applications for designated areas or of agency action on specific permits to submit such requests through email, and receive such notices by email. A subscription fee is established for those persons wishing to receive notices of permit applications by regular mail. Amendments eliminate the requirement to publish or send unrequested notices of agency action on water use permits to potentially affected property owners. Amendments to Rule 40D-1.1010, F.A.C., clarify that for water use and environmental resource permits and petitions for formal determination of wetlands or other surface waters, the District shall require an applicant to publish, or inform an applicant of its right to publish, notice of agency action on the application in a newspaper. Applicants for individual permits and other applicants required to publish notice of application will be required to publish notice of agency action. Amendments also clarify the meaning of "receipt of written notice" when notices are sent by email, the required content of published notices, and the time in which to file a petition for administrative hearing concerning consolidated applications for environmental resource permits and use of sovereignty state lands. Minor clarifying amendments are also proposed for Rule 40D-1.1024, F.A.C., which concerns processing procedures for noticed general environmental resource permits. Permit noticing rules contained in Chapters 40D-2, 40D-4, 40D-40, F.A.C., and the District's Water Use Permit Information Manual Part B, Basis of Review are also being amended as part of this rulemaking package.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 120.54(5), 373.044, 373.113, 373.118, 373.414 FS.

LAW IMPLEMENTED: 120.54(5), 120.60, 120.60(4), 253.115, 373.116, 373.118, 373.216, 373.219, 373.229, 373.308, 373.309, 373.323, 373.413, 373.4136, 373.414, 373.416, 373.418, 373.421, 373.426, 373.427 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Martha A. Moore, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

THE FULL TEXT OF THE PROPOSED RULES IS:

40D-1.603 Permit Application Procedures.

(1) No change.

(2) No later than 30 days after submittal receipt of an initial application or an application for modification of an individual surface water management permit, an individual Environmental Resource Permit or an initial application or application for renewal or modification of an individual water use permit for annual average withdrawals of 500,000 gpd ~~annual average daily~~ or greater pursuant to Chapter 40D-2, F.A.C., the applicant District shall publish at the applicant's expense a notice of the District's receipt of the application thereof in a newspaper having general circulation as defined in Chapter 50, F.S., in the county or counties in which the activity is proposed. No later than 30 days after ~~Upon~~ receipt of an application for an initial or modification of a general surface water management permit or Environmental Resource Permit pursuant to Chapter 40D-40, F.A.C., ~~a general surface water management permit pursuant to Chapter 40D-40, F.A.C., (January 11, 1993)~~ or a noticed general surface water management Environmental Resource Permit pursuant to Chapter 40D-400, F.A.C., or for an initial application or application for renewal or modification of a general water use permit for annual average withdrawals of less than 500,000 gpd ~~annual average daily~~ pursuant to Chapter 40D-2, F.A.C., the District shall post notice thereof on the District's website at www.watermatters.org ~~in the District's headquarters and in each of the District's service offices~~. In the event that after posting of notice an application for a general permit is modified such that it is an application for an individual permit, notice of the application shall be published by the applicant in a newspaper as provided herein above.

(3) Persons who wish to be notified in writing or by electronic mail of receipt of permit applications affecting a particular geographic area shall notify the District in writing or

by electronic mail, and shall specify their area of interest by county or by section, township and range. Persons may request to be notified by regular U.S. mail or by electronic mail. ~~In addition,~~ The District shall, within 30 days of receipt of an application, provide by regular or electronic mail as requested, a letter giving notice of receipt of the application to any person who has filed a written or electronic mail request within the immediately preceding six months for notification of any pending applications affecting the particular designated area in which the activity is proposed. Persons electing to receive mailed notices of application shall be assessed a subscription fee to cover duplication and mailing costs as provided in subsection (14) below. Requests for notification of receipt of applications shall expire after six months and may be renewed.

(4) Each notice of receipt of application ~~and letter~~ shall state ~~where that~~ interested persons ~~may shall have the opportunity to~~ inspect a copy of the application and ~~that submit~~ written comments or objections concerning the application ~~may be filed with the District. Comments or objections must be received within 14 days of the date of the notice in order to be considered by the District.~~ The District may request persons submitting objections or comments to furnish additional information. Upon request, the District will provide the applicant with a copy of all objections and comments received. Submittal of comments or objections concerning a permit application does not constitute a petition for administrative hearing pursuant to Chapter 120, F.S.

(5) ~~In addition,~~ Each notice of application receipt shall further and letter will advise that if notice of agency action or opportunity to request an administrative hearing pursuant to Chapter 120, F.S., regarding a permit application is desired, a written or electronic mail request referencing the permit application number must be filed with and received by the ~~Agency Clerk of the District at the District's Brooksville address by the date specified in the letter, newspaper notice or the posted notice as applicable pursuant to this subsection. The date specified in such notice or letter to obtain notice of agency action or to request a hearing shall be no less than 14 days from the date of mailing, publication or posting, as applicable. Upon request, the District will provide the applicant with a copy of all objections and comments received.~~

(6)(3) Publication or posting of the notice of application pursuant to subsection (2) shall constitute constructive notice of the permit application to all substantially affected persons. Notices of ~~a~~Agency ~~a~~Action will be issued mailed only to applicants and persons who have filed such requests.

(7)(4) When information submitted to the District incorporates or results in a material change to the proposed activity for which the applicant seeks a permit, the District shall notify the applicant that the application is deemed to be amended, the proposal contained in the original application is deemed withdrawn and the 30 and 90 day time requirements provided in Section 120.60(1), F.S., shall restart. For purposes

of this subsection (7)(4), the term "material change" shall mean information which is reasonably expected to lead to a different agency action on the application or an impact or design specification that is different in degree or kind than previously proposed.

(8)(5) Only one application shall be filed for a permit required under the Part II of Chapter 373, F.S., and District rules Chapter 40D-2, F.A.C., for an activity on or involving the same property and project, including initial permit applications as well as applications for modification of a permit, at any time prior to final action on the application first received by the District. If the District determines that more than one application has been so filed, the District will notify the applicant that the most recent application is deemed an amendment of the pending application, and if the amendment constitutes a material change, the application will be processed in accordance with subsection (7)(4) above.

(6) ~~Notwithstanding the provisions of subsections (2) and (3) above, the District will provide notice of its agency action on water use permit applications to potentially affected property owners, as determined pursuant to paragraph 40D-2.101(3)(e), F.A.C. If the number of potentially affected property owners is less than 500, the District will provide notice of its decision by regular U.S. mail. If the number of potentially affected property owners equals or exceeds 500, the District will publish notice of its decision in a newspaper of general circulation as set forth in Chapter 50, F.S., in the county or counties where the withdrawal is proposed.~~

(9)(7) In addition to, and concurrent with the noticing required pursuant to subsection (2), when the applicant is an entity with the power of eminent domain that does not have current ownership or control of the entire project area described in the application, the applicant District shall provide the property owner(s) identified in the application:

(a) through (b) No change.

(10)(8) No change.

(11) Published notices of receipt of an application for a surface water management permit or Environmental Resource Permit shall contain information and be in a format substantially as follows:

Notice is hereby given that the Southwest Florida Water Management District has received [surface water or Environmental Resource] permit application number [application number] from [name and address of applicant]. Application received: [date]. Proposed activity: [specify commercial, industrial, residential or other development]. Project name: [name or description of project]. Project size: [specify acres] Location: Section(s) [specify] Township [specify] East, Range [specify] South, in [specify] County. Outstanding Florida Water: [yes or no]. Aquatic preserve: [yes or no]. The application is available for public inspection Monday through Friday at [specify District office and address]. Interested persons may inspect a copy of the application and

submit written comments concerning the application. Comments must include the permit application number and be received within 14 days from the date of this notice. If you wish to be notified of agency action or an opportunity to request an administrative hearing regarding the application, you must send a written request referencing the permit application number to the Southwest Florida Water Management District, Regulation Performance Management Department, 2379 Broad Street, Brooksville, FL 34606-6899 or submit your request through the District's website at www.watermatters.org. The District does not discriminate based on disability. Anyone requiring accommodation under the ADA should contact the Regulation Performance Management Department at (352)796-7211 or 1(800)423-1476; TDD only 1(800)231-6103.

(12) Published notices of receipt of an application for a water use permit shall contain information and be in a format substantially as follows:

Notice is hereby given that the Southwest Florida Water Management District has received an application for a water use permit to withdraw water from wells and/or surface waters from [applicant name and address]. Application number: [insert application number]. Application received: [date]. Predominant use type(s): [specify public supply, recreation/aesthetic, commercial, agricultural, mining/dewatering]. Total requested withdrawal average daily gallons per day: [specify]. Peak month average gallons per day: [specify]. Maximum daily gallons per day: [specify]. From [number of] [wells or other withdrawal points]. Location: Section(s) [specify] Township [specify] East, Range [specify] South, in [specify] County. The application is available for public inspection Monday through Friday at [specify District service office and address]. Interested persons may inspect a copy of the application and submit written comments concerning the application. Comments must include the permit application number and be received within 14 days from the date of this notice. If you wish to be notified of agency action or an opportunity to request an administrative hearing regarding the application, you must send a written request referencing the permit application number to the Southwest Florida Water Management District, Regulation Performance Management Department, 2379 Broad Street, Brooksville, FL 34606-6899 or submit your request through the District's website at www.watermatters.org. The District does not discriminate based on disability. Anyone requiring accommodation under the ADA should contact the Regulation Performance Management Department at (352)796-7211 or 1(800)423-1476; TDD only 1(800)231-6103.

(13) Applicants required to publish notice of application receipt must provide to the District a publisher's affidavit establishing proof of publication pursuant to Sections 50.041

and 50.051, F.S., before the application will be considered complete and the 90-day timeframe for taking agency action on the application will commence.

(14)(a) A pre-paid subscription fee shall be assessed for processing requests to receive notices of District receipt of permit applications sent by regular U.S. mail to cover costs of duplication and mailing. Subscription fees for a maximum term of up to six months duration are as follows:

1. \$10.00 per designated section, township and range;
2. \$50.00 per designated county; or
3. \$5.00 per designated application.

(b) Duplication costs equal to those allowable for producing copies of public records pursuant to Section 119.07, F.S., and actual postage costs shall be assessed against the subscription fee until the pre-paid fee is exhausted. Persons who have pre-paid the subscription fee will be notified when their subscription fee balance has been exhausted, and no further notices will be sent until additional subscription fees are paid pursuant to this subsection. Persons having pre-paid subscription fees remaining at the expiration or cancellation of a subscription term may request that the fees be refunded or applied toward another subscription or subscription term.

Specific Authority 373.044, 373.113, 373.118 FS. Law Implemented 120.60(4), 373.116, 373.118, 373.229, 373.413 FS. History—New 10-1-84, Amended 5-10-88, 12-22-94, 10-19-95, 3-31-96, 12-16-97, 7-2-98, 7-22-99, 11-8-00, 9-26-02, 12-24-07, 4-7-08, _____.

40D-1.1010 Point of Entry into Proceedings.

(1) For all District permitting decisions under Part II and Part IV of Chapter 373, F.S., and decisions on petitions for formal determination of wetlands or other surface waters, the District shall require an applicant to publish, or inform an applicant that the applicant has the right to publish, written notice of a District decision in a newspaper of general circulation as set forth in Chapter 50, F.S., in the county or counties where the activity is proposed.

(2)(a) "Written notice" as set forth in Rule 28-106.111, F.A.C., means either receipt of actual written notice that the District has taken or intends to take final agency action, or publication of notice that the District has taken or intends to take final agency action. If the District's Governing Board takes action which materially differs from a written notice of the District's intended action, persons who may be substantially affected shall have an additional 21 days, or for a notice of consolidated intent an additional 14 days, from the date of receipt or publication of notice of such action to request an administrative hearing. Such requests for an administrative hearing shall only address those aspects of the agency action which differ from the proposed agency action.

(b) Receipt of written notice of a District decision shall be deemed to be either the fifth day after the date on which the written notice is deposited in the United States mail if actual notice is mailed, the date that the notice is sent if actual notice

is issued by electronic mail, or the date that notice is published if actual notice is not issued mailed to the persons who may be substantially affected. If the date of publication of a notice of District decision precedes the date that actual notice is received, the applicable 21-day or 14-day period in which to request an administrative hearing will be determined from the date that notice of District decision was published.

(3) When publication is made or of the written notice is issued of a District decision on a permitting matter, the notice shall contain as a minimum;

(a) through (b) No change.

(c) Statement of the District’s intended action and basis for the issuance or denial except when issuance is a ministerial act;

(d) No change.

(e) Notification of administrative hearing opportunity or right to judicial review, the procedures which must be followed and applicable time limits; and

(f) No change.

(4) When an ~~permit~~ applicant publishes written notice of a District decision, the applicant shall provide an affidavit of publication to the District within 14 days of publication.

(5) For notices of agency action on a consolidated application for an Environmental Resource Permit and Use of Sovereignty Submerged Lands concurrently reviewed by the District pursuant to Section 373.427, F.S., any petition for an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., must be filed within 14 days of receipt of written notice of consolidated intent to issue or deny a permit.

(6) Applicants for individual permits and all other applicants required to publish notice of application receipt pursuant to Rule 40D-1.603, F.A.C., shall be required to publish at their expense written notice of a District decision on the application. The applicant shall cause the notice to be published as soon as possible after notification by the District of its intended action.

Specific Authority 120.54(5), 373.044, 373.113 FS. Law Implemented 120.54(5), 120.60, 253.115, 373.216, 373.219, 373.308, 373.309, 373.323, 373.413, 373.4136, 373.414, 373.416, 373.418, 373.421, 373.426, 373.427 FS. History–New 7-2-98, Amended _____.

40D-1.1024 Processing Procedures for Noticed General Permits Under Chapter 40D-400, F.A.C.

(1) through (2) No change.

(3) When the applicant is an entity with the power of eminent domain that does not have current ownership or control of the entire project area described in the application, within three days of District receipt of an application the applicant at the applicant’s expense ~~District~~ shall mail to the property owner(s) identified in the application a written notice of District receipt of the application in accordance with Rule subsection 40D-1.603(2), F.A.C. The owners of property, not

owned by the applicant, identified in the application shall be those identified in the County Property Appraiser’s records within 30 days prior to the filing of the application.

(4) If the District determines that the system does not qualify for a noticed general permit, the District shall so notify the applicant by issuing mailing a notification within 30 days of receiving the application. For the purposes of this subsection, issuance mailing shall be deemed to occur either when the notice is properly addressed, stamped, and deposited in the United States mail, in which case ~~and~~ the postmark date shall be the date of issuance mailing, or the date the notice is sent by electronic mail. When the District notifies the applicant that the system does not qualify for a noticed general permit due to an error or omission in the original application to the District, the applicant shall have 60 days from the date of the notification to amend the application and submit additional information to correct such error or omission. If the applicant amends the application and submits additional information correcting the error or omission within the 60-day time limit, no additional application fee will be required for the noticed general permit. If the District does not issue mail the notice informing the applicant that the system does not qualify for a noticed general permit within 30 days of receipt of the original application, or amended application if an amended application is submitted, the applicant may conduct the activity authorized by the noticed general permit.

(5) through (8) No change.

Specific Authority 120.54(5), 373.044, 373.113, 373.118, 373.414 FS. Law Implemented 120.54(5), 373.118, 373.413, 373.414, 373.416, 373.426 FS. History–New 10-3-95, Amended 12-23-97, Formerly 40D-400.211, Amended 7-2-98, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Martha A. Moore, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Southwest Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 29, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 14, 2008

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE NOS.:	RULE TITLES:
40D-2.091	Publications Incorporated by Reference
40D-2.101	Content of Application

PURPOSE AND EFFECT: This rulemaking is part of a package of rule amendments to revise District procedures for providing notice of receipt of applications for water use

permits and environmental resource permits and notice of agency action concerning such permit applications. The effect of the amendments proposed for Rules 40D-2.091 and 40D-2.101, F.A.C., will be to eliminate the requirement for water use permit applicants to submit with their applications the names and addresses of property owners located within specified distances of the proposed water use. A corresponding change is being made to the District's Water Use Permit Information Manual Part B, Basis of Review, Section 1.7.

SUMMARY: District rules concerning permit application noticing and agency action noticing have remained largely unchanged since their inception in the 1980's. Current noticing rules do not reflect technological advances in disseminating information to the public, such as the internet and electronic mail. Special noticing practices have also evolved over the years, which are not required by statute and which can now be accomplished more efficiently through the District's website. The District is proposing amendments to several rules to revise and update the District's noticing procedures. Section 1.7 of the District's Water Use Permit Information Manual Part B, Basis of Review (BOR) and Rule 40D-2.101, F.A.C., are amended to eliminate the requirement for water use permit applicants to submit the names and addresses of property owners located within certain distances of the proposed water use. BOR section 1.7 is also amended to reflect changes being made in Rule 40D-1.603, F.A.C., concerning notices of applications received by the District and notices of agency action on such applications. Rule 40D-2.091, F.A.C., is amended to incorporate by reference the revised BOR.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.118, 373.171 FS.

LAW IMPLEMENTED: 373.036, 373.0361, 373.042, 373.0421, 373.0831, 373.116, 373.117, 373.118, 373.149, 373.171, 373.1963, 373.216, 373.219, 373.223, 373.229, 373.239, 373.243 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Martha A. Moore, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

THE FULL TEXT OF THE PROPOSED RULES IS:

40D-2.091 Publications Incorporated by Reference.

The following publications are hereby incorporated by reference into this Chapter, and are available from the District upon request:

(1) Water Use Permit Information Manual Part B, "Basis of Review" (_____) (~~5/08~~) and Part D, "Requirements for the Estimation of Permanent and Temporal Service Area Populations in the Southern Water Use Caution Area" (1/07);

(2) through (5) No change.

Specific Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.036, 373.0361, 373.042, 373.0421, 373.0831, 373.116, 373.117, 373.118, 373.149, 373.171, 373.1963, 373.216, 373.219, 373.223, 373.229, 373.239, 373.243 FS. History—New 10-1-89, Amended 11-15-90, 2-10-93, 3-30-93, 7-29-93, 4-11-94, 7-15-98, 7-28-98, 7-22-99, 12-2-99, 8-3-00, 9-3-00, 4-18-01, 4-14-02, 9-26-02, 1-1-03, 2-1-05, 10-19-05, 1-1-07, 8-23-07, 10-1-07, 10-22-07, 11-25-07, 12-24-07, 2-13-08, 2-18-08, 4-7-08, 5-12-08, _____.

40D-2.101 Content of Application.

In order to obtain a Water Use Permit, an applicant shall file with the District the appropriate form entitled "Water Use Permit Application" including the appropriate supplemental forms. The Application shall include the following information:

(1) through (2) No change.

~~(3) All applications shall include a list of the names and mailing addresses of all owners of real property, as taken from the latest tax rolls, together with the names and addresses of any new owners not yet placed upon the tax rolls but of which the Applicant has actual knowledge, whose property is located within the distances prescribed below, which shall be attached to and become a part of the permit application:~~

~~(a) If the application is for a withdrawal from a lake or other impoundment, as defined in Rule 40D-1.102, F.A.C., having a water surface of 80 acres or less, all riparian owners of lands adjoining such lake or other impoundment shall be included. If such water surface is in excess of 80 acres, all riparian owners along the shoreline, extending for 660 feet in each direction from the points where the lateral boundaries of the Applicant's property intersects the shoreline, shall be included.~~

~~(b) If the application is for a withdrawal from a stream or other watercourse, as defined in Rule 40D-1.102, F.A.C., and the withdrawal is for not more than five million gallons during a single day (5 MGD), all riparian owners of lands within 660 feet upstream and within 1,320 feet downstream from the points where the extreme lateral boundaries of the Applicant's property intersects with the shoreline, shall be included; if such withdrawal is for more than five million gallons during a single day (5 MGD), all such owners of lands within 1,320 feet upstream and within 2,640 feet downstream from such points shall be included.~~

(e) If the application is for a withdrawal from a well or mining pit, unless the mining pit will be reclaimed for the withdrawal terminated within two years of initiation, all owners of property within the distances prescribed below as measured from the well or mining pit, or at the option of the Applicant, all owners of property contiguous with or within the distances prescribed of the boundaries of the Applicant's property, shall be included:

Withdrawal amounts	Distance from well or mine pit	Distance from property boundary
1. If the withdrawal during any single day is to exceed 1,000,000 gallons but not more than 5,000,000 gallons or	660 feet	100 feet
If the withdrawal is to exceed 100,000 gallons average per day on an annual basis but not more than 500,000 gallons average		
2. If the withdrawal during any single day is to exceed 5,000,000 gallons but not more than 10,000,000 gallons or	1,320 feet	200 feet
If the withdrawal is to exceed 500,000 gallons average per day on an annual basis but not more than 1,000,000 gallons		
3. If the withdrawal during any single day is to exceed 10,000,000 gallons or	2,640 feet	400 feet
If the withdrawal is to exceed 1,000,000 gallons average per day on an annual basis		

(4) When there is potential for significant impacts outside the area specified in subsection (3), the District shall require a supplemental listing of owners to encompass a larger area than specified in subsection (3).

(5) When the area specified in subsection (3) is larger than the area predicted to be impacted by the proposed withdrawal, the District, upon specific request of an Applicant, shall modify the provisions of subsection (3).

(6) through (7) renumbered (3) through (4) No change.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.216, 373.229 FS. History—Readopted 10-5-74, Amended 10-24-76, 1-6-82, 2-14-82. Formerly 16J-2.06. Amended 10-1-89, 10-23-89, 2-10-93, 7-15-99, 1-1-03, 1-1-07, 11-25-07, _____.

WATER USE PERMITTING INFORMATION MANUAL
PART B

BASIS OF REVIEW

1.0 PERMITTING PROCEDURES

1.7 POTENTIALLY AFFECTED PARTIES

Upon receipt of an individual a permit application, the District will require the applicant to publish notice in a newspaper of general circulation in accordance with Rule 40D-1.603, F.A.C. near the location of the proposed withdrawal. Upon receipt of a general permit application, the District will post notice of receipt of the application pursuant to subsection 40D-1.603(2), F.A.C. The District will also provide a copy of such notice of receipt of a water use permit application to any applicable county or city government from which boundaries the withdrawal is proposed to be made. At the option of the applicable county or city government, the District will provide the notice via regular mail or electronic mail. The notice to the applicable county or city government will include information, when applicable, that the application is for a relocation or is a competing application competition pursuant to Section 373.233, F.S. Interested persons may request to be provided notice of agency action on a permit application.

Permit Applicants must submit a list of names and addresses of property owners that may be affected by the proposed withdrawals as indicated on the application form, and required by subsection 40D-2.101(3), F.A.C.

The District will provide a Notice of Agency Action on each permit to potentially affected property owners as determined pursuant to subsection 40D-2.101(3), F.A.C., and those interested persons who have requested to be notified of agency action pursuant to subsection 40D-1.603(5), F.A.C., as well as the permit applicant. Affected persons may request a hearing on the agency action within 21 days of receipt of the notice in accordance with Chapter 120, F.S., and Chapter 28-106, F.A.C., and Rule 40D-1.1010, F.A.C. Amended 1-1-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Martha A. Moore, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Southwest Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 29, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 14, 2008

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE NOS.:	RULE TITLES:
40D-2.091	Publications Incorporated by Reference
40D-2.381	Standard Permit Conditions
40D-2.401	Identification Tags

PURPOSE AND EFFECT: The District proposes to amend Rules 40D-2.381 and 40D-2.401, F.A.C., and Section 6.1 of the District’s Water Use Permit Information Manual Part B, Basis of Review (BOR) concerning the requirement to attach identification tags to all wells from which water is withdrawn under a District-issued Water Use Permit. The effect will be to limit the requirement for a well tag to those wells or other withdrawal facilities that are required to be metered or for which withdrawal quantities are required to be reported to the District. Rule 40D-2.091, F.A.C., is amended to adopt by reference the revised BOR Section 6.1.

SUMMARY: The District currently requires that, for each withdrawal facility or well used to withdraw water under a water use permit issued by the District, a permanent identification tag must be affixed to the withdrawal facility or well, regardless of the quantities authorized or whether the amounts withdrawn from the facility are reported to the District. Well identification tags serve as a compliance mechanism to ensure that water use permittees are using facilities authorized by the permit, and District staff conducts site visits to confirm that each well tag has been affixed to the proper facility. Staff has determined that it is no longer cost effective to require well tags or conduct compliance site visits if the quantities being withdrawn from a well are not required to be reported to the District or the withdrawal facility is not required to be metered. The proposed amendment will limit the requirement to affix identification tags to only those facilities that are required to be metered or for which withdrawal quantities must be reported to the District.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.118, 373.149, 373.171, 373.216, 373.249, F.S.

LAW IMPLEMENTED: 373.036, 373.0361, 373.042, 373.0421, 373.0831, 373.116, 373.117, 373.118, 373.149, 373.171, 373.1963, 373.216, 373.219, 373.223, 373.224, 373.226, 373.229, 373.239, 373.243, 373.244 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Martha A. Moore, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

THE FULL TEXT OF THE PROPOSED RULES IS:

40D-2.091 Publications Incorporated by Reference. The following publications are hereby incorporated by reference into this Chapter, and are available from the District upon request:

- (1) Water Use Permit Information Manual Part B, “Basis of Review” (_____) (~~5/08~~) and Part D, “Requirements for the Estimation of Permanent and Temporal Service Area Populations in the Southern Water Use Caution Area” (1/07);
- (2) through (5) No change.

Specific Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.036, 373.0361, 373.042, 373.0421, 373.0831, 373.116, 373.117, 373.118, 373.149, 373.171, 373.1963, 373.216, 373.219, 373.223, 373.229, 373.239, 373.243 FS. History—New 10-1-89, Amended 11-15-90, 2-10-93, 3-30-93, 7-29-93, 4-11-94, 7-15-98, 7-28-98, 7-22-99, 12-2-99, 8-3-00, 9-3-00, 4-18-01, 4-14-02, 9-26-02, 1-1-03, 2-1-05, 10-19-05, 1-1-07, 8-23-07, 10-1-07, 10-22-07, 11-25-07, 12-24-07, 2-13-08, 2-18-08, 4-7-08, 5-12-08, _____.

**WATER USE PERMIT INFORMATION MANUAL
PART B, BASIS OF REVIEW
CHAPTER 6.0 PERMIT CONDITIONS**

6.1 STANDARD PERMIT CONDITIONS

The following conditions are placed on all Water Use Permits:

- 1. through 14. No change.
- 15. A District identification tag shall be prominently displayed at each withdrawal point that is required by the District to be metered or for which withdrawal quantities are required to be reported to the District, by permanently affixing the tag to the withdrawal facility.
- 16. through 19. No change.
- New 1-1-03, Amended 1-1-07, _____.
- 40D-2.381 Standard Permit Conditions.
 - (1) through (2) No change.
 - (3) Every permit acquired under this Chapter shall include the following standard conditions which impose certain limitations on the permitted water withdrawal:
 - (a) through (n) No change.
 - (o) A District identification tag shall be prominently displayed at each withdrawal point that is required by the District to be metered or for which withdrawal quantities are required to be reported to the District, by permanently affixing the tag to the withdrawal facility.
 - (p) through (r) No change.
 - (4) No change.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.219, 373.223, 373.244 FS. History—New 6-7-78, Amended 9-9-80, 10-21-80, Formerly 16J-2.112, Amended 10-1-89, 2-10-93, 5-2-93, 4-14-02, 1-1-03, 10-19-05,_____.

40D-2.401 Identification Tags.

(1) When a Water Use Permit is issued, the Governing Board will issue a permanent tag bearing a use identification number for each withdrawal facility that is required by the District to be metered or for which withdrawal quantities are required to be reported to the District, which tag shall be prominently displayed at the site of withdrawal by permanently affixing such tag to the pump, headgate, valve, or other withdrawal facility. If the Water Use Permit covers several facilities, such as a well field, a tag will be issued for each facility.

(2) Failure to display a permit tag as prescribed herein shall constitute a violation of these rules and may be grounds for suspension or revocation of the permit. The permittee shall be allowed 10 days after notice to obtain a replacement tag. Upon failure of the permittee to display such tag within 10 days, the Governing Board may cause the replacement of such tag and charge the permittee one hundred dollars (\$100) for such service.

Specific Authority 373.044, 373.113, 373.149, 373.171, 373.216, 373.249 FS. Law Implemented 373.219, 373.223, 373.224, 373.226 FS. History—Readopted 10-5-74, Formerly 16J-2.05, Amended 10-1-89,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Martha A. Moore, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Southwest Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 29, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 16, 2008

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE NOS.: RULE TITLES:

40D-4.041 Permits Required

40D-4.101 Content of Application

PURPOSE AND EFFECT: This rulemaking is part of a package of rule amendments to revise and update the District’s permit application noticing and agency action noticing procedures. The purpose of amendments proposed for Rules 40D-4.041 and 40D-4.101, F.A.C., is to describe more accurately the procedures that are in use for reviewing Environmental Resource Permit (ERP) applications. The effect will be to reference Rule 40D-1.603, F.A.C., as being

applicable in the review of ERP applications seeking a proprietary authorization for activities located on sovereignty submerged lands and to correctly list who is invited to comment on ERP applications involving wetlands or other surface waters.

SUMMARY: District rules for permit application noticing and agency action noticing have remained largely unchanged since their inception in the 1980’s. The District is proposing amendments to Chapters 40D-1, 40D-2, 40D-4 and 40D-40, F.A.C., to revise and update the District’s noticing procedures. Rule 40D-4.041, F.A.C., is amended to add Rule 40D-1.603, F.A.C., to the list of rules applicable to the review of individual ERP applications that involve a proprietary authorization for activities located on sovereignty submerged lands. Rule 40D-4.101, F.A.C., is revised to list correctly the agencies that the District provides notice to and requests comments from when reviewing an individual ERP application involving activities located in, on, or over wetlands or other surface waters.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.118, 373.149, 373.171 FS.

LAW IMPLEMENTED: 373.042, 373.413, 373.416, 373.426, 373.427 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Martha A. Moore, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

THE FULL TEXT OF THE PROPOSED RULES IS:

40D-4.041 Permits Required.

(1) through (4) No change.

(5) A proprietary authorization is required by Chapters 253 and 258, F.S., for activities which are located on submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund. Such authorization shall be reviewed by the District for activities which also require an Environmental Resource Permit or exemption under Chapters 40D-4, 40D-40, and 40D-400, F.A.C., or a permit under subsections 373.414(11)-(16), F.S., under Section 373.427, F.S., Chapters 18-20 and 18-21, F.A.C., and Rules 62-312.065, ~~and 62-343.075,~~ and 40D-1.603, F.A.C.

(6) No change.

Specific Authority 373.044, 373.113, 373.118, 373.149, 373.171 FS. Law Implemented ~~373.042~~, 373.413, 373.416, 373.426, 373.427 FS. History—Readopted 10-5-74, Amended 12-31-74, 9-4-77, 6-7-78, Formerly 16J-4.04, 16J-4.10(1), (2), (4), Amended 10-1-84, 3-1-88, 10-3-95, 7-23-96, 10-16-96, 4-17-97, 10-11-01, 7-16-02, 9-26-02, 3-26-03, 1-8-08, _____.

40D-4.101 Content of Application.

(1) through (2) No change.

(3) Notwithstanding the provisions of subsection (2), persons authorized by entities with the power of eminent domain may sign the application in lieu of the owner when applying on behalf of the entity and notice to the property owner(s) is provided pursuant to subsection 40D-1.603~~(8)~~~~(7)~~, F.A.C.

(4) through (5) No change.

(6) If the application involves activities located in, on, or over wetlands or other surface waters the District shall forward a copy of the notice of application to and request comments from:

(a) The Florida Fish and Wildlife Conservation Commission; and

(b) The Florida Department of State, Division of Historical Resources; ~~and~~

~~(c) The person who has requested a copy of the specific application that is under review.~~

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.413 FS. History—Readopted 10-5-74, Amended 12-31-74, 6-7-78, Formerly 16J-4.06(1), (2), Amended 10-1-84, 3-1-88, 10-3-95, 10-16-96, 12-16-97, 2-27-03, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Martha A. Moore, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Southwest Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 29, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 14, 2008

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE NOS.:	RULE TITLES:
40D-40.040	General Environmental Resource Permits
40D-40.112	Content of Application for General Permits

PURPOSE AND EFFECT: This rulemaking is part of a package of rule amendments to revise and update the District’s permit application noticing and agency action noticing procedures. The purpose of amendments proposed for Rules

40D-40.040 and 40D-40.112, F.A.C., is to describe more accurately the procedures that are in use for reviewing Environmental Resource Permit (ERP) applications. The effect will be to reference Rule 40D-1.603, F.A.C., as being applicable in the review of general ERP applications seeking a proprietary authorization for activities located on sovereignty submerged lands and to correctly list who is invited to comment on general ERP applications involving wetlands or other surface waters.

SUMMARY: District rules for permit application noticing and agency action noticing have remained largely unchanged since their inception in the 1980’s. The District is proposing amendments to Chapters 40D-1, 40D-2, 40D-4 and 40D-40, F.A.C., to revise and update the District’s noticing procedures. Rule 40D-40.040, F.A.C., is amended to add Rule 40D-1.603, F.A.C., to the list of rules applicable to the review of general ERP applications involving a proprietary authorization for activities located on sovereignty submerged lands. Rule 40D-40.112, F.A.C., is revised to list correctly the agencies that the District provides notice to and requests comments from when reviewing a general ERP application involving activities located in, on, or over wetlands or other surface waters.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.118, 373.421(2) FS.

LAW IMPLEMENTED: 373.413, 373.414, 373.416, 373.419, 373.427 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Martha A. Moore, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

THE FULL TEXT OF THE PROPOSED RULES IS:

40D-40.040 General Environmental Resource Permits.

(1) through (3) No change.

(4) An activity which requires both a general environmental resource permit or a permit under subsections 373.414(11)-(16), F.S., and a proprietary authorization under Chapter 253 or 258, F.S., shall be subject to the requirements and procedures in Section 373.427, F.S., Chapters 18-20 and 18-21, F.A.C., and Rules 62-312.065, ~~and~~ 62-343.075, and 40D-1.603, F.A.C.

Specific Authority 373.044, 373.113, 373.118, 373.421(2) FS. Law Implemented 373.413, 373.414, 373.416, 373.419, 373.427 FS. History–New 10-3-95, Amended 7-23-96, 10-16-96, 7-2-98, 9-26-02,_____.

40D-40.112 Content of Application for General Permits.
(1) through (4) No change.

(5) If the application involves activities located in, on, or over wetlands or other surface waters, as delineated by the methodology authorized in subsection 373.421(1), F.S., the District shall forward a copy of notice of the application to and request comments from:

(a) The Florida Fish and Wildlife Conservation Commission; and

(b) The Florida Department of State, Division of Historical Resources;

~~(c) Any person who has requested a copy of the specific application that is under review; and~~

~~(d) The Department of Environmental Protection, if the proposed activities have a potential to impact marine listed species.~~

Specific Authority 373.044, 373.113, 373.118 FS. Law Implemented 373.413, 373.414, 373.416, 373.419 FS. History–New 10-1-84, Amended 3-1-88, 10-3-95, 7-23-96, 10-16-96, 9-26-02, 2-19-04,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Martha A. Moore, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Southwest Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 29, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 14, 2008

DEPARTMENT OF ELDER AFFAIRS

Federal Aging Programs

RULE NOS.:	RULE TITLES:
58A-1.001	Definitions
58A-1.002	Department Duties Under the Older Americans Act
58A-1.003	Department Assistance to the Advisory Council
58A-1.004	Responsibilities of the Department of Elder Affairs as the State Unit on Aging
58A-1.005	Designation of Area Agencies on Aging
58A-1.0051	Procedures for Rescinding Designation of an Area Agency on Aging

58A-1.006	The Area Agency on Aging’s Area Plan
58A-1.007	Area Agency on Aging Functions and Responsibilities
58A-1.008	Service Providers Under the Area Plan
58A-1.009	Confidentiality, Disclosure of Information, and Retention of Records
58A-1.010	Program Forms

PURPOSE AND EFFECT: The purpose of the proposed rule amendments is to update Rule Chapter 58A-1, F.A.C., to reflect current federal and state statutory language, policies, and procedures; to update program forms; to add a new rule for procedures for rescinding designation of an area agency on aging; and to delete references to the Department of Elder Affairs Programs and Services Manual, July 1994 and revised November 1994, which is incorporated by reference in this rule chapter.

SUMMARY: These rule amendments include definitions used in this rule chapter; departmental duties required under the federal aging programs; assistance provided to the department’s Advisory Council; responsibilities of the department as the state agency on aging; designation of area agencies on aging; rescinding designation of an area agency on aging; area plans; area agencies on aging functions and responsibilities; service provider eligibility and application process; confidentiality, disclosure of information and record retention procedures; and program forms.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 430.08 FS.

LAW IMPLEMENTED: 20.41, 430.03, 430.04, 430.05, 430.101, 430.105 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: June 18, 2008, 9:30 a.m. – 11:00 a.m. EST.
PLACE: Department of Elder Affairs, 4040 Esplanade Way, Conference Room 225 F, Tallahassee, FL 32399-7000

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Jim Crochet, Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, FL 32399-7000; Telephone number (850)414-2000; Email address: crocethj@elderaffairs.org. A copy of the proposed rule amendments and forms incorporated by reference in the rules

are available on the department Web site at <http://elderaffairs.state.fl.us/> under the heading DOEA Rulemaking, Administration of the Older Americans Act.

THE FULL TEXT OF THE PROPOSED RULES IS:

58A-1.001 Definitions.

The following terms are defined in this rule:

~~(1) ADULT DAY CARE is a program of therapeutic social and health activities and services provided to adults who have functional impairments, in a protective environment that provides as noninstitutional an environment as possible.~~

~~(2) ADVOCACY or Representation is action taken on behalf of an older person to secure his or her rights or benefits. It includes receiving, investigating and working to resolve disputes or complaints informally. Advocacy or Representation within these rules does not pertain to services provided by an attorney or person under the supervision of an attorney.~~

~~(1)(3) AREA AGENCY ON AGING: means An agency designated by the department to develop and administer an Area Plan for a comprehensive and coordinated service system for older persons in a Planning and Service Area (PSA). The aArea aAgency on aAging may also be referred to as an aArea aAgency.~~

~~(2) CONTRACTING AGENCY: An area agency on aging, a lead agency, or any other agency or entity that enters into a contract to provide program administration or program services with a contractor.~~

~~(3) CONTRACTOR: The department, area agency on aging, lead agency or any other entity that initiates a contract with a contracting agency.~~

~~(4) AREA PLAN means the document submitted by an Area Agency on Aging to the Department of Elder Affairs in order to receive subgrants or contracts under the Older Americans Act. The Plan details the manner in which the Area Agency on Aging will furnish a comprehensive and coordinated system of services for older persons throughout the planning and service area.~~

~~(5) CASE MANAGEMENT is a client centered series of activities which includes planning, arrangement for, coordination of community-based services for an eligible client. Case Management is a service which may be delivered in the absence of other services. Case Management activities include intake and referral, comprehensive assessment and reassessment, development of a care plan with planned client outcomes, assistance in helping clients to obtain community resources, follow-up contacts for the purpose of monitoring client progress to assure effective delivery of services, and travel time related to the client's case.~~

~~(6) CHORE is performance of house or yard tasks including such jobs as seasonal cleaning, essential errands, yard work, lifting and moving, simple household repairs, pest~~

~~control, and household maintenance for eligible persons who are unable to do these tasks for themselves because of frailty or other disabling conditions.~~

~~(7) COMPANIONSHIP is visiting a client who is socially or geographically isolated, for the purpose of relieving loneliness and providing continuing social contact with the community by casual conversation, providing assistance with reading, writing letters, or entertaining games.~~

~~(8) CONGREGATE MEALS means a meal provided to an eligible client or other eligible participant, at a congregate meal site which:~~

~~(a) Complies with the Dietary Guidelines for Americans (published by the Secretaries of the Department of Health and Human Services and the United States Department of Agriculture); and,~~

~~(b) Provides a minimum of thirty three and one third percent of the daily Recommended Dietary Allowances (RDA, Food and Nutrition Board of the National Academy of Sciences).~~

~~(9) COUNSELING uses the casework mode of relating to a client (via interview, discussion or lending a sympathetic ear) to advise and enable the older person or his or her family to resolve problems (concrete or emotional) or to relieve temporary stresses encountered by them. This shall either be done on a one-to-one basis or a group basis and shall be conducted by paid, donated, or volunteer staff.~~

~~(a) Counseling includes assisting older individuals with permanency planning for adult children with disabilities.~~

~~(b) Gerontological Counseling provides emotional support, information and guidance through a variety of modalities including mutual support groups for older adults who are having mental, emotional or social adjustment problems that have arisen as a result of the process of aging. Gerontological Counseling can also be conducted on a one-on-one basis.~~

~~(c) Pre-retirement counseling and post-retirement assistance is included.~~

~~(d) Social Services Counseling provides linkages to other services which might be beneficial to an individual client or a group of clients. Social Service Counseling includes referral and follow-up to all manner of social and health services.~~

~~(10) DEPARTMENT means the Department of Elder Affairs established by Section 20.41, F.S., and encompasses responsibilities for all federal aging programs pursuant to ch. 91-115, Laws of Florida.~~

~~(11) DISCOUNT is a reduction made on goods or services from a regular or list price.~~

~~(12) DISEASE INFORMATION is providing information to individuals, families, caregivers, and the general public about chronic conditions and diseases; what prevention measures and services are available; how to prevent the seriousness of the effects once the condition is present; treatment, rehabilitation, and coping strategies for those factors~~

which cannot change. Services include information concerning diagnosis, prevention, treatment and rehabilitation of age-related diseases and chronic disabling conditions. Osteoporosis, cardiovascular diseases, incontinence, and Alzheimer's disease and related disorders with neurological and organic brain dysfunction are examples of such conditions.

(13) ~~EDUCATION or TRAINING~~ is:

(a) ~~providing formal or informal opportunities for individuals to acquire knowledge, experience or skills. It includes individual or group events designed to increase awareness in such areas as nutrition, crime or accident prevention; promote personal enrichment, for example, through continuing education; to increase or gain skills in a specific craft, trade, job or occupation.~~

(b) ~~conducting training for individuals, professionals, and paraprofessionals in relevant fields on the identification, prevention and treatment of elder abuse, neglect and exploitation with particular focus on prevention and enhancement of self-determination and autonomy.~~

(14) ~~EMERGENCY ALERT RESPONSE~~ service means a community based electronic surveillance service system established to monitor the frail homebound elderly by means of an electronic communication link with a response center which will alert and dispatch properly qualified assistance to the client in need on a 24 hour, seven days a week basis.

(15) ~~EMPLOYMENT~~ is assisting an individual to secure paid employment. This includes part time, full time, or temporary employment.

(16) ~~ESCORT~~ is personal accompaniment of individuals to or from service providers. Escorts may also provide language interpretation to people who have hearing or speech impairments or speak a foreign language.

(17) ~~HEALTH PROMOTION~~ Programs are programs that offer individual or group sessions which assist participants to understand how their lifestyle impacts their physical and mental health and to develop personal practices that enhance their total well-being.

(18) ~~HEALTH RISK ASSESSMENT~~ is an assessment utilizing one or a combination of diagnostic tools to test older persons for certain risk factors that are known to be associated with a disease or condition. Many factors are modifiable, including diet, risk taking behaviors, coping styles, and life style choices (such as smoking and overeating), and can be measured or identified through risk appraisal questionnaires. An individual may be aware of specific risk factors, such as inadequate nutrition, which make future compromised health more likely. The Health Risk Assessment helps the individual to determine the additive nature of many factors in an individual's life. The risks are greatly increased with each additional factor an individual has. For example, someone who smokes, overeats, doesn't exercise and has a history of heart disease in the family has a greatly elevated risk of future health problems. Any of those factors which are modified can

increase the likelihood of a more positive health outcome. Modifying all of the factors above over which the individual has control, all but heredity, greatly increases the possibility of healthy aging.

(19) ~~HEALTH RISK SCREENING~~ is defined as services which utilize diagnostic tools to screen large groups of people or individuals for the presence of a particular disease or condition.

(20) ~~HEALTH SUPPORT~~ is defined as activities to assist persons to secure and utilize medical treatment as well as preventive, emergency and health maintenance services. Examples of Health Support services include obtaining appointments for treatment; locating health and medical facilities; obtaining therapy; obtaining clinic cards for clients; wellness programs, including regular or occasional health screenings to detect illness or a worsening of health conditions of older persons; physical activities, including regular exercise programs, weight control emphasis; and activities to reduce mental fatigue, stress, or boredom.

(21) ~~HOME DELIVERED MEAL~~ is a hot, cold, frozen, dried, canned, or supplemental food (with a satisfactory storage life) meal that meets a minimum of thirty-three and one-third percent of the daily Recommended Dietary Allowances (RDA, Food and Nutrition Board of the National Academy of Sciences), served in the home to a functionally impaired homebound older person.

(22) ~~HOME HEALTH AIDE~~ service is the provision of medically oriented personal health care services by a trained home health agency to an individual in the home under the supervision of a health professional.

(23) ~~HOME INJURY CONTROL~~ Services are services which are aimed at preventing or reducing the extent of damage due to a fall or other preventable injury of elders in their homes.

(24) ~~HOMEMAKER~~ service is the accomplishment of specific home management duties including housekeeping, meal planning and preparation, shopping assistance, and routine household activities by a trained homemaker.

(25) ~~HOME NURSING SERVICE.~~

(a) ~~Home nursing service is part-time or intermittent nursing care administered to an individual by a licensed practical nurse, registered nurse, or advanced registered nurse practitioner, in the individual's place of residence, pursuant to a plan of care approved by a licensed physician and in accordance with Sections 440.462(6), 400.464(5)(a), 410.0241, and Chapter 464, F.S.~~

(b) ~~The objective of home nursing services is to provide services which assist the individual in his or her efforts to maintain an optimal level of health of body and mind, to prevent the occurrence or progression of illness, to provide services that the individual would do for him or herself if able or to provide comfort to the terminally ill.~~

~~(26) HOUSING IMPROVEMENT or EMERGENCY HOME REPAIR is providing home repairs or alterations for an eligible person or assistance in obtaining needed repairs or alterations for the client's home; arranging for home improvement grants or loans; providing assistance to obtain adequate housing; securing fuel and utilities, and provision of pest exterminating services.~~

~~(27) INFORMATION is responding to an inquiry from a person, or on behalf of a person, regarding resources and available services.~~

~~(28) INTERPRETING or TRANSLATING is explaining the meaning of oral or written communication to non-English speaking or handicapped persons unable to perform the functions.~~

~~(29) LEGAL ASSISTANCE.~~

~~(a) Legal Assistance is legal advice and representation by an attorney (including counseling or assistance by a paralegal or law student under the supervision of an attorney), and includes counseling or representation by a non-lawyer when permitted by law, to older individuals with economic or social need.~~

~~(b) Legal Assistance for program delivery purposes is defined as services to assist clients to become aware of and protect their civil or legal rights through activities or direct intervention by attorneys or legal paraprofessionals.~~

~~(30) LETTER WRITING or READING is reading or writing business or personal correspondence.~~

~~(31) MATERIAL AID is aid in the form of goods or food such as the direct distribution of commodities, surplus food, the distribution of clothing, smoke detectors, eyeglasses, security devices, etc.~~

~~(32) MEDICAL THERAPEUTIC SERVICES means those corrective or rehabilitative services which are prescribed by a physician or other health care professional in accordance with Sections 400.462(6), 400.464(5)(a), 410.0241 and Chapter 464, F.S. Such services are designed to assist the functionally impaired older person to maintain or regain sufficient functional skills to live independently in his or her place of residence and include physical, occupational, respiratory, hearing disorder or speech language therapy.~~

~~(33) MEDICARE EDUCATION is defined as activities designed to inform older persons on the availability, benefits, and use of preventive health services which are available under Medicare.~~

~~(34) MEDICATION MANAGEMENT screening and education is identification and counseling regarding the medication regime that individuals are using, including prescription and over the counter medications, vitamins and home remedies. These services also help to identify any dietary factors and the effect of alcohol or tobacco which may interact with the medication regime.~~

~~(35) MENTAL HEALTH SCREENING is the provision of examination, diagnostic and treatment planning services for elders who experience acute or chronic mental or emotional problems. Included is referral to psychiatric or psychological services.~~

~~(36) MULTIPURPOSE SENIOR CENTER means a community or neighborhood facility for the organization and provision of health, social, nutritional and educational services and for recreational and group activities for older persons.~~

~~(37) NUTRITION COUNSELING provides individualized advice and guidance to individuals, who are at nutritional risk because of their nutritional history, current dietary intake, medications use or chronic illnesses, about options and methods for improving their nutritional status, provided by a registered licensed dietitian or other health professional functioning within their legal scope of practice.~~

~~(38) NUTRITION EDUCATION.~~

~~(a) CONGREGATE NUTRITION EDUCATION is a formal program of regularly scheduled presentations that promote better health by providing accurate and culturally sensitive nutrition, physical fitness, or health (as it relates to nutrition) information and instruction to participants in a group setting overseen by a dietitian or individual of comparable expertise.~~

~~(b) HOME DELIVERED NUTRITION EDUCATION or Nutrition Education for home-bound clients is a formal program that promotes better health by providing accurate and culturally sensitive nutrition, physical fitness, or health (as it relates to nutrition) information and instruction to participants or caregivers in a group or individual setting overseen by a dietitian or individual of comparable expertise.~~

~~(40) OUTREACH is defined as making active efforts to reach target group individuals, either in a community setting or in a neighborhood with large numbers of low income minority elderly, making one to one contact, identifying their service need, and encouraging their use of available resources.~~
~~(39) OLDER AMERICANS ACT means the Older Americans Act of 1965, as amended, 42 U.S. Code 3001-3058ee. The Act is the principal statutory authority for federal grants for state and local community programs for older persons and is available in the Office of the Secretary and at each Area Agency on Aging, and herein incorporated by reference.~~

~~(41) PERSONAL CARE means services to assist the functionally impaired elderly with bathing, dressing, ambulation, housekeeping, supervision, emotional security, eating and assistance with securing health care. Personal Care Services do not include medical services.~~

~~(42) PHYSICAL FITNESS PROGRAMS are programs that provide activities for people who want to improve their strength, flexibility, endurance, muscle tone, range of motion, reflexes, cardiovascular health or other aspects of physical functioning.~~

~~(43) PLACEMENT is assisting a person in obtaining a suitable place or situation such as housing or an institution such as a nursing home.~~

~~(44) PLANNING AND SERVICE AREAS (PSAs) means a Geographic areas of Florida designated by the Department (the State Unit on Aging) for purposes of planning, development, delivery and administration of services under an Area Plan. In order for a State to be eligible to participate in programs under the Older Americans Act, the State Agency shall, in accordance with Section 305(a)(1)(E) of the Older Americans Act and federal regulations 45 CFR 1321.7(b), divide the State into distinct planning & service areas or area (PSA's). The Planning and Service Areas (PSA's) and the counties they include are designated as follows over the following counties: PSA 1- Escambia, Okaloosa, Santa Rosa, Walton; PSA 2- Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, Wakulla, Washington; PSA 3- Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Putnam, Sumter, Suwannee, Union; PSA 4- Baker, Clay, Duval, Flagler, Nassau, St. Johns, Volusia; PSA 5- Pasco, Pinellas; PSA 6- Hardee, Highlands, Hillsborough, Manatee, Polk; PSA 7- Brevard, Orange, Osceola, Seminole; PSA 8- Charlotte, Collier, DeSoto, Glades, Hendry, Lee, Sarasota, the Seminole Indian Reservations; PSA 9- Indian River, Martin, Okeechobee, Palm Beach, St. Lucie; PSA 10- Broward; PSA 11- Miami-Dade, Monroe.~~

~~(45) PROGRAMS AND SERVICES MANUAL is the Department of Elder Affairs Programs and Services Manual, dated July 1994 and revised November 1994, available in the Office of the Secretary and at each Area Agency on Aging, and herein incorporated by reference.~~

~~(46) RECREATION is participation in or attendance at planned leisure events such as, games, sports, arts and crafts, theater, trips and other relaxing social activities.~~

~~(47) REFERRAL is an activity wherein information is obtained on a person's needs and the person is directed to a particular resource; contact with the resource is made for the person as needed; follow up is conducted with the referred person or resource to determine the outcome of the referral. Agencies making referrals will usually obtain intake information from the client to be used as part of the referral process.~~

~~(48) RESPITE CARE is a demand for relief or rest from the constant or continued supervision, companionship, therapeutic or personal care, of a functionally impaired older person for a specified period of time.~~

~~(49) SCREENING or Assessment is administering standard examinations, screening instruments, procedures or tests for purpose of gathering information about an applicant for services or a current client to determine need or eligibility for services.~~

~~(50) SECRETARY means the Secretary of the Department of Elder Affairs.~~

~~(51) SERVICE PROVIDER or local project means an entity that is awarded a contract from an Area Agency on Aging to provide services under an Area Plan.~~

~~(52) SHOPPING ASSISTANCE is assisting a client in getting to and from stores and in the proper selection of items. An individual Shopping Aide may assist more than one client during a shopping trip.~~

~~(53) STATE PLAN ON AGING means the document submitted by the Florida Department of Elder Affairs to the U.S. Department of Health and Human Services, Administration on Aging, to receive grants under the Older Americans Act, Commissioner on Aging of the U.S. Dept. of Health and Human Services.~~

~~(54) STATE UNIT ON AGING means the Department of Elder Affairs, designated by Section 10 of Chapter 91-115, Laws of Florida, for the administration of programs under the federal Older Americans Act.~~

~~(55) SUPERVISION is overseeing actions or behavior of a client to safeguard his rights and interest for the purpose of protection against harm to self or others.~~

~~(56) TELEPHONE REASSURANCE is communicating with designated clients by telephone on a mutually agreed schedule to determine their safety and to provide psychological reassurance, or to implement special or emergency assistance.~~

~~(57) TRANSPORTATION is travel to or from service providers or community resources.~~

Specific Authority 20.41(2), 410.016(2)(k), 430.08 FS., ch. 91-115, s. 10, Laws of Fla. Law Implemented 20.41(2), (6), 410.011, 410.016, 430.03(6) FS., ch. 91-115, Laws of Fla. History-New 12-23-81, Formerly 10A-11.01, 10A-11.001, Amended 3-28-95, _____.

58A-1.002 Department Duties Under the Older Americans Act Federal Aging Programs.

(1) The Department of Elder Affairs is designated in Sections 20.41(5), 430.03(7) and 430.04(1), F.S. Chapter 91-115, Laws of Florida, as the State Agency to administer all programs made available to Florida under the Federal Older Americans Act. The Department shall administer these programs in accordance conformity with Title 45, Chapter 13, Code of Federal Regulations and policy guidance issuances from the Administration on Aging within, Office of Human Development Services, of the U.S. Department of Health and Human Services.

(2) Federal regulations governing grants for State and Community Programs on Aging as published in the Federal Register, are applicable to all recipients of grants and contracts funded by the Older Americans Act, including the Department, Area Agencies on aging and service providers. These Florida administrative rules are intended to complement and clarify requirements, procedures and Departmental policies applicable to the Older Americans Act Program.

Specific Authority ~~20.41(2), 410.016(2)(k), 430.08 FS., ch. 91-115, s. 10, Laws of Fla. Law Implemented 20.41, 410.011, 410.016, 430.03(6), 430.04, 430.101 FS., ch. 91-115, s. 10, Laws of Fla. History—New 12-23-81, Formerly 10A-11.02, 10A-11.002, Amended 3-28-95, _____.~~

58A-1.003 Department Assistance to the Advisory Council.

(1) The ~~d~~Department must provides staff support to assist the Department of Elder Affairs Advisory Council established by Section 430.05, F.S. Members of that ~~c~~Council, entitled by law to reimbursement for travel and per diem expenses, shall submit their expense vouchers and related documentation according to Section 112.061, F.S.

(2) Staff support for the council and by the Department ~~will be furnished through the Office of the Secretary.~~ Members of the ~~d~~Department are prohibited from imposing any control, direction, or supervision upon the ~~c~~Council ~~any control, direction, or supervision.~~

Specific Authority ~~20.41(2), 410.016(2)(k), 430.08 FS., ch. 91-115, s. 10, Laws of Fla. Law Implemented 410.016(2)(d), (e), (i), 20.19(3), 430.05 FS., ch. 91-115, s. 10, Laws of Fla. History—New 12-23-81, Formerly 10A-11.03, 10A-11.003, Amended 3-28-95, _____.~~

58A-1.004 Responsibilities of the Department of Elder Affairs as the State Unit Agency on Aging.

(1) The Department of Elder Affairs is the State Unit Agency on Aging. The ~~d~~Department has authority and responsibility to plan, develop, and administer policy on programs for older persons and to provide a visible focal point for advocacy, coordination, priority setting, monitoring and evaluation of programs for older persons within the ~~s~~State. To fulfill its responsibilities, the ~~d~~Department shall:

(a) Develop a ~~s~~State ~~p~~Plan as required in Section 305 of the Older Americans Act;

(b) Administer the ~~s~~State plan within the state;

(c) Review and comment on all ~~s~~State ~~p~~Plans, budgets, and policies which affect older persons;

(d) Conduct public hearings on the needs of older persons; in order to receive information and maximize visibility of important issues;

(e) Provide adequate and effective opportunities for older persons, who are recipients of supportive or nutrition services or who use multipurpose senior centers, to express their views on policy development and program implementation under the ~~s~~State ~~p~~Plan on aAging;

(f) Evaluate, with the assistance of the AAAs, the need for social and nutrition services for older persons and determine the extent to which other public and private programs meet those needs ~~With the assistance of the Area Agencies on Aging, evaluate the need for social and nutrition services for older persons in the State, and determine the extent to which other public and private programs meet those needs;~~

(g) Ensure, in conjunction with the AAAs, preference is given to older persons with greatest economic or social need, with particular emphasis on low income minorities in the delivery of service ~~In conjunction with Area Agencies on Aging and service providers, give preference to older persons with greatest economic or social need, with particular emphasis on low income minorities, in the delivery of services;~~

(h) Render, in conjunction with the AAAs, technical assistance to contractors and volunteers ~~In cooperation with Area Agencies, render technical assistance to contractors and volunteers;~~

(i) Advise the Governor, and key designated legislators, regarding the need for and location of programs related to aging, as stipulated in Section 430.04, F.S.;

(j) ~~In consultation with the Area Agencies on Aging,~~ Develop, in consultation with the AAAs, and publish for review and comment, a formula for funds distribution which addresses those most in need of services and submit such formula to the Administration on Aging for approval;

(k) Require outreach efforts;

(l) Set specific objectives for each planning and service area for providing services funded under this title to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas;

(m) Undertake specific program development, advocacy, and outreach efforts focused on the needs of low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas; and

(n) Provide a description of the efforts described above in paragraphs (d), (e), and (f) of this subsection that will be undertaken by the ~~s~~State agency.

(2) The department is responsible for dividing ~~Divide~~ the state into planning and service areas (PSAs).

(3) The ~~d~~Department is responsible for the designation of the ~~a~~Area ~~a~~Agency on ~~a~~Aging for each PSA in accordance with Title III, Section 305(~~E~~) of the Older Americans Act. ~~The Department shall establish and follow procedures to provide due process to affected parties, if the State agency initiates an action or proceeding to revoke the designation of an area agency on aging, designate an additional planning and service area, divide the State into different planning and service areas; or otherwise affect the boundaries of the planning and service areas in the state.~~

(4) The ~~d~~Department must will develop, promulgate and revise, as necessary, a uniform format for the ~~a~~Area ~~a~~Agency on ~~a~~Aging's Multi Year ~~a~~Area ~~p~~Plan as prescribed in its contract with the AAA. The Plan will cover four years, with required annual updates. In conjunction with the Plan format:

(a) The Department will develop and revise the format for the Area Plan, after opportunity for comment has been provided to Area Agency on Aging staff.

~~(b) The Department will develop and revise the basic format and minimum requirements for the service provider applications, after opportunity for comment has been provided to Area Agency on Aging staff and selected service provider agencies.~~

~~(5) Staff of the Department will monitor the administration of each Area Plan. Not less than annually, Department staff will conduct a formal on-site evaluation of the performances of each Area Agency on Aging.~~

~~(5)(6) The Department must will coordinate the development of programs and services under of Titles III, V, and VII of the Older Americans Act, and establish policy, and minimum standards and procedures for those programs and services that are included them as defined in contracts between the department and the AAAs the Department of Elder Affairs Programs and Services Manual, dated July 1994 and revised November 1994, available in the Office of the Secretary and at each Area Agency on Aging, and herein incorporated by reference.~~

~~(6)(7) The Department must will ensure that supplemental funding under the Nutrition Services Incentive Program of the Older Americans Act and available U.S. Department of Agriculture food, cash or a combination of food and cash is made available to nutrition service providers funded under the area plan.~~

~~(7)(8) The Department must will coordinate the development of legal services for older individuals of the state.~~

~~(8)(9) For the purpose of acquiring programmatic and fiscal information for Federal and State data and analysis, the Department must shall establish reporting requirements for aArea aAgencies on aAging and service providers under their respective contracts with the contractor in accordance with the Department of Elder Affairs Programs and Services Manual, Chapter I-4, Program Reporting Responsibilities, dated July 1994 and revised November 1994, available in the Office of the Secretary and at each Area Agency on Aging, and herein incorporated by reference.~~

~~(10) Agencies, organizations and individuals affected by actions of the Department may seek review in accordance with the Administrative Procedures Act, Chapter 120, F.S.~~

~~Specific Authority 20.41(2), 410.016(2)(k), 430.08 FS., ch. 91-115, s. 10, Laws of Fla. Law Implemented 20.41, 410.011, 410.016, 430.03, 430.046, 430.101 FS., ch.91-115, s. 10, Laws of Fla. History-New 12-23-81, Formerly 10A-11.04, 10A-11.004, Amended 3-28-95,_____.~~

58A-1.005 Designation of Area Agencies on Aging.

(1) An aArea aAgency on aAging must will be designated in each planning and service area. Of the eligible applying entities, as defined by Section 305 of the Older Americans Act, the dDepartment shall select the the that one which demonstrates ~~to the Department that~~ by virtue of location, office, staff,

experience and community resources, it is best able to discharge the duties of an aArea aAgency on aAging established by this rule.

(2) Actual designation occurs upon acceptance of the aArea aAgency's aArea pPlan and formal execution of the associated contract.

(3) The designated aArea aAgency on aAging is responsible for administration of Older Americans Act programs in its planning and service area.

(4) In addition to the circumstances outlined in Section 430.04(2), F.S., ~~(The department State agency on aging shall rescind withdraw~~ an area agency's designation in accordance with Section 305(b)(5)(c) of the Older Americans Act as amended, whenever, after reasonable notice and opportunity for a hearing, it is determined that:

(a) An area agency does not meet the requirements of 45 CFR 1321 and Section 305 of the Older Americans Act, as amended; or

(b) An area plan including amendments is not approved by the dDepartment after reasonable opportunity to comply; or

(c) There is substantial failure in the provisions or administration of an approved plan to comply with provisions of Section 306 of the Older Americans Act of 1965, as amended in 2006, the applicable federal regulations, state statutes, or administrative rules or the contract between the department and the AAA.

~~Specific Authority 20.41(2), 410.016(2)(k), 430.08 FS., ch. 91-115, s. 10, Laws of Fla. Law Implemented 20.41, 410.016(2)(f), 430.03(6), 430.04 FS., ch.91-115, s. 10, Laws of Fla. History-New 12-23-81, Formerly 10A-11.05, 10A-11.005, Amended 3-28-95,_____.~~

58A-1.0051 Procedures for Rescinding Designation of an Area Agency on Aging.

Pursuant to Section 430.04, F.S., the department has the authority to rescind designation of an area agency on aging under specified conditions as cited in subsection 58A-1.005(4), F.A.C. The department must include these procedures in its contract with the AAA.

Specific Authority 430.08 FS. Law Implemented 430.04 FS. History-New _____.

58A-1.006 The Area Agency on Aging's Area Plan.

~~(1) Prior to preparation and submission of an area plan, AAn eligible agency or organization desiring to apply for redesignation or initial designation as an aArea aAgency on aAging must submit shall obtain an aArea pPlan to the Secretary of the Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida, 32399-7000 Format, dated March 1994, available the Office of the Secretary, and herein incorporated by reference.~~

(2) Preparation and submission of a formal aArea pPlan must will be in accordance with the prescribed aArea pPlan fFormat as determined by the requirements of the Older

Americans Act, as amended, for entities desiring initial designation or redesignation, and the contract between the department and the AAA for entities desiring redesignation the Department of Elder Affairs Programs and Services Manual dated July 1994 and revised November 1994, available in the Office of the Secretary and at each Area Agency on Aging, and herein incorporated by reference.

~~(a) Technical assistance on the Area Plan submission may be sought at any time from the Department.~~

~~(b) The submission must accurately describe required activities, essential information and include attachments and exhibits required by the Department's format. The format for the Area Plan will be contained in the Area Plan on Aging Program Module and Contract Module, dated April 1994, available in the Office of the Secretary, and herein incorporated by reference.~~

~~(c) Also required as integral to the Area Plan, is an annual update of the Program and Contract module which details annual fiscal information and the implementation schedule of programmatic objectives. The format and submission dates of the Annual Update may be revised by the Department for flexibility in annual planning.~~

~~(d) Area Agencies in their Area Plans shall incorporate procedures for fair hearings. Hearings may be requested by affected service providers in the following situations:~~

~~1. If an Area Agency proposes to deny a service provider's application to provide services under the area plan, or to terminate or not renew a contract except as provided in Federal regulations;~~

~~2. If an Area Agency proposes a reduction in the amount of funds made available to service providers.~~

~~(e) In the event a hearing is held by an Area Agency, as specified in paragraph (d) above, a copy of the findings and final report detailing the results of the hearing is to be forwarded to the Department Secretary in writing by the person who conducted the hearing within ten working days of the conclusion of the hearing. The affected party may request a review by the Department Secretary. The Department will review to assure that a fair hearing was held. Further, if the affected party does not concur with the decision of the Secretary, the appeal may be considered by and brought before the Administration on Aging for a ruling.~~

~~(f) Additional information concerning Area Plan preparation and submission will be made available by the Department upon the request of any person.~~

~~(g) Associated with the Area Plan submission but not developed by the Area Agency on Aging is a contract document prepared by the Department and formally executed between the Department and the Area Agency on Aging upon acceptance of the Area Plan. The Area Plan is incorporated in the contract by reference.~~

~~(3) The Area Plan and its associated contract is accepted by the Department for implementation after execution by the Secretary or a designee.~~

~~(4) Changes to the Area Plan are to be made based on the following:~~

~~(a) The plan shall be amended at any time under the circumstances prescribed in Federal regulations.~~

~~(b) Amendments to the area plan will be effected by submission of the Area Agency of new or revised information using the Department's format and having said amendment approved by DOEA.~~

~~(c) Amendments to an approved Area Plan must be approved in writing by the Department, prior to implementation.~~

~~(d) Minor revisions and non-substantive changes to the plan as determined by the Department may be made at any time by the Area Agency in order to keep the plan current. Examples of a minor revision are changes in telephone numbers and addresses, personnel, and administrative details not affecting the quantity or quality of services to persons assisted by the programs administered. The Area Agency shall notify the Department of minor revisions at least quarterly.~~

~~(e) Whenever a change is contemplated by the Area Agency in any cost category or individual salary as budgeted in the Area Plan for Area Agency Administration:~~

~~1. Prior written approval from the Department is required if the contemplated change would result in a change in the original approved amount greater than ten percent.~~

~~2. Notification of such change shall be included in the next monthly financial report to the Department, if the change would not result in a change in the original amount greater than ten percent.~~

~~3. Revised Area Plan pages shall be forwarded to the Department in accordance with time frames established by the Department.~~

~~(3)(5) Subject to the availability of fFederal and sState funds and budget authority, the dDepartment will contract with the aArea aAgency on aAging based on the approved submitted aArea pPlan for the Federal and State amounts indicated in the approved State Plan on Aging. Instructions for submitting payment requests and expenditure reports are contained in each contract for services executed between the Area Agency on Aging and the Department.~~

~~(6) In the event an Area Agency on Aging, after written notice of deficiency, fails to comply in a timely manner with the terms of the contract, the Department shall withhold distribution of a part of the total of contract funds designated for the Area Agency on Aging in proportion to the amount of services not furnished by the Area Agency on Aging as a result of the Area Agency on Aging delay. The Department shall promptly release any funds withheld, after corrective action has been taken or upon acceptance of a corrective action plan submitted by the Area Agency on Aging. If the Area Agency~~

on Aging desires to appeal the decision to withhold funds, it may seek review in accordance with the Administrative Procedures Act, Chapter 120, F.S.

(7) ~~Withdrawal of an Area Agency on Aging designation will be done in conformity with Federal Regulations governing the Older Americans Act program and in accordance with the Administrative Procedures Act, Chapter 120, F.S., subsection 58A 1.005(4), F.A.C. above, and the Department's Programs and Services Manual, Chapter IV 1, General Policies, Older American Act, dated July 1, 1994, available at Department headquarters and at each Area Agency on Aging, and incorporated herein by reference.~~

Specific Authority 430.08 FS. Law Implemented 20.41, 430.03, 430.04 FS. History—New 12-23-81, Formerly 10A-11.06, 10A-11.006, Amended 3-28-95, 10-30-05,_____.

58A-1.007 Area Agency on Aging Functions and Responsibilities.

(1) Within the planning and service area, an aArea aAgency on aAging must shall:

(a) Serve as an effective and visible advocate and focal point for older persons in ~~of~~ the planning and service area; and

(b) Develop and administer the area plan for a comprehensive and coordinated system of services for older persons in accordance with the requirements of its contract with the department.

(2) Each aArea aAgency on aAging must shall agree to the following responsibilities:

(a) Establish and maintain a bBoard of dDirectors and an aAdvisory cCouncil. The responsibilities, membership, frequency of meeting, by-laws and minutes of the aAdvisory cCouncil must follow the conditions as required under Section 306(a)(6)(D) of shall comply with Section 430.05, F.S., and the Older Americans Act of 1965, as amended in 2006.

(b) Establish and maintain ~~an adequate~~ staff to administer the aArea pPlan.

(c) Plan social, health, nutrition and in-home services to meet the current and projected needs of older persons in ~~of~~ the planning and service area, within the limits of available funds.

(d) Contract with service providers to assist socially or economically needy older persons, using priorities for services with special emphasis on low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency and older individuals residing in rural areas, as established ~~locally~~ by local needs assessment information.

(e) ~~Area Agencies on Aging shall~~ Hhave procedures for handling complaints from persons whose complain that services have ~~has~~ been denied, terminated or reduced ~~improperly~~ under any programs funded by the Older Americans Act. The procedures shall be developed in accordance with the area agency on aging's contract with the department ~~include at a minimum an opportunity to submit~~

~~facts and information orally or in writing to support the complaint and a written decision from the Area Agency on Aging containing the reasons for its decision. Area Agencies on Aging shall require service providers funded under the area plan to have procedures for handling such complaints. The Area Agency on Aging shall have the final decision authority regarding client complaints unless the client is alleging discrimination.~~

(f) Provide programmatic and technical assistance to service providers and monitor and assess services provided under the area plan Monitoring by the Area Agency on Aging shall determine the provider's compliance with state and federal laws and rules.

(g) Provide financial management services, technical assistance and financial monitoring of the operations of the service providers, and maintain accountability for all contracted funds awarded by ~~contract~~ by the dDepartment.

(h) No change.

(i) Accurately prepare and, ~~in a timely manner,~~ submit programmatic and fiscal reports required by dDepartmental policies in a timely manner as specified in its contract with the department.

(j) Coordinate with other programs servicing ~~for~~ older persons to ensure ~~assure~~ a comprehensive service delivery system.

(k) Ensure that mMembership of the aArea aAgency on aAging governing board is shall be composed of persons residing within the planning and service area. Each governing board shall adopt in its by-laws; specific policy concerning conflict of interest regarding board members. No conflict policy shall be less stringent than the Code of Conduct provided in ~~Part III,~~ Chapter 112, Part III, F.S., the Florida Code of Ethics for Public Officers and Employees.

(3) The Area Agency on Aging is authorized to plan and administer ~~under contract with the Department the following programs listed in this subsection~~ as established by the provisions of its contract with the department ~~Federal requirements, Florida State law, and policies of the Department of Elder Affairs, Programs and Services Manual:~~

- (a) Older Americans Act of 1965, as amended in 2006:-
- Title III B – Supportive Services and Senior Centers;
- Title III C – Nutrition Programs;
- ~~Title III D – In-home Services for Frail Older Individuals~~
- Title III DF – Disease Prevention and Health Promotion; and

Title VII – Abuse, Neglect, Exploitation, and Long Term Care Ombudsman Program, however, The department State shall directly administer programs from Title VII, Older Americans Act, Programs for Prevention of Elder Abuse, Neglect, and Exploitation; and the Outreach, Counseling, and Assistance Program. ~~Reference Older Americans Act Sections 721 and 741, F.S.~~

(b) ~~Community Care for the Elderly Program.~~

~~(e) Alzheimer's Disease Initiative.~~

~~(b)(d) Emergency Home Energy Assistance for the Elderly Program.~~

~~(e) Local Services Programs.~~

~~(c)(f) Medicaid Waiver Aged and Disabled Adults (ADA) and Assisted Living for the Elderly (ALE) pPrograms.~~

~~(d)(g) United States Department of Agriculture programs.~~

~~(e)(h) Additional federal grant programs as awarded by the federal government.~~

Specific Authority ~~20.41(2), 410.016(2)(k), 430.08 FS., ch. 91-115, s. 10, Laws of Fla. Law Implemented 20.41, 409.508(4), 410.016(2)(d), (f), (h), (i), (m), 410.401, 410.402, 410.403, 430.03(6), 430.04 FS., ch. 91-115, s. 10, Laws of Fla. History New 12-23-81, Formerly 10A-11.07, 10A-11.007, Amended 3-28-95, _____.~~

58A-1.008 Service Providers Under ~~the an~~ Area Plan.

(1) Any public or private non-profit agency or organization, incorporated under the Laws of Florida, is eligible to receive a subgrant or contract for services funded under the Older Americans Act. A regional or local agency of the state, however, is not eligible to perform as a service provider. An aArea aAgency on aAging may not provide direct services unless the department determines that this is necessary in order to ensure assure an adequate supply of a specific that service. Any proposed contract between an Area Agency on Aging and a profit making organization to provide services under an Area Plan must receive approval prior to contract execution, from the Department.

(2) Any Eligible agenciesy or organizationsu desiring to provide services apply for a contract under the aArea plan must apply to may request an application from the local aArea aAgency on aAging when after a request for proposal(s) has been issued. The Area Agency on Aging shall respond within ten working days and enclose an application. The application will contain complete instructions, forms, and specific documentation requirements to be completed by an applicant. The Area Agency shall utilize competitive bidding procedures in procurement contracts in accordance with State and Federal regulations.

(a) Applicants may apply for funding based on procedures established at the local Area Agency on Aging. Applicants proposing to provide social, health, in-home or nutrition services must provide specified information in the Service Provider Application, DOEA Form #218, dated September 1994, available in the Office of the Secretary, and herein incorporated by reference.

(b) An applicant seeking Older Americans Act funding for the purpose of acquisition, alteration, or renovation of existing facilities, including mobile units, and construction of facilities to serve as multipurpose senior centers, shall make requests to the Area Agency on Aging. The Area Agency on Aging will render technical assistance concerning procedures and required documentation.

(3) Applicants may seek technical assistance regarding the application process from the Area Agency on Aging at any time.

(a) To be considered responsive, a formal application for funding must be:

1. Signed by the senior officer of the applicant agency's governing body or designee.

2. Submitted on the Service Provider Application, DOEA Form #218, dated September 1994, available in the Office of the Secretary, and herein incorporated by reference and in accordance with the application instructions.

3. Provide an acceptable commitment for required non federal financial participation (matching requirement).

4. Contain assurances of compliance with applicable Federal Regulations.

(b) A non-responsive application shall be rejected by the Area Agency on Aging; or, at the discretion of the Area Agency on Aging an applicant may be permitted to withdraw the application and resubmit it after correction of deficiencies.

(c) The Area Agency on Aging will acknowledge receipt of an application within ten working days.

(4) The following are minimum standards to be used by the Area Agency on Aging in evaluating applications to provide services under an Area Plan. Each Area Agency on Aging may incorporate in their Area Plan additional criteria for judging applications, based upon local needs and special conditions.

(a) The applicant shall:

1. Propose social, in home, health or nutritional services in conformity with the Area Plan.

2. Include realistic program objectives which are in compliance with Department service standards as specified in contract terms.

3. Incorporate reasonable, necessary and allowable budget information in compliance with Department grants accounting standards as specified in contract terms.

4. Propose a project staff qualified by experience, education or training, including sufficient numbers of staff to assure proper and efficient programmatic and fiscal accountability.

5. Contain assurances that the project will be operated in accordance with Department standards and requirements as specified in contract terms.

(b) In the event of the receipt of applications from more than one local service provider proposing to provide essentially the same services, the Area Agency on Aging shall consider:

1. The extent of community support for the applicant,

2. The recommendations of the Area Agency on Aging's Board of Directors and Advisory Council, and

3. The prior experience of the applicant in providing social or nutrition services for older persons.

~~(c) In the event an applicant is dissatisfied with the action taken by the Area Agency on Aging, the applicant may request a hearing under procedures described in the Area Agency's Area Plan for complaints as described in paragraph 58A-1.007(2)(e), F.A.C., above.~~

~~(d) If the application is accepted for funding, the service provider will be further instructed by the Area Agency on Aging regarding establishment of project operation and start of service.~~

~~(5) Contracts between the Department, and the Area Agency on Aging, lead agency or core service providers shall follow departmental contracting and financial management procedures.~~

~~(6) Service providers funded under the Area Plan shall adopt procedures for handling complaints from persons who assert that service has been denied, terminated or reduced improperly under any programs funded by the Older Americans Act. The complaint procedure must permit at least an opportunity to present orally or in writing the reasons why the service should not be changed and that the provider will furnish to the complainant a written explanation of the nature and reasons for the provider's action.~~

~~Complaints which remain unresolved by a service provider shall be referred to the Area Agency on Aging by written report from the service provider no later than 30 days following the complainant's notice, with detailed information regarding efforts to resolve the complaint.~~

Specific Authority 430.08 FS. Law Implemented 430.03, 430.04 FS. History—New 12-23-81, Formerly 10A-11.08, 10A-11.008, Amended 3-28-95,10-30-05,_____.

58A-1.009 Confidentiality, and Disclosure of Information, and Retention of Records.

~~(1) Contracting agencies that provide services under the Older Americans Act shall collect, maintain, and exchange information about applicants applying for services and clients receiving services only to the extent it is necessary to administer the programs covered under this agreement in accordance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Information described in subsection (2) is confidential and exempt from the public records law, Section 119.07(1), F.S. It shall not be disclosed to the public in such a way as to identify the elderly person, unless written consent is provided by the elderly person or his or her guardian.~~

~~(2) The contracting agency shall retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to each agreement and/or contract for a period of at least five (5) years after termination of the agreement(s). Information about functionally impaired elderly or disabled adults, Alzheimer's disease patients, or information on individuals who receive benefits from Departmental programs~~

~~based on their relationship to eligible persons, where information is received by or through Department files, reports, inspections or in any other way, shall not be disclosed without express written permission from the impaired or disabled adult or the eligible party affected.~~

~~(a) If an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained at least until resolution of the audit findings.~~

~~(b) These records shall be subject to additional retention requirements set by law to the department within thirty (30) days after the designation is rescinded.~~

~~(3) Pursuant to Title 45 CFR, Part 92.42(e)(1) and (2), persons duly authorized by the department and federal auditors shall have full access and the right to examine or duplicate any records and documents during the stated retention period or as long as records are retained, whichever is later. This rule prohibits disclosure of information regarding the client supplied to officers and employees of the Department, to Area Agencies on Aging and their officers and employees, to persons who volunteer their services, and to persons or entities who provide service under contract with the Department, unless otherwise directed as per subsections 58A-1.009(1) and (2), F.A.C.~~

Specific Authority 20.41(2), 410.016(2)(k); 430.08 FS., ch. 91-115, s. 10, Laws of Fla. Law Implemented 20.41, 430.04, 430.0105 410.016(2)(e), 410.0295, 410.037,410.302, 410.403, 410.605, 430.05 FS., ch. 91-115, s. 10, Laws of Fla. History—New 12-23-81, Formerly 10A-11.09, 10A-11.009, Amended 3-28-95,_____.

58A-1.010 Program Forms.

The following forms shall be used for programs regulated by this chapter, These forms are hereby incorporated by reference, and are available from the Department of Elder Affairs, 4040 Esplanade Avenue, Tallahassee, Florida, 32399-7000, in the Office of the Secretary and at each Area Agency on Aging:

(1) For purposes of assessment:

(a) DOEA Form 701A, Department of Elder Affairs Prioritization Form, 2008 July, 2000.

(b) DOEA Form 701B, Department of Elder Affairs Assessment Instrument, 2008 July, 2000.

(c) DOEA Form 701C, Department of Elder Affairs Congregate Meals Assessment, 2008 July, 2000.

(2) For purposes of completing forms listed in subsection (1): DOEA Form 701D, Department of Elder Affairs Assessment Instructions (701A, 701B, 701C), 2008 July, 2000.

(3) For purposes of documenting planned services of care, a case management agency must develop a care plan format that includes at least the following information: DOEA Forms 203A, Care Plan, and 203B, instructions dated July, 2001.

(a) Client name and identification number;

- (b) Case management agency name and identification number;
- (c) Client’s assessed service needs;
- (d) Types, units, frequency and duration of planned DOEA and non-DOEA services;
- (e) The provider and associated costs of each planned service;
- (f) Initiation, revision and termination dates of the care plan;
- (g) An acknowledgement that the client or client’s representative is involved in the development of the care plan; and
- (h) Client or representative and case manager signatures and date of signatures.

Specific Authority 430.08, 430.101 FS. Law Implemented 20.41, 430.101 FS. History–New 8-20-00, Amended 8-6-01,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Jim Crochet
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: E. Douglas Beach, Ph.D., Secretary
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 9, 2008
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 24, 2005

DEPARTMENT OF ELDER AFFAIRS

Community Care for the Elderly

RULE NOS.:	RULE TITLES:
58C-1.001	Definitions
58C-1.002	Eligibility
58C-1.003	Administration
58C-1.004	Application Procedures
58C-1.005	Service Provider Requirements
58C-1.007	Co-payments and Contributions
58C-1.008	Program Forms
58C-1.009	Confidentiality, Disclosure of Information and Retention of Records

PURPOSE AND EFFECT: The purpose of the proposed rule amendments is to update Rule Chapter 58C-1, F.A.C., to reflect current statutory language, policies, and procedures; to add language regarding confidentiality and disclosure of information; and to delete references to the Department of Elder Affairs Program and Services Manual, July 1994 and revised November 1994, which is incorporated by reference in this rule chapter.

SUMMARY: The proposed rule amendments include definitions used in this rule chapter; eligibility for Community Care for the Elderly (CCE) services; administration of the CCE program; application process; provider requirements under the

CCE program; contributions and donations; program forms; and the addition of language regarding confidentiality, disclosure of information and record retention procedures.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 430.08 FS.

LAW IMPLEMENTED: 430.03, 430.04, 430.202, 430.203, 430.205, 430.207 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW(IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: June 18, 2008, 9:30 a.m. – 11:00 a.m. EST.
PLACE: Department of Elder Affairs, 4040 Esplanade Way, Conference Room 225F, Tallahassee, FL 32399-7000

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 72 hours before the workshop/meeting by contacting: Jim Crochet, Department of Elder Affairs, 4040 Esplanade Avenue, Tallahassee, FL 32399-7000; Telephone number (850)414-2000; Email address crochethj@elderaffairs.org. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Jim Crochet, Department of Elder Affairs, 4040 Esplanade Avenue, Tallahassee, FL 32399-7000; Telephone number (850)414-2000; Email address crochethj@elderaffairs.org. A copy of the proposed rule amendments and the form incorporated by reference is included on the department’s Web site at <http://elderaffairs.state.fl.us/>, under the heading DOEA Rulemaking, Administration of the Community Care for the Elderly Program

THE FULL TEXT OF THE PROPOSED RULES IS:

58C-1.001 Definitions.

The following terms are defined in this rule chapter As used in this chapter:

(1) “AGING OUT CLIENTS”: Individuals reaching 60 years of age who are being transitioned from the Department of Children and Families Services Community Care for Disabled Adults or Home Care For Disabled Adults services to the department’s community-based services. ~~Adult Day Care means a social program which assures that a protective~~

environment and preventive, remedial, and restorative services are provided to functionally impaired adults in need of such care.

(a) ~~Adult Day Health Care means an organized day program of therapeutic, social and health activities and services provided to functionally impaired adults for the purpose of restoring or maintaining optimal capacity of self care.~~

(2) ~~ASSESSMENT INSTRUMENT: The tool prescribed in the contract between the department and the AAAs, the AAAs and the lead agencies, and the lead agencies and the service providers for use in determining a client's level of functioning, existing resources, service needs, and priority for services. Area Agency on Aging (AAA) means the agency designated by the Department in a planning and service area defined by the Department to develop and administer the area plan for a comprehensive and coordinated system of services for older persons.~~

(3) ~~CONTRACTOR: The department, area agency on aging, lead agency or any other agency that initiates a contract with a contracting agency as described in Section 430.203(4), F.S. Area Plan (Plan of Action) means a plan developed by an Area Agency on Aging for a comprehensive and coordinated service delivery system in its planning and service area in accordance with 42 U.S.C. 3001 et seq., Older Americans Act of 1965, as amended, on a uniform area plan format prescribed by the State Unit on Aging. This plan identifies such funding resources as: the Older Americans Act (OAA), Community Care for the Elderly (CCE), and other funds; and sets forth measurable objectives; and, identifies the planning, coordination, evaluation activities to be undertaken for the period. The area plan is developed and submitted by the Area Agency on Aging and submitted to the State Unit on Aging. Annual updates of the area plan are required.~~

(4) ~~Case/Care Plan means a plan which specifies the ongoing services prescribed for a CCE client to meet the needs identified in the comprehensive assessment. The care plan shall specify the estimated duration, desired frequency, problem statements, and scope of the services to be provided. It shall identify the provider agency, organization or person(s) responsible for providing the service(s). It shall also identify non-traditional providers such as families, churches, private agencies and neighbors. The care plan shall include a listing of desired outcomes agreed to with the client or caregiver where client is incapacitated. The case plan shall be signed by the case manager and the client.~~

(5) ~~Case Management means a client centered series of activities which includes planning, arrangement for, and coordination of community based services for an eligible Community Care for the Elderly client. Case Management is an approved service, even when delivered in the absence of other services. Case management includes intake and referral, travel time related to the client's case, a comprehensive client assessment, development of an individualized care plan with~~

~~planned client outcomes, and follow-up contacts for the purpose of monitoring the client's situation and to assure timely, effective delivery of service.~~

(6) ~~Chore Service means the performance of house or yard tasks including seasonal cleaning, essential errands, yard work, lifting and moving, and simple household repairs for eligible persons who are unable to do these tasks for themselves because of frailty or other disabling conditions.~~

(7) ~~Comprehensive Assessment means an assessment which records an individual's physical health status, ability to perform activities of daily living, existing social support including individual client preferences and mental functioning.~~

(8) ~~Community means a geographic area designated by the Area Agency on Aging after considering the needs, the availability and delivery pattern of local services, and natural boundaries of neighborhoods. A community can be a county, a portion of a county, or two or three counties.~~

(9) ~~Core Service means services limited to adult day care, chore service, counseling, emergency home repair, health maintenance service, home delivered meals, homemaker services, information, medical transportation services, mini day care, referral, and respite care.~~

(10) ~~Counseling means an interactive process, on a one-to-one or group basis, wherein a person is provided direct guidance and assistance in the utilization of needed health, mental health, financial, and social services, and help in coping with personal problems through the establishment of a supportive relationship. Counseling may include the purchase of professional mental health and financial management counseling services.~~

(11) ~~Emergency Alert Response Service means a community based electronic surveillance service system established to monitor the frail homebound elderly by means of an electronic communication link with a response center which will alert and dispatch properly qualified assistance to the client in need on a 24 hour, seven days a week basis.~~

(12) ~~Emergency Home Repair means assistance in obtaining critical repairs or alterations to correct deficiencies or situations identified as a barrier to the eligible person's health, safety, or ability to perform activities of daily living or as an impediment to the delivery of services to that eligible person.~~

(13) ~~Health Maintenance Services means those routine health services necessary to help maintain the health of a functionally impaired elderly person, but shall be limited to medical therapeutic services, nonmedical prevention services, personal care services, home health aide services, home nursing services, and emergency response systems.~~

(14) ~~Home Delivered Meals means a nutritionally sound meal that meets one-third of the current daily recommended dietary allowance served in the home to a homebound older person.~~

(15) ~~Home Health Aide Service means health or medically oriented tasks provided to an eligible individual in his residence by a home health aide. The home health aide must be employed by a licensed home health agency and supervised by a licensed health professional who is an employee or contractor of the home health agency, in accordance with Chapter 59A-8, F.A.C. This service must be prescribed by a physician or nurse practitioner licensed in the State of Florida.~~

(16) ~~Home Nursing Service means part time or intermittent nursing care administered to an individual by a licensed practical nurse, registered nurse, or advanced registered nurse practitioner, in the individual's place of residence, pursuant to a plan of care approved by a licensed physician and in accordance with Sections 400.462(6), 400.464(5)(a), 410.0241, and Chapter 464, F.S. Home nursing service must be provided through a licensed home health agency.~~

(17) ~~Homemaker Service means the accomplishment of specific home management duties including housekeeping, meal planning and preparation, shopping assistance, and routine household activities by a trained homemaker.~~

(18) ~~Information means responding to an inquiry from a person, or on behalf of a person, regarding resources and available services.~~

(19) ~~Medical Therapeutic Service means those corrective or rehabilitative services which are prescribed or administered by a physician or other health care professional in accordance with Sections 400.462(6), 400.464(5)(a), 410.0241 and Chapter 464, F.S. Such services are designed to assist the functionally impaired older person to maintain or regain sufficient functional skills to live independently in his or her place of residence and include physical, occupational, respiratory, hearing disorder or speech language~~

~~therapy. Medical therapeutic services must be provided through a licensed home health agency.~~

(20) ~~Medical Transportation Services means the provision of rides and/or escort services to and from medical services. Medical services are defined as visits to physicians, dentists, psychiatrists, physical therapists, clinics, hospitals, mental health centers, or any similar facility or service provider. The service can include intermediate stops to fill prescriptions and buy medical supplies in conjunction with such visits.~~

(21) ~~Mini Day Care means a program providing for supervised care in a private home, licensed adult congregate living facility, or adult family care home for up to five impaired persons for a portion of a 24 hour day. A meal and snacks and social and recreational activities are included as part of the service.~~

(22) ~~Personal Care Services means those non-medically oriented tasks provided by a personal care worker to assist the functionally impaired elderly person with bathing, dressing, ambulation, housekeeping, supervision, emotional security, eating, supervision of self-administered medications and~~

~~assistance with securing health care from appropriate sources. Personal Care Services shall be provided with the supervision of a nurse licensed under Chapter 464, F.S.~~

(23) ~~Referral means activity wherein a person's needs are determined and the person is directed to a particular resource(s). Contact with the resource(s) is made for the person. Follow up is conducted with the client and referral agency to determine whether the service was received.~~

(24) ~~Respite Care means a service to provide supervision, companionship, or personal care, to a functionally impaired older person for a specified period of time. The purpose of the service is to maintain the quality of care to the client for a sustained period of time through temporary, intermittent relief of the primary caregiver.~~

(25) ~~Service Provider means an individual, group or organization that is awarded a subgrant or contract from the Department, lead agency or an Area Agency on Aging to provide core or other services under the Area Agency on Aging Community Care for the Elderly Application plan.~~

~~Specific Authority 410.021-029, 430.08 FS., ch. 80-101, s. 10, ch. 91-115, s. 10, Laws of Fla. Law Implemented 410.021-029, 430.03(6), 430.04, 430.203 FS., ch. 91-115, s. 10, Laws of Fla. History-New 12-23-81, Formerly 10A-11.02, 10A-11.002, Amended 3-28-95, _____.~~

58C-1.002 Eligibility.

~~To be eligible for Community Care for the Elderly services, a pPersons must be who meet the following criteria are eligible for CCE core services:~~

(1) ~~Shall be Aage 60 or over; and~~

(2) ~~Shall be Ffunctionally impaired pursuant to Section 430.203(7), F.S., as determined by through an the initial comprehensive assessment and at least an annual reassessment using the form incorporated by reference in paragraph 58A-1.010(1)(b), F.A.C. shall be reassessed at least annually;~~

(2) ~~Priority shall be given to those persons who are assessed to be at risk of placement in an institution or who are abused, neglected or exploited.~~

~~Specific Authority 410.021-029, 430.08 FS., ch. 80-181, s. 10, ch. 91-115, s. 10, Laws of Fla. Law Implemented 410.023(4), 410.0241(6), 430.03(6), 430.04, 430.202, 430.203 FS., ch. 91-115, s. 10, Laws of Fla. History-New 3-11-81, Formerly 10A-10.02, 10A-10.002, Amended 3-28-95, _____.~~

58C-1.003 Administration.

(1) ~~The dDepartment shall plan, develop, and coordinate a statewide program to carry out its responsibilities under the Community Care for the Elderly program administer directly or through an Area Agency on Aging, at least one community care service system in each planning and service area where practical.~~

(2)(a) ~~The AAA Area Agency on Aging, under contract with the department, shall responsibilities include:~~

(a) Comply with State of Florida procedures regarding solicitation and execution of contracts with service providers; and

1. Plan for and approve funds for community care service systems;

2. Submit annually to the Department Community Care for the Elderly Contract Module Sections of the Area Plan;

(b)3. Designate lead agencies and administer the Community Care for the Elderly program in accordance with its contract with the department, the Department of Elder Affairs Programs and Service Manual, dated July 1994 and revised November 1994, available in the Office of the Department Secretary and at each Area Agency on Aging, and herein incorporated by reference;

4. Administer Community Care for the Elderly contracts;

5. Cooperate with lead agencies to determine core services to be funded;

6. Designate lead agencies;

7. Advertise funds available for lead agencies and core services;

8. Provide technical assistance to lead agency applicants;

9. Require annual submission of Service Provider Application, DOEA Form #218, dated September 1994, available in the Office of the Secretary and herein incorporated by reference, for funding of current lead agency and core service providers utilizing applications provided by the Department;

10. Notify applicants of acceptability of applications and any further action;

11. Assess applicant's ability to be a lead agency and provide core services and case management as well as ability to sub-contract, if applicant indicates plans to do so;

12. Provide the Department with review copies of applications;

13. Assess fiscal management capabilities;

14. Monitor the lead agencies' case management capabilities;

15. Assess availability of ten percent match for lead agency budget; match is the minimum funding necessary for the support of project operations and includes in-kind or cash contributions;

16. Contract for lead agency and core services according to manuals, rules and contract procedures of the Department. The lead agency shall provide case management and shall subcontract or directly provide core services;

17. Monitor and evaluate contracts programmatically and fiscally;

18. Make payments to contractors;

19. Provide for in-service training for lead agencies at least once a year;

20. Establish procedures for appeals regarding contracts for lead agencies and core services and for appeals regarding denial, reduction or termination of core services and assessed contributions. Criteria are to assure a timely response and identify how appeals are handled and the time limitations involved;

21. Assure that procedures for appeals regarding denial of core services, reduction of core services, or termination of core services are followed by each lead agency.

(3)(b) Lead agencies shall responsibilities include: provide, directly or through subcontracts, case management and core services; maintain client and program records; and provide reports as specified in their contracts with the AAAs.

1. Coordinate services for functionally impaired elderly;

2. Provide case management;

3. Provide or sub-contract for at least four core services;

4. Compile community care statistics as required by the Department;

5. Monitor its sub-contracts following standards set by the Department and as identified in the Department of Elder Affairs Programs and Services Manual, dated July 1994 and revised November 1994, available in the Office of the Department Secretary and at each Area Agency on Aging, and herein incorporated by reference;

6. Make payments to sub-contractors for core services;

7. Collect contributions and donations for core services provided according to Rule 58C-1.007, F.A.C.;

8. Utilize services provided by recipients of core services in lieu of contributions;

9. Locate in a multi-service senior center when practicable;

10. Provide for in-service training for staff including volunteers and core service contractors at least once a year;

11. Accept contributions, gifts and grants to carry out a community care service system;

12. Maximize use of volunteers to provide core services to functionally impaired elderly persons;

13. Demonstrate innovative approaches to program management, staff training, and service delivery that impact on cost avoidance, cost effectiveness and program efficiency;

14. Follow procedures established by the contracting agency for appeals regarding denial, reduction or termination of core services to clients and for appeals regarding contracts for core services.

15. Ensure that quality services are delivered in a timely manner to eligible individuals.

16. Case managers shall ensure that all other resources have been utilized prior to approving the provision of services with Community Care for the Elderly funds.

17. All agencies receiving Community Care for the Elderly funds shall maintain client, fiscal, and program records and provide reports as specified by the Department of Elder

Affairs Programs and Services Manual, dated July 1994 and revised November 1994, available in the Office of the Department Secretary and at each Area Agency on Aging, and herein incorporated by reference.

Specific Authority ~~410.021-.029, 430.08 FS., ch. 80-181, s. 10, ch. 91-115, s. 10, Laws of Fla. Law Implemented 410.024, 410.0241, 430.03(6), 430.04, 430.202, 430.203, 430.204, 430.205 FS., ch. 91-115, s. 10, Laws of Fla. History-New 3-11-81, Formerly 10A-10.03, 10A-10.003, Amended 3-28-95,_____.~~

58C-1.004 Application Procedures.

Application procedures for a Community Care for the Elderly lead agency and core service provider shall be accomplished through a competitive bid process.

(1) ~~Prior to advertising for the lead agency, each Area Agency on Aging, shall review the results of the most current aging needs assessment and waiting lists for services in each service area in order to determine the area of the planning and service area most in need of core services and which core services are most needed.~~

(2) ~~Existing Community Care for the Elderly lead agencies and core service providers shall submit a service provider application each year in order to be considered for refunding. The Service Provider Application is DOEA Form #218, dated September 1994, available in the Office of the Department Secretary, and herein incorporated by reference.~~

(3) ~~Standards for approval of applications.~~

(a) ~~Prior to contracting with any lead agency, the Area Agency on Aging administering the program shall assess the applicant's or provider agency's ability to meet lead agency or service provider requirements as contained in Rule 58C-1.005, F.A.C.~~

(b) ~~Applications which are properly and completely prepared according to the instructions provided will be approved for contracts subject to the availability of State and local resources in sufficient amounts to assure that cash outlays can be met.~~

(c) ~~The contracting agency which funds and administers Community Care for the Elderly shall review all applications and determine which applications are approved for funding. The approved agency must demonstrate sound fiscal management in accordance with generally accepted accounting principles and be capable of providing core services, case management and coordination of services.~~

(d) ~~The lead agency and any of its core service providers will provide a minimum of ten percent of the funding necessary to support the program. Cash or in-kind resources may be used to meet this matching requirement.~~

(4) ~~Contracting and Financial Management Procedures. Contracts between the department, the Area Agency on Aging, lead agency or core service providers shall follow departmental contracting and financial management procedures.~~

Specific Authority 430.08 FS. Law Implemented 430.03, 430.04, 430.203(9), 430.204, 430.205 FS. History-New 3-11-81, Formerly 10A-10.04, 10A-10.004, Amended 3-28-95, 10-30-05,_____.

58C-1.005 Service Provider Requirements.

All service providers must provide services in accordance shall comply with the requirements in their contracts with the contractor the Department of Elder Affairs Programs and Services Manual, dated July 1994 and revised November 1994, available in the Office of the Department Secretary and at each Area Agency on Aging, and herein incorporated by reference.

Specific Authority ~~410.021-.029, 430.08 FS., ch. 80-181, s. 10, ch. 91-115, s. 10, Laws of Fla. Law Implemented 410.024-.0241, 430.03(6), 430.04, 430.204, 430.205 FS., ch.91-115, s. 10, Laws of Fla. History-New 3-11-81, Formerly 10A-10.05, 10A-10.005, Amended 3-28-95,_____.~~

58C-1.007 Co-payments and Contributions and Donations.

(1) Contracting agencies that enter into a contract to provide services under the Community Care for the Elderly program Lead agencies are responsible for collection of co-payments and contributions and donations from clients receiving recipients of Community Care for the Elderly core services.

(2) The contracting agency must determine Once an applicant is deemed eligible (Ref. Rule 58C-1.002, F.A.C.), a determination shall be made as to a dollar amount that the applicant must be assessed for those services based on an overall ability to pay. Partial payments may also be assessed.

(3) Pursuant to Section 430.204(8), F.S., co-payments must be determined using the fee schedule established in DOEA Form CoPay, Co-Pay Schedule, July 2008. The form is hereby incorporated by reference and available from the Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399-7000. If it is readily apparent, after completion of the Department of Elder Affairs Programs and Services Manual assessed contribution work sheet, that the applicant is not able to afford a partial or total contribution towards payment for services, further inquiry as to the applicant's income level is unnecessary. Included within this category is an applicant whose monthly expenses are such that a contribution would be punitive. In these situations, service providers may continue to request voluntary contributions or donations.

(4) The case manager shall request information from the applicant, his or her spouse, relative or guardian in order to establish a contribution assesment.

Specific Authority ~~410.021-.029, 430.08 FS., ch. 80-181, s. 10, ch. 91-115, s. 10, Laws of Fla. Law Implemented 410.024(8), 430.03(6), 430.04, 430.204(8) 430.06(2)(c)13. FS., ch. 91-115, s. 10., Laws of Fla. History-New 3-11-81, Formerly 10A-10.07, 10A-10.007, Amended 3-28-95,_____.~~

58C-1.008 Program Forms.

The following forms shall be used for programs regulated by this chapter; are hereby incorporated by reference in Rule 58A-1.010, F.A.C. In addition, a care plan must be developed that meets the criteria established in subsection (3) of that rule, and are available in the Office of the Secretary and at each Area Agency on Aging:

(1) For purposes of assessment:

(a) ~~DOEA Form 701A, Prioritization Form, July, 2000.~~

(b) ~~DOEA Form 701B, Assessment Instrument, July, 2000.~~

(c) ~~DOEA Form 701C, Congregate Meals Form, July, 2000.~~

(2) For purposes of completing forms listed in subsection

(1): ~~DOEA Form 701D, Assessment Instructions (701A, 701B, 701C), July, 2000.~~

(3) For purposes of documenting planned services of care:

~~DOEA Forms 203A, Care Plan, and 203B, instructions dated July, 2001.~~

Specific Authority ~~430.08, 430.203-205~~ FS. Law Implemented ~~430.203, 430.205 430.201-207~~ FS. History—New 8-20-00, Amended 8-6-01, _____.

58C-1.009 Confidentiality, Disclosure of Information, and Retention of Records.

(1) Contracting agencies that enter into a contract to provide services under the Community Care for the Elderly program shall collect, maintain, and exchange information about applicants applying for services and clients receiving services only to the extent it is necessary to administer the programs covered under this agreement in accordance with the Health Insurance Portability and Accountability Act (HIPPA) of 1996.

(2) The contracting agency shall retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to each agreement and/or contract for a period of at least five (5) years after termination of the agreement(s).

(a) If an audit has been initiated and audit findings have not been resolved at the end of five (five) years, the records shall be retained at least until resolution of the audit findings.

(b) These records may be subject to additional retention requirements set by law.

(3) Persons duly authorized by the department shall have full access and the right to examine or duplicate any of said records and documents during the stated retention period or as long as records are retained, whichever is later.

Specific Authority 430.08 FS. Law Implemented 430.207 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:

Jim Crochet

NAME OF SUPERVISOR OR PERSON WHO APPROVED

THE PROPOSED RULE: E. Douglas Beach, Ph.D., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY

HEAD: May 9, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT

PUBLISHED IN FAW: June 24, 2005

DEPARTMENT OF ELDER AFFAIRS

Alzheimer's Disease Initiative

RULE NOS.:

58D-1.001

58D-1.002

58D-1.003

58D-1.004

58D-1.005

58D-1.006

58D-1.007

58D-1.009

RULE TITLES:

Purpose

Definitions

Eligibility

Program Components

Program Administration

Service Provider Responsibilities

Program Forms

Confidentiality, Disclosure of Information, and Retention of Records

PURPOSE AND EFFECT: The purpose of the proposed rule amendments is to update Rule Chapter 58D-1, F.A.C., to reflect current statutory language, policies, and procedures; to add language regarding confidentiality and disclosure of information; and to delete references to the Department of Elder Affairs Programs and Services Manual, July 1994 and revised November 1994, which is incorporated by reference in this rule chapter.

SUMMARY: The proposed rule amendments include the purpose of the Alzheimer's Disease Initiative (ADI); definitions used in this rule chapter; eligibility for the ADI program; ADI program components; administration of the ADI program; service provider requirements under the ADI program; program forms; and the addition of language regarding confidentiality, the disclosure of information and record retention procedures.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 430.08 FS.

LAW IMPLEMENTED: 430.501-.504 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: June 18, 2008, 9:30 a.m. – 11:00 a.m., EST.

PLACE: Department of Elder Affairs, 4040 Esplanade Way, Conference Room 225F, Tallahassee, FL 32399-7000

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 72 hours before the workshop/meeting by contacting: Jim Crochet, Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, FL 32399-7000; Telephone number (850)414-2000; E-mail address: crocethj@elderaffairs.org. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Jim Crochet, Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, FL 32399-7000; Telephone number (850)414-2000; E-mail address: crocethj@elderaffairs.org. A copy of the proposed rule amendments is included on the DOEA Web site at <http://elderaffairs.state.fl.us/> under the heading DOEA Rulemaking, Administration of the Alzheimer's Disease Initiative.

THE FULL TEXT OF THE PROPOSED RULES IS:

58D-1.001 Purpose.

The purpose of these rules is to provide a framework by which the Department of Elder Affairs will administer Sections ~~430.501 410.401~~ through ~~430.504 410.403~~, F.S., the Alzheimer's Disease Initiative. The Alzheimer's Disease Initiative (~~hereinafter~~ ADI) was established by the Legislature in 1985 to provide services and training to address the special needs of individuals suffering from Alzheimer's disease and related memory disorders and their caregivers. It also provides for research relating to the cause, prevention, management, and treatment of the disease.

Specific Authority ~~410.401(3), 430.08 FS. Law Implemented 410.401-403, 430.04(6), 430.501, 430.502, 430.503, 430.504 FS., Ch. 91-115, Laws of Florida, s.10. History-New 3-28-95, Amended~~

58D-1.002 Definitions.

The following terms are defined in this rule:

~~(1) Alzheimer's Disease: A progressive brain syndrome with insidious onset which results in impaired memory, language and cognitive dysfunction during an alert state, behavioral changes, and a decline in the ability to perform activities of daily living. Alzheimer's disease can ultimately result in death. The term as used in these rules includes other "related memory disorders".~~

~~(1)(2) Alzheimer's Disease Advisory Committee: The committee created pursuant to Section 430.502(2), (3) 410.401(2), F.S., to advise the Department in the performance of its duties pursuant to the ADI.~~

~~(3) Alzheimer's Disease Initiative or ADI: The programs and services created and funded under the provisions of Sections 410.401-403, F.S.~~

~~(2)(4) Alzheimer's Disease Research Brain Bank: The entity designated by the Department to collect post mortem normal control brains and brains of individuals who were clinically diagnosed as having Alzheimer's disease for the purpose of conducting comparative research aimed at learning about, finding a cause, and developing a treatment or cure for the disease.~~

~~(5) Alzheimer's Disease Registry: The entity designated by the Department to design and operate a data base to support demographic and epidemiological research on Alzheimer's disease.~~

~~(6) Area Agency on Aging (AAA): The agency designated by the Department in a planning and service area (PSA) to develop and administer a plan for a comprehensive and coordinated system of services for older people.~~

~~(7) Area Plan: The document developed by each Area Agency on Aging and submitted to the Department which identifies the planning, administrative and coordination activities to be undertaken by the Area Agency on Aging to assure a comprehensive and coordinated system of services for older people in the designated planning and service area.~~

~~(8) Case Management: A client centered series of activities which include planning, arranging and coordinating community based services for an eligible client and caregiver. Case management is an approved service, even when delivered in the absence of other services. Case management can be offered with services for emergency cases without an assessment for a limited period of time. Case management includes a comprehensive client assessment, development of an individualized care plan with planned client outcomes, and follow up contacts for the purpose of monitoring the client's situation to assure timely, effective delivery of services. Case management is a required service for model day care and respite care providers. It shall be provided to clients and caregivers in accordance with standards established by the Department.~~

~~(3)(9) Client: For the purposes of these rules, the client is The person with Alzheimer's disease; however, the client's caregiver will receive residual benefits through the provision of education, training, respite, and support services, as needed.~~

~~(10) Department: The Department of Elder Affairs, the state agency designated to administer the ADI.~~

~~(11) District: The term as used in these rules mean planning and service area.~~

~~(4)(12) Memory Disorder Clinic: Research oriented programs created pursuant to Sections 430.502(1) and (2) 410.402(1) and (2), F.S., to provide diagnostic and referral services, conduct basic and service-related multidisciplinary research, and develop training materials and educational opportunities for lay and professional caregivers of individuals~~

with Alzheimer's disease. The memory disorder clinics are located at the University of Florida (Gainesville), University of South Florida (Tampa), University of Miami (Miami), Mount Sinai Medical Center (Miami Beach), North Broward Regional Medical Center (Pompano Beach), and Florida Institute of Technology (Melbourne). Mayo Clinic Jacksonville (Jacksonville) was funded by the 1994 appropriations bill as a memory disorder clinic. Memory disorder clinics shall provide:

(a) A minimum of four (4) hours of in-service training annually to model day care and respite care providers in the designated service area; and

(b) A minimum of one (1) annual contact with each model day care and respite care provider in the designated service area to plan and develop service-related research projects.

~~(5)(13)~~ Model Day Care Program: Refers to the three specialized day care programs specifically authorized by Section ~~430.502(4)~~ ~~410.402(3)~~, F.S. These programs provide a therapeutic setting for the provision of specialized services to clients with Alzheimer's disease. They also provide training to health care and social service personnel and caregivers, and serve as a natural laboratory for research.

~~(14)~~ Planning and Service Area: The term as used in these rules means ~~a~~ geographic area of Florida that is designated for purposes of planning, development, delivery and overall administration of services under the ADI.

~~(15)~~ Programs and Services Manual: Department of Elder Affairs Programs and Services Manual dated July 1994 and revised November 1994, available at the Office of the Department Secretary and at each Area Agency on Aging, and incorporated herein by reference.

~~(6)(16)~~ Related Memory Disorders: Other forms of progressive memory disorders that result in diminished memory, language, and other cognitive functions, and the inability to perform activities of daily living. ~~Related memory disorders are included under the ADI in these rules.~~

~~(7)(17)~~ Research: The term as used in these rules refers to ~~investigations undertaken to learn more about the Alzheimer's disease process in order to determine the cause, resulting behavioral changes, treatment, cure, and family or societal impact of Alzheimer's the disease.~~

~~(18)~~ Respite Care: A service to provide supervision and companionship for a specified period of time to a person with a diagnosis of Alzheimer's disease as defined in these rules. The purpose of respite care is to provide temporary relief to the primary caregiver. Service providers may offer personal care services, as defined in Section ~~400.402(16)~~, F.S., and essential supplies to a client under these rules.

~~(a)~~ Facility-Based Respite: Respite care provided in a facility such as a licensed nursing home, adult day care center, adult congregate living facility, or other facility operated by a program under contract with funds provided by the department.

~~(b)~~ In home Respite: Respite Care provided in the home or principal residence of the client or primary caregiver.

~~(19)~~ Service Provider: A private or public organization receiving funds from the Department to provide services to individuals with Alzheimer's disease or to their caregivers.

~~(8)(20)~~ Training: The term as used in these rules refers to ~~the~~ provision of educational activities and instruction to assist health care professionals, and social service providers, and the client's caregivers in understanding Alzheimer's disease and to increase their knowledge and caregiving skills.

Specific Authority ~~410.401(3)~~, 430.08 FS. Law Implemented ~~430.501, 430.502~~ ~~410.401, 402~~, 430.04(6) FS., Ch. 91-115, Laws of Florida, s. 10. History—New 3-28-95, Amended _____.

58D-1.003 Eligibility.

(1) To be eligible ~~for to receive~~ model day care services, an individual, ~~regardless of age~~, must be 18 years of age and have a diagnosis of Alzheimer's disease or a related memory disorder.

(2) To be eligible to receive all other services funded under the Alzheimer's Disease Initiative that are included in the provider's contract with the department or the area agency on aging, an individual, regardless of age, must be 18 years of age or older and have a diagnosis of Alzheimer's disease or a related memory disorder, may be diagnosed as having or be suspected of having Alzheimer's disease or a related memory disorders to be eligible for all other services funded under the Alzheimer's Disease Initiative.

(3) The caregivers of individuals receiving services ~~funded~~ under the Alzheimer's Disease Initiative are eligible to receive training and related support services to assist them in caring for the person with Alzheimer's disease.

Specific Authority ~~410.401(3)~~, 430.08 FS. Law Implemented ~~430.501, 430.502~~ ~~410.402(2)~~ (4) FS., Ch. 91-115, Laws of Florida, s. 10. History—New 3-28-95, Amended _____.

58D-1.004 Program Components.

(1) In its role as advisor to the ~~d~~Department, the Alzheimer's Disease Advisory Committee shall provide feedback ~~have responsibility~~ for each of the following components:

- (a) Memory Disorder Clinics;
- ~~(b)~~ Registry;
- ~~(b)(e)~~ Brain Bank;
- ~~(c)(d)~~ Model Day Care; and
- ~~(d)(e)~~ Respite Care.

(2) The Alzheimer's Disease Advisory Committee shall address service, training, research, and coordination among components.

(3) The Alzheimer's Disease Advisory Committee may enlist services, assistance, and direction from a broad representation of health care professionals, service providers, individuals affiliated with the Alzheimer's Association, caregivers, and other interested or knowledgeable parties.

Specific Authority ~~410.401(2)~~, 430.08 FS. Law Implemented ~~430.501, 430.502~~ ~~410.401(2)~~ FS., Ch. 91-115, Laws of Florida, s. 10. History—New 3-28-95, Amended _____.

58D-1.005 Program Administration.

(1) The Department of Elder Affairs shall plan, develop and coordinate a statewide program to carry out its responsibilities under the Alzheimer's Disease Initiative. The Department shall:

- ~~(a) Develop a multi-year plan.~~
- ~~(b) Allocate funds for respite services based on the number and proportion of persons seventy-five years of age and older within counties in the Planning and Service Areas.~~
- ~~(c) Develop provider application package(s) and contract specifications, including requirements for a research component in each contract, for distribution to the Area Agencies on Aging and service providers.~~
- ~~(d) Establish policies and procedures for service providers.~~
- ~~(e) Provide technical assistance to staff of the Area Agencies on Aging and service providers as requested.~~
- ~~(f) Evaluate Alzheimer's disease programs.~~
- ~~(g) Monitor services to assess quality of service delivery.~~
- ~~(h) Develop program reports.~~
- ~~(i) Maintain a resource library for staff development. Include training materials pertaining to Alzheimer's disease and a list of information and referral services throughout Florida.~~
- ~~(j) Provide access to training whenever possible.~~
- ~~(k) Provide staff support to assist the Alzheimer's Disease Advisory Committee in the performance of its duties.~~
- ~~(1) Establish guidelines and procedures for the award and allocation of funds received pursuant to Section 410.401(3), F.S., Note, into a Department administrative trust fund.~~

(2) The aArea aAgency on aaging, under contract with the dDepartment, shall be responsible for the planning and administration of respite and model day care services funded under the Alzheimer's Disease Initiative and, ~~in turn,~~ shall contract with local service providers for the provision of these services. ~~The Department may retain the budget authority to contract directly with service providers for the implementation of special projects when appropriate.~~ Each aArea aAgency on aaging shall:

- ~~(a) In conjunction with the Department, establish priorities, policy and procedures for administration and delivery of services, and include objectives for the Alzheimer's Disease Initiative in the area plan.~~
- ~~(a)(b) Comply with State of Florida procedures regarding solicitation and execution of agreements with providers of services.~~
- ~~(c) Review and critique applications to ensure completeness and accuracy of information, and assess the applicant's ability to provide required services and manage a subcontract.~~

~~(d) Assure that all service provider contracts include a requirement for an Alzheimer's disease research component and responsibility for coordination with other Alzheimer's Disease Initiative components.~~

~~(e) Assure that all client information and program reports, including reports of research efforts, are complete and accurate.~~

~~(f) Provide for staff development and training of provider staff.~~

~~(g) Assume contract management responsibilities.~~

~~(h) Assess fiscal management capabilities of service providers.~~

~~(i) Monitor service providers.~~

~~(j) Process payments to service providers.~~

~~(k) Provide technical assistance to service providers as requested or required.~~

~~(l) Establish procedures for appeals by clients and contract service providers.~~

~~(m) Ensure that grievance and appeals procedures are adhered to by service providers.~~

~~(b)(n) Maintain coordination with the mMemory dDisorder cClinics, the Alzheimer's Disease Brain Bank, the Alzheimer's Disease Registry, and all other components of the Alzheimer's Disease Initiative in the designated planning and service area as outlined in its contract with the dDepartment of Elder Affairs Programs and Services Manual dated July 1994 and revised November 1994, available in the Office of the Department Secretary and at each Area Agency on Aging, and incorporated herein by reference.~~

~~(c)(o) Comply with all terms and conditions of its the contract with the department and guidelines specified in the Department of Elder Affairs Programs and Services Manual, dated July 1994 and revised November 1994, available in the Office of the Department Secretary and at each Area Agency on Aging, and incorporated herein by reference.~~

~~(p) Make available reports submitted to the Department by the memory disorder clinics, the registry and the brain bank to other service providers in the designated planning and service area.~~

Specific Authority 430.08 FS. Law Implemented 430.502, 430.503 FS. History—New 3-28-95, Amended 10-30-05, _____.

58D-1.006 Service Provider Responsibilities.

Each service provider must shall:

(1) No change.

(2) Employ competent and qualified staff to provide the services essential to the achievement of the program goals and objectives as specified in its contract with the department or the area agency on aging.

(3) Maintain the minimum staffing requirements established in its contract with the dDepartment or area agency on aging.

(4) Provide case management services as applicable and as specified in its contract with the Department or area agency on aging of Elder Affairs Programs and Services Manual, dated July 1994 and revised November 1994, available in the Office of the Department Secretary and at each Area Agency on Aging, and incorporated herein by reference.

(5) Provide respite or model day care services, and maintain coordination with ~~or the services of~~ the memory disorder clinics, and the registry or brain bank as specified in its contract with the Department or area agency on aging of Elder Affairs Programs and Services Manual, dated July 1994 and revised November 1994, available in the Office of the Department Secretary and at each Area Agency on Aging, and incorporated herein by reference.

(6) Provide pre-service preservice and in-service inservice training for staff and volunteers as specified in its contract with the Department or area agency on aging of Elder Affairs Programs and Services Manual, dated July 1994 and revised November 1994, available in the Office of the Department Secretary and at each Area Agency on Aging, and incorporated herein by reference.

(7) through (8) No change.

(9) Collect co-payments for services pursuant to Section 430.503(2), F.S. Co-payments must be determined using the fee schedule established in Rule 58C-1.007, F.A.C. Request contributions and ensure that contributions are only used to expand program services.

(10) through (12) No change.

(13) Maintain client and program records and provide reports as required by its contract with the Department or area agency on aging of Elder Affairs Programs and Services Manual, dated July 1994 and revised November 1994, available in the Office of the Department Secretary and at each Area Agency on Aging, and incorporated herein by reference.

(14) Establish goals and objectives for the Alzheimer's Disease Initiative research component and submit reports as specified by the Department on research activities.

Specific Authority ~~410.401(3), 430.08 FS. Law Implemented 430.502, 430.503 410.402(3) (5), 410.403, 430.06(2) FS., Ch. 91-115, Laws of Florida, s. 10; History-New 3-28-95, Amended~~ _____.

58D-1.007 Program Forms.

The following forms shall be used for programs regulated by this chapter; are hereby incorporated by reference in Rule 58A-1.010, F.A.C. In addition, a care plan must be developed that meets the criteria established in subsection (3) of that rule, and are available in the Office of the Secretary and at each Area Agency on Aging:

(1) For purposes of assessment:

(a) ~~DOEA Form 701A, Prioritization Form, July, 2000.~~

(b) ~~DOEA Form 701B, Assessment Instrument, July, 2000.~~

~~(c) DOEA Form 701C, Congregate Meals Form, July, 2000.~~

(2) For purposes of completing forms listed in subsection (1): ~~DOEA Form 701D, Assessment Instructions (701A, 701B, 701C), July, 2000.~~

(3) For purposes of documenting planned services of care: ~~DOEA Forms 203A, Care Plan, and 203B, instructions dated July, 2001.~~

Specific Authority ~~430.08, 430.501-503 FS. Law Implemented 430.502 430.501-504 FS. History-New 8-20-00, Amended 8-6-01,~~ _____.

58D-1.009 Confidentiality, Disclosure of Information, and Retention of Records.

(1) Entities contracting to provide services under the Alzheimer's Disease Initiative shall collect, maintain, and exchange information about applicants applying for services and clients receiving services only to the extent it is necessary to administer the programs covered under this agreement in accordance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

(2) Contracting ADI entities shall retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to each agreement and/or contract for a period of at least five (5) years after termination of the agreement(s).

(a) If an audit has been initiated and audit findings have not been resolved at the end of five (five) years, the records shall be retained at least until resolution of the audit findings.

(b) These records may be subject to additional retention requirements set by law.

(3) Persons duly authorized by the department shall have full access and the right to examine or duplicate any of said records and documents during the stated retention period or as long as records are retained, whichever is later.

Specific Authority ~~430.08 FS. Law Implemented 430.504 FS. History-New~~ _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Jim Crochet

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: E. Douglas Beach, Ph.D., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 9, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 24, 2005

DEPARTMENT OF ELDER AFFAIRS

Home Care for the Elderly

RULE NOS.:	RULE TITLES:
58H-1.001	Purpose
58H-1.002	Definitions
58H-1.003	Program Administration
58H-1.004	Access to the Program
58H-1.005	Client Eligibility
58H-1.006	Caregiver Requirements
58H-1.007	Dwelling Requirements
58H-1.008	Appeal Proceedings
58H-1.009	Program Forms
58H-1.010	Confidentiality and Disclosure Information

PURPOSE AND EFFECT: The purpose of the proposed rule amendments is to update Rule Chapter 58H-1, F.A.C., to reflect current statutory language, policies, and procedures; to add language regarding confidentiality and disclosure of information; and to delete references to the Department of Elder Affairs Programs and Services Manual, July 1994 and revised November 1994, which is incorporated by reference in this rule chapter.

SUMMARY: The proposed rule amendments include the purpose of the Home Care for the Elderly (HCE) program; definitions used in this rule chapter; administration of the HCE program; HCE program access; HCE program eligibility; caregiver requirements; dwelling requirements; grievance procedures; program forms; and the addition of language regarding confidentiality, disclosure of information and record retention procedures.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 430.08, 430.603 FS.

LAW IMPLEMENTED: 430.601-.608 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: June 18, 2008, 9:30 a.m. – 11:00 a.m., EST.

PLACE: Department of Elder Affairs, 40540 Esplanade Way, Conference Room 225F, Tallahassee, FL 32399-7000

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 72 hours before the workshop/meeting by contacting: Jim Crochet, Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, FL 32399-7000; Telephone

number (850)414-2000; Email address crochethj@elderaffairs.org. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice)

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Jim Crochet, Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, FL 32399-7000; Telephone number (850)414-2000; Email address crochethj@elderaffairs.org. A copy of the proposed rule amendments is available on the department Web site at <http://elderaffairs.state.fl.us/>, under the heading DOEA Rulemaking, Administration of the Home Care for the Elderly Program

THE FULL TEXT OF THE PROPOSED RULES IS:

58H-1.001 Purpose.

The purpose of these rules is to provide a framework for the Department of Elder Affairs (DOEA) to administer Sections 430.601-.608, F.S. The Home Care for the Elderly (HCE) program provides rules encourage the provision of care for the elderly in family-type living arrangements in private homes as an alternative to and prevention of premature or inappropriate institutionalization by providing assistance through financial subsidies and support services to encourage and assist those individuals who live with and willing to provide care for frail elderly individuals in family-type arrangements in private homes on a not for profit basis.

Specific Authority 430.08, 430.603 FS. Law Implemented 430.601-.606 FS. History-New 1-1-96, Amended _____.

58H-1.002 Definitions.

The following terms are defined in the rule chapter are in addition to definitions found in Sections 430.602 and 430.203(1) and (9), F.S.:

(1) ASSESSMENT INSTRUMENT: The tool prescribed by the area agency on aging in its contract with the case management agency for use in determining the client's level of functioning, existing resources, service needs, and priority for services. ACTIVITIES OF DAILY LIVING (ADL) are functions and tasks for self care, such as ambulating, bathing, dressing, eating, grooming, and other personal care activities.

(2) BASIC SUBSIDY: is a monthly payment made to the caregiver for support and health maintenance; to assist with the cost of housing, food, clothing, medical and dental services, and incidentals, which are not covered by Medicare, Medicaid and other insurance.

(3) CARE PLAN means a plan which specifies the ongoing services prescribed for a Home Care for the Elderly client to meet the needs identified in the comprehensive assessment. The care plan shall specify the estimated duration, desired frequency, problem statements, and scope of the services to be provided. The care plan shall identify the caregiver, provider agency, or other organization responsible

for providing the service(s). The care plan shall include a listing of desired outcomes agreed to with the client and caregiver. The care plan shall be developed, signed and dated by the case manager, the client, and caregiver.

~~(3)(4) CAREGIVER: is An adult person(s), age 18 or above, who applies and is approved by the case management Lead Agency to provide care to 3 or fewer elderly persons client(s) in the private residence of the client or caregiver on a non-profit basis.~~

~~(5) CASE MANAGEMENT is a client centered series of activities which includes planning, arrangement for and coordination of community based services for an eligible client. Case Management is a service which may be delivered in the absence of other services. Case Management activities include intake and referral, comprehensive assessment and reassessment, development of a care plan with planned client outcomes, assistance in helping clients to obtain community resources, follow-up contacts for the purpose of monitoring client progress to assure effective delivery of services, and travel time related to the client's case.~~

~~(4) CASE MANAGEMENT AGENCY: The Community Care for the Elderly lead agency or other agency under contract with an area agency on aging (AAA) to provide case management services.~~

~~(5)(6) DWELLING: means A family-type home that serves as the primary residence of the client and ~~or~~ caregiver.~~

~~(7) HOME CARE CLIENT means an individual who meets all eligibility requirements for this program, and who without home care supportive services could require placement in an institution or nursing home.~~

~~(6)(8) SERVICE PROVIDER: means A Community Care for the Elderly Lead Agency that is awarded a contract to provide case management and other services under the Home Care for the Elderly program.~~

~~(7)(9) SPECIAL SUBSIDY: means A flexible payment based on actual cost that is has been pre-authorized on the care plan by the Lead Agency case manager to purchase any specialized medical or health care services, supplies or equipment, which are required to maintain the health and well-being of the elderly person. The special subsidy This supplement is separate from and may be utilized in addition to the basic subsidy.~~

Specific Authority 430.08, 430.603 FS. Law Implemented 430.603, 430.605 430.601-606 FS. History-New 1-1-96, Amended

58H-1.003 Program Administration.

The Home Care for the Elderly Program shall be administered directly by the Department through an Area Agency on Aging located within a Planning and Service Area.

(1) The Department of Elder Affairs shall, plan, develop, and coordinate a statewide program to carry out its responsibilities under the Home Care for the Elderly statutes, including entering into contracts with area agencies on aging

for the provision of HCE services within the designated planning and service area. The Department's responsibilities include:

- ~~(a) Coordinating statewide activities necessary to carry out the provisions of the Home Care for the Elderly law;~~
- ~~(b) Developing program policies and plans;~~
- ~~(c) Setting service standards and rates;~~
- ~~(d) Providing for program development and quality through monitoring, technical assistance, staff development and training, and evaluation activities; and~~
- ~~(e) Contracting with the Area Agency on Aging for provision of Home Care for the Elderly services.~~

(2) The area agencies on aging shall comply with the following requirements in regards to carrying out its responsibilities under the Home Care for the Elderly program: Area Agency on Aging's responsibilities include:

- ~~(a) State of Florida procedures regarding solicitation and execution of contracts with service providers; and~~
- ~~(b)(a) Terms and conditions of its contract with the department. Administering the Home Care for the Elderly Program in accordance with the Department of Elder Affairs Programs and Services Manual dated July 1994, revised January 1996, and the Division of Administration Policy Memorandum A0016, dated December 1995, available in the Office of the Department Secretary and at each Area Agency on Aging, and herein incorporated by reference;~~
- ~~(b) Administering the Home Care for the Elderly contracts with Community Care for the Elderly Lead Agencies;~~
- ~~(c) Contracting with the Lead Agency for provision of Home Care for the Elderly Case Management;~~
- ~~(d) Providing information regarding available subsidy funding;~~
- ~~(e) Providing technical assistance to Lead Agencies;~~
- ~~(f) Requiring Lead Agencies to annually submit the Service Provider Application, (DOEA Form 218, September 1994, revised October 1, 1995, available in the Office of the Secretary and herein incorporated by reference) for funding of current Lead Agency to provide Home Care for the Elderly;~~
- ~~(g) Providing the Department with review copies of applications;~~
- ~~(h) Monitoring Lead Agencies' programmatic and fiscal capabilities;~~
- ~~(i) Making Home Care for the Elderly basic and special subsidy payments after verification schedules have been reviewed;~~
- ~~(j) Reconciling client data input in Department's Client Information and Registration Tracking System from the Lead Agency and any fiscal verification schedules before making basic or special subsidy payments or Lead Agency Case Management payment;~~
- ~~(k) Compiling program statistics required by the Department;~~

(l) Providing for in-service training for Lead Agencies at least once a year;

(m) Having and implementing procedures and time frames for appeals regarding contracts for Lead Agencies and for appeals regarding denial, reduction or termination of services to clients pursuant to Rule 58H 1.008, F.A.C.; and

(n) Hearing appeals not resolved at the Lead Agency.

(3) The case management Lead Agency shall responsibilities include:

(a) Determining eligibility for the Home Care for the Elderly Program using the assessment instrument form incorporated by reference in paragraph 58A-1.010(1)(b), F.A.C. for functionally impaired and financially eligible elderly;

(b) Providing case management services as applicable and specified in accordance with its contract with the area agency on aging;

(c) Determining the amount of the basic subsidy derived from DOEA Form H-001, Home Care for the Elderly Basic Subsidy Chart, July 2008, hereby incorporated by reference and available from the Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida, 32399-7000 Coordinating services; and

(d) Compiling program statistics as required by the Department;

(e) Determining basic and special subsidy payments to caregivers as required;

(f) Entering data on clients in Department's Client and Information Tracking System monthly;

(g) Providing for in service training for staff including volunteers at least once a year;

(h) Accepting contributions, gifts and grants to carry out services;

(i) Maximizing use of volunteers to provide services to functionally impaired elderly persons;

(j) Having and implementing procedures and time frames for appeals regarding denial, reduction or termination of services to clients pursuant to Rule 58H 1.008, F.A.C.;

(k) Ensuring that quality services are delivered in a timely manner to eligible individuals; and,

(d)(4) Maintaining client, fiscal, and program records and provide reports as specified in its contract with the area agency on aging by the Department of Elder Affairs Programs and Services Manual, dated July 1994 and revised January 1996, and the Division of Administration Policy Memorandum A0016, dated December 1995, available in the Office of the Department Secretary and at each Area Agency on Aging, and herein incorporated by reference.

Specific Authority 430.08, 430.603 FS. Law Implemented 430.603, 430.605, 430.606 430.60-606 FS. History-New 1-1-96, Amended _____.

58H-1.004 Access to the Program.

(1) Requests for ~~the~~ Home Care for the Elderly pProgram services may be initiated by the applicant potential home care client or the applicant's caregiver on behalf of the client.

(2) ~~The service provider shall not arrange for recruitment and matching of potential providers and recipients to facilitate admittance to the Home Care for the Elderly Program between two unrelated or unfamiliar parties.~~

(3) ~~The application process shall include:~~

(a) ~~Client assessment and determination of functional and financial eligibility.~~

(b) ~~Caregiver eligibility, including an assessment of the home.~~

(2)(4) The application process must be completed as specified in the case management agency's contract with the area agency on aging by the Department's Programs and Services Manual.

Specific Authority 430.08, 430.603 FS. Law Implemented 430.603, 430.606 430.601-606 FS. History-New 1-1-96, Amended _____.

58H-1.005 Client ~~Functional and Financial~~ Eligibility.

(1) To be eligible for the Home Care for the Elderly pProgram, an applicant must:

(a) Be age 60 or older; and

(b) Be a current resident of the State of Florida with the intent to remain in the state Have completed on their behalf, an Intake and Comprehensive Uniform Client Assessment, DOEA Form 111A and B, Feb. 1992, for Home Care for the Elderly services; and

(c) Meet the criteria for functional and financial eligibility set forth under subparagraphs 1. through 5. below:-

1. Be Shall have been assessed and determined to be at risk of nursing home placement based on the comprehensive uniform client assessment instrument pursuant to paragraph 58H-1.003(3)(a), F.A.C.; and

2. Have Shall self-declared their income and assets which do not cannot exceed the Institutional Care Program (ICP) limits set forth in DOEA Form H-001, incorporated by reference in paragraph paragraph 58H-1.003(3)(c), F.A.C.; used under Medicaid for eligibility for nursing home care or;

3. Receive Shall be a recipient of Supplemental Security Income (SSI); or;

4. Receive benefits as a Shall be a recipient of Medicaid for the Aged or Disabled (Meds AD), or Qualified Medicare Beneficiary (QMB), or as a Special Low Income Medicare Beneficiary (SLMB); and

5. Shall Hhave an approved caregiver who meets the caregiver requirements pursuant to Rule 58H-1.006, F.A.C., and the dwelling requirements pursuant to Rule 58H-1.007, F.A.C.

~~(2) Once eligibility has been determined, the caregiver and client will be notified of their eligibility status for the Home Care for the Elderly Program.~~

~~(a) A Care Plan specifying the services and the amount of monthly basic subsidy, and if authorized, special subsidy for which the client has been determined eligible, will be signed and dated by the caregiver, client and the case manager.~~

~~(b) Subsidy payment shall be based on the financial status of the client receiving care.~~

~~(3) If determined ineligible, the client and caregiver shall be notified of their right to an appeal.~~

~~Specific Authority 430.08, 430.603 430.603 FS. Law Implemented 430.603, 430.606 430.601-.606 FS. History-New 1-1-96, Amended _____.~~

58H-1.006 Caregiver Requirements.

~~(1) Caregivers shall meet the following requirements as specified in the case management agency's contract with the area agency on aging. A caregiver in the Home Care for the Elderly Program shall:~~

~~(a) Be a mature adult, age 18 or above, capable of providing a family type living environment and willing to accept the responsibility for the social, physical and emotional needs of the home care client;~~

~~(b) Be a relative or friend who has been accepted by the client as surrogate family or is a responsible adult with whom the client has made an arrangement to provide home care services;~~

~~(c) Be willing to accept the responsibility for the social, physical and emotional needs of the recipient.~~

~~(d)(e) Be physically present to provide supervision and to assist in arrangement of services for the client;~~

~~(e)(d) Maintain the residential dwelling free of conditions that pose an immediate threat to the life, safety, health and well being of the home care client pursuant to Rule 58H-1.007, F.A.C.; and~~

~~(f)(e) Be without record of conviction of abuse, neglect or exploitation of another older person, adult or child; shall not have been the perpetrator in a confirmed report of abuse, neglect or exploitation of another person by the Abuse Registry or other investigation process; and shall be willing to sign a statement which certifies that they are without record of conviction or have not been a perpetrator in a proposed confirmed or confirmed report of abuse, neglect or exploitation of another person by the Abuse Registry or other investigative process and grants written authorization to the Lead Agency to check the Abuse Registry through the Florida Department of HRS. The Lead Agency may grant an exemption from this disqualification following the procedures outlined in the DOEA Programs and Services Manual.~~

~~(2) The case management agency may exempt a caregiver from certain requirements as specified in its contract with the area agency on aging.~~

~~Specific Authority 430.08, 430.603 FS. Law Implemented 430.603 430.601-.606 FS. History-New 1-1-96, Amended _____.~~

58H-1.007 Dwelling Requirements.

~~(1) The dwelling must comply with safety, fire, and sanitation standards as described in the case management agency's contract with the area agency on aging the Department's Programs and Services Manual, Chapter II 3, Client Assessment, Section G.~~

~~(2) When a home is determined not to meet the standards set forth for the Home Care for the Elderly pProgram, the applicant, must client, or caregiver shall be notified in writing.~~

~~Specific Authority 430.08, 430.603 FS. Law Implemented 430.603, 430.604 430.601-.606 FS. History-New 1-1-96, Amended _____.~~

58H-1.008 Appeal Proceedings.

~~(1) Applicants shall be advised of the right to and the process of requesting an appeal. Appeals may be initiated in reference to application denial or any action which would terminate, suspend or reduce services received.~~

~~(2) Appeals must be reviewed and heard by the Lead Agency first.~~

~~(3) Written notification of the determination and right to an appeal shall be sent from the Lead Agency to the applicant.~~

~~(4) If resolution is not reached after an appeal hearing at the Lead Agency, the applicant may request the appeal be forwarded to the Area Agency on Aging.~~

~~(5) Upon request and receipt of the appeal from the Lead Agency, the Area Agency on Aging shall review and hear the appeal.~~

~~(6) The Area Agency on Aging shall provide written notification of determination to the applicant and the Lead Agency.~~

~~Specific Authority 430.08, 430.603 FS. Law Implemented 430.601-.606 FS. History-New 1-1-96, Repealed _____.~~

58H-1.009 Program Forms.

~~The following forms shall be used for programs regulated by this chapter, are hereby incorporated by reference in Rule 58A-1.010, F.A.C. In addition, the development of a care plan must meet the criteria established in subsection (3) of that rule, and are available in the Office of the Secretary and at each Area Agency on Aging:~~

~~(1) For purposes of assessment:~~

~~(a) DOEA Form 701A, Prioritization Form, July, 2000.~~

~~(b) DOEA Form 701B, Assessment Instrument, July, 2000.~~

~~(c) DOEA Form 701C, Congregate Meals Form, July, 2000.~~

~~(2) For purposes of completing forms listed in subsection (1): DOEA Form 701D, Assessment Instructions (701A, 701B, 701C), July, 2000.~~

~~(3) For purposes of documenting planned services of care: DOEA Forms 203A, Care Plan, and 203B, instructions dated July, 2001.~~

Specific Authority 430.08, 430.603 FS. Law Implemented 430.603, 430.606 430.601-608 FS. History—New 8-20-00, Amended 8-6-01, _____.

58H-1.010 Confidentiality and Disclosure Information.

(1) Case management agencies contracting with the area agency on aging to provide services under the HCE shall collect, maintain, and exchange information about applicants applying for services and clients receiving services only to the extent it is necessary to administer the programs covered under this agreement in accordance with the Health Insurance Portability and Accountability Act (HIPPA) of 1996.

(2) The case management agency shall retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to each agreement and/or contract for a period of at least five (5) years after termination of the agreement(s).

(a) If an audit has been initiated and audit findings have not been resolved at the end of five (five) years, the records shall be retained at least until resolution of the audit findings.

(b) These records may be subject to additional retention requirements set by law.

(3) Persons duly authorized by the department shall have full access and the right to examine or duplicate any of said records and documents during said retention period or as long as records are retained, whichever is later.

Specific Authority 430.08, 430.603 FS. Law Implemented 430.608 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Jim Crochet

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: E. Douglas Beach, Ph.D., Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 9, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 25, 2005

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO.: 62-285.420
RULE TITLE: Heavy-Duty Vehicle Idling Reduction

PURPOSE AND EFFECT: The purpose and effect of the proposed new rule section is to reduce emissions from unnecessary, long-duration diesel engine idling.

SUMMARY: The proposed rule addresses air pollution abatement from heavy-duty diesel vehicles.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 403.061 FS.

LAW IMPLEMENTED: 403.031, 403.061 FS.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: June 19, 2008, 10:00 a.m., before the Environmental Regulation Commission (ERC). Any proposed amendment or other comments or objections should be presented in accordance with paragraph 62-110.103(2)(b), F.A.C.

PLACE: Florida Department of Environmental Protection, Douglas Building, Conference Room A, 3900 Commonwealth Boulevard, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Ms. Lynn Scarce at (850)921-9551. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mr. Larry George at (850)921-9555 or larry.george@dep.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS:

62-285.420 Heavy-Duty Vehicle Idling Reduction.

(1) Applicability. This rule applies to any heavy-duty diesel engine powered motor vehicle. For the purposes of this rule:

(a) Heavy-duty diesel engine powered motor vehicle means a motor vehicle:

1. With a gross vehicle weight rating equal to or greater than 8,500 pounds;

2. Used on roads for the transportation of passengers or freight; and

3. Serving a commercial, governmental, or public purpose.

(b) Gross vehicle weight rating means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

(2) Requirement. Owners or operators of heavy-duty diesel engine powered motor vehicles are prohibited from idling for more than five consecutive minutes. Idling is the continuous operation of a vehicle's main drive engine while the vehicle is stopped.

(3) Exemptions. The idling restriction of subsection 62-285.420(2), F.A.C., shall not apply:

(a) To idling while stopped for traffic conditions over which the driver has no control, including being stopped for an official traffic control device or signal, in a line of traffic, at a railroad crossing, at a construction zone, or at the direction of law enforcement;

(b) To idling of buses 10 minutes prior to passenger loading and when passengers are onboard if needed for passenger comfort;

(c) To idling of an armored vehicle in which a person remains inside the vehicle while guarding the contents of the vehicle or while the vehicle is being loaded or unloaded.

(d) If idling is necessary for a police, fire, ambulance, public safety, military, or other vehicle being used in an emergency or training capacity;

(e) If idling is necessary to verify that the vehicle is in safe operating condition as required by law and that all equipment is in good working order, either as part of a daily vehicle inspection or as otherwise needed, provided that engine idling is mandatory for such verification;

(f) If idling is necessary to accomplish work for which the vehicle was designed, other than transporting goods, for example: operating a lift, crane, pump, drill, hoist, mixer, or other auxiliary equipment other than a heater or air conditioner;

(g) If idling is necessary to operate defrosters, heaters, air conditioners, or other equipment to prevent a safety or health emergency, but not solely for the comfort of the driver;

(h) To idling while the driver is sleeping or resting in a sleeper berth. This exemption expires at midnight September 30, 2013.

Specific Authority 403.061 FS. Law Implemented 403.031, 403.061 FS. History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Mr. Joseph Kahn, Director, Division of Air Resource Management

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ms. Mimi Drew, Deputy Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 16, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 27, 2007

DEPARTMENT OF HEALTH

Division of Medical Quality Assurance

RULE NO.: 64B-9.001
RULE TITLE: Biennial Licensing

PURPOSE AND EFFECT: The rule is to inform of the consequences of non-compliance after renewal or citation.

SUMMARY: The rule prohibits persons with a license who renew without meeting renewal requirements to renew a second time without having complied with the lawful requirements for renewal or without having paid money owed as established by a citation final order.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 456.004(1) FS.

LAW IMPLEMENTED: 456.004(1), 456.013, 456.036(5), 456.039, 456.0391, 456.077 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Lola Pouncey, Bureau Chief, 4052 Bald Cypress Way, Bin #C10, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B-9.001 Biennial Licensing.

(1) through (5) No change.

(6) Renewal.

(a) Licensees who renew to an active status license and are subsequently found to be out of compliance with the requirements for that renewal or the requirements set forth in a citation final order shall not be permitted to renew during the subsequent renewal cycle or thereafter until they have:

1. Satisfied any deficiencies in continuing education requirements, financial responsibility requirements, and any other conditions for renewal set forth in statute or rule; and

2. Paid any money owed for a citation in which a final order has been issued.

(b) A licensee who disputes the continuing existence of a deficiency in fact or as a matter of law may request a Section 120.57, Florida Statutes, hearing within 21 days of receipt of notification of denial of the renewal application.

Specific Authority 456.004(1) FS. Law Implemented 456.004(1), 456.013, 456.036(5), 456.039, 456.0391, 456.077 FS. History--New 11-5-00, Amended 11-24-05, 11-8-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Lola Pouncey
 NAME OF SUPERVISOR OR PERSON WHO APPROVED
 THE PROPOSED RULE: Lucy Gee
 DATE PROPOSED RULE APPROVED BY AGENCY
 HEAD: April 2, 2008
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT
 PUBLISHED IN FAW: April 25, 2008

DEPARTMENT OF HEALTH

Board of Nursing Home Administrators

RULE NO.:	RULE TITLE:
64B10-14.004	Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances

PURPOSE AND EFFECT: The Board proposes the rule amendment to delete unnecessary language and to add language clarifying: violation of Chapter 64B10, F.A.C. or Chapter 456, F.S.; and end of life and palliative care.

SUMMARY: The rule amendment will delete unnecessary language and to add language clarifying: violation of Chapter 64B10, F.A.C. or Chapter 456, F.S.; and end of life and palliative care.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 456.072(1)(gg), 456.073(3), 456.079, 468.1685(1) FS.

LAW IMPLEMENTED: 456.072, 456.073(3), 456.079, 468.1685(4), (5), (6), 468.1755(1)(a), (j), (q) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Nursing Home Administrators/MQA, 4052 Bald Cypress Way, Bin # C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B10-14.004 Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.

- (1) No change.
- (2) The following disciplinary guidelines shall be followed by the Board in imposing disciplinary penalties upon licensees for violation of the below mentioned statutes and rules:

First Offense:	\$1,000 fine	6 months suspension followed by probation and \$1,000 fine
Second Offense:	6 months suspension followed by probation and \$1,000 fine	revocation and \$1,000 fine

(y) Failure to implement quality assurance program.

(Section 468.1755(1)(q), F.S.)

First Offense:	<u>reprimand</u>	<u>reprimand and \$1,000 fine</u>
Second Offense:	<u>probation and \$1,000 fine</u>	<u>1 month suspension</u>

(z) Violating any provision of this chapter or Chapter 456, F.S., or any rules adopted pursuant thereto.

(Section 468.1755(1)(r), F.S.)

<u>First Offense:</u>	<u>For any offense not specifically listed herein, based upon the severity of the offense and the potential for patient harm, from a reprimand to revocation or denial; and an administrative fine from \$500 to \$10,000.</u>	
<u>Second Offense:</u>	<u>For any offense not specifically listed herein, based upon the severity of the offense and the potential for patient harm, From probation to revocation or denial and an administrative fine from \$500 to \$10,000.</u>	

(aa)(x) No change.

(bb)(y) No change.

(cc)(z) Failing to comply with the educational course requirements for human immunodeficiency virus, acquired immune deficiency syndrome, ~~or~~ end of life and palliative health care.

(Section 456.072(1)(e), F.S.)

First Offense:	\$750 fine	\$1,000 fine
Second Offense:	probation and \$750 fine	probation and \$1,000 fine
Third Offense:	probation and \$1,000 fine	6 months suspension followed by probation and \$1,000 fine

~~(dd)(aa)~~ No change.
~~(ee)(bb)~~ No change.
~~(ff)(cc)~~ No change.
~~(gg)(dd)~~ No change.
~~(hh)(ee)~~ No change.
~~(ii)(ff)~~ No change.
~~(jj)(gg)~~ No change.
~~(kk)(hh)~~ No change.
~~(ll)(ii)~~ No change.
~~(mm)(jj)~~ No change.
~~(nn)(kk)~~ No change.
~~(oo)(ll)~~ No change.
~~(pp)(mm)~~ No change.
~~(nn)~~ Failure to implement quality assurance program.
~~(Section 468.1755(1)(q), F.S.)~~

First Offense:	reprimand	reprimand and \$1,000 fine
Second Offense:	probation and \$1,000 fine	1-month suspension

~~(oo)~~ Authorizing the discharge or transfer of a resident for a reason other than those provided in Sections 400.022 and 400.0255, F.S.
~~(Section 468.1755(1)(f), F.S.)~~

First Offense:	reprimand	reprimand and \$1,000 fine
Second Offense:	probation and \$1,000 fine	1-month suspension

~~(qq)(pp)~~ No change.
~~(3)(a) through (e)~~ No change.

Specific Authority 456.072(1)(gg), 456.073(3), 456.079, 468.1685(1) FS. Law Implemented 456.072, 456.073(3), 456.079, 468.1685(4), (5), (6), 468.1755(1)(a), (j), (q) FS. History–New 11-23-86, Amended 4-22-87, Formerly 21Z-14.004, 61G12-14.004, 59T-14.004, Amended 10-12-97, 10-16-00, 2-13-01, 2-10-03, 5-1-03, 7-27-06,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Nursing Home Administrators
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Nursing Home Administrators
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 29, 2008
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 21, 2008

DEPARTMENT OF HEALTH

Board of Psychology

RULE NO.: 64B19-11.006
RULE TITLE: Incomplete Applications
PURPOSE AND EFFECT: The Board proposes the rule amendment in order to clarify language regarding incomplete applications.
SUMMARY: Language concerning incomplete applications will be clarified.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.
Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.
SPECIFIC AUTHORITY: 120.60(1), 490.004(4) FS.
LAW IMPLEMENTED: 456.013(1), 490.005(1) FS.
IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Allen Hall, Executive Director, Board of Psychology, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B19-11.006 Incomplete Applications.

(1) The Board will not review incomplete applications, and applications that remain incomplete for one year following a timely filed notice of deficiency shall expire and be automatically closed by the department.

(2) Applicants whose files are closed and who wish further consideration must submit new applications. Likewise, applicants who delay timely responses to notices of deficiencies may be required to update their applications with the department prior to the Board’s consideration.

Specific Authority 120.60(1), 490.004(4) FS. Law Implemented 456.013(1), 490.005(1) FS. History–New 6-23-91, Formerly 21U-11.008, 61F13-11.008, 59AA-11.006, Amended_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Psychology
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Psychology
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 4, 2008
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 18, 2008

**Section III
Notices of Changes, Corrections and
Withdrawals**

**BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND**

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled “Official Notices.”

WATER MANAGEMENT DISTRICTS

Suwannee River Water Management District

RULE NO.: 40B-4.3020
RULE TITLE: Content of Works of the District Development Permit Applications
NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 13, March 28, 2008 issue of the Florida Administrative Weekly.

40B-4.3020 Content of Works of the District Development Permit Applications.

(1)(h) Where applicable, the applicant must provide the name and address of the person who prepared the plans and specifications of construction.

(i) Where applicable, the applicant must provide the name and address of the person who will construct the proposed work.

(2)(g) Where applicable, the applicant must provide the name and address of the person who prepared the plans and specifications of construction.

(h) Where applicable, the applicant must provide the name and address of the person who will construct the proposed work.

The change reflects comments received from the Joint Administrative Procedures Committee, which incorporates language required in Section 373.413, Florida Statutes.