

proposed or refused initiation or change, including facts relating to the problem; and, a proposed resolution of the problem to the extent known and available to the parents at the time. However, the school district may not deny or delay a parent's right to a due process hearing for failure to provide this notice.

2. Immediately forwarding the Division of Administrative Hearings by facsimile transmission of the parent's request for a hearing upon its receipt;

3. Notifying all parties regarding their rights and responsibilities before, during, and after the hearing. This notice should include information to the parent of any free or low cost legal and other relevant services, which are available, if the parent requests this information or if the parent or school district initiates a hearing.

4. Determining whether an interpreter is needed and arranging for the interpreter as required;

5. Complying with the administrative law judge's rulings regarding requests for and exchanges of evidence; discovery; the filing of motions and, scheduling, so as to meet the requirements of this rule, and the deadlines established herein.

6. Arranging for the provision and payment of clerical assistance, the hearing, use of facilities, and a verbatim transcript of the hearing;

7. Completing other responsibilities specified by the school board.

(h) Duties and responsibilities of the Department of Education shall include:

1. Maintaining a list of persons who serve as administrative law judges including a statement of the qualifications of each of these persons; and,

2. Maintaining an index of the final orders of such hearings and providing this information to the public upon request.

(i) Duties and responsibilities of an administrative law judge shall be:

1. To establish the date, time, and location of the hearing and any pre-hearing conference calls and motion hearings. Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and their child;

2. To conduct the hearing in a fair and impartial manner;

3. To ensure that all discovery, motion practice, and pre-hearing procedures are conducted in an expedited manner, consistent with the deadlines established by this rule concerning the exchange of evidence and the issuance of the final decision.

4. To determine if the parent wants an electronic or written copy of the final decision and the administrative record of the hearing;

5. To determine whether the parent wants the hearing open to the public and whether the parent wants their child to attend the hearing;

6. To determine whether the parent's advisor or representative is sufficiently knowledgeable about or trained regarding students who are gifted;

7. To determine how evidence may be exchanged prior to and during the hearing;

8. To determine how witnesses may be compelled to attend, be cross-examined, and confronted during discovery and at the hearing;

9. To determine how evaluations and recommendations may be disclosed prior to and during a hearing;

10. To summarize the facts and findings of the case and to arrive at an impartial decision based solely on information presented during the hearing;

11. To reach a final decision and mail to all parties copies of the facts, findings and decision regarding the hearing within forty-five (45) days of the district's receipt of the parent's request or the filing of the district's request for a hearing, whichever is sooner;

12. To be accountable for compliance with all deadlines and procedures established by the statutes and rules for such hearings;

13. To maintain the confidentiality of all information; and

14. To rule on requests for specific extensions of time beyond the periods set forth in subsection (7) of this rule, at the request of either party.

(j) Civil action. A decision made in a hearing conducted under subsection (7) of this rule shall be final, unless, within thirty (30) days, a party aggrieved by the decision brings a civil action in state circuit court without regard to the amount in controversy, as provided in Section 1003.57(5), Florida Statutes. The state circuit court shall: receive the records of the administrative proceedings; hear, as appropriate, additional evidence at the request of a party; and, basing its decision on the preponderance of the evidence, shall grant the relief it determines appropriate. In the alternative, any party aggrieved by the administrative law judge's decision shall have the right to request an impartial review by the appropriate district court of appeal as provided by Sections 120.68 and 1003.57(5), Florida Statutes.

Specific Authority 1001.02(1)(2)(n), 1003.01(3)(a)(b), 1003.57(5) FS. Law Implemented 1001.42(4)(l) 1003.01(3)(a)(b), 1003.57(5), 1001.03(8) FS. History - New 9-20-2004.

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

Providing parents, who have enrolled their children in private schools, and private school personnel with information regarding parents' rights under this rule is necessary so that they have information regarding the school district services that continue to be available to their children.

(1) Rights of children with disabilities enrolled by their parents in private schools. Except as provided in subsection (9) of Rule 6A-6.03311, FAC., a child with a disability who has been enrolled in a private school by his or her parent does not have an individual right to receive some or all of the specially designed instruction and related services that the child would receive if enrolled in a public school.

(2) Prior notice. The district shall provide parents with prior written notice a reasonable time before a school district proposes or refuses to initiate or change the identification, evaluation or educational placement of the student.

(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 commonly used by the parents unless such communication 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 to the parents in their native language or mode of communication;
2. That the parents understand the content of the notice; and
3. That there is written documentation that the requirements of subparagraphs (2)(b)1. and (2)(b)2. of this rule have been met.

(c) The notice to the parents shall include:

1. A description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take the action, and a description of any options the district considered and the reasons why those options were rejected;
2. A description of each evaluation procedure, test, record, or report the district used as a basis for the proposal or refusal;
3. A description of any other factors relevant to the district's proposal or refusal;
4. A statement that the parents of a child with a disability have protections under the procedural safeguards specified in this rule.
5. The means by which a copy of a description of the procedural safeguards can be obtained.
6. Sources for parents to contact to obtain assistance understanding their procedural safeguards specified in this rule.

(3) Informed parental consent.

(a) Parents shall be 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 unless it is clearly not feasible to do so.

(b) Written parental consent shall be obtained prior to the school district conducting a formal, individual evaluation to determine eligibility for specially designed instruction and related services, prior to initial provision of specially designed instruction and related services, and prior to conducting a reevaluation for students with disabilities except as provided in paragraph (3)(e) of this rule.

(c) School districts shall document the attempts to secure consent from the parent as required by paragraphs (3)(a)-(b) of this rule.

(d) Parental consent is voluntary and may be revoked at any time before the school district's action occurs.

(e) Parental consent is required for reevaluation except when the school district can demonstrate that it has taken reasonable measures, consistent with those described in paragraph (3)(d) of Rule 6A-6.03028, FAC., to obtain that consent and the student's parents have failed to respond.

(4) Parents' opportunity to examine records and participate in meetings.

(a) The parents of a child with a disability shall be afforded, in accordance with Rule 6A-1.0955, FAC.,

Section 1002.22, Florida Statutes, and this rule, an opportunity to inspect and review their child's educational records maintained by the local school district.

(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.

(c) The parents of a child with a disability must be afforded an opportunity to participate in meetings with school district personnel with respect to the identification, evaluation, or educational placement of their child.

(5) Mediation. The Department of Education provides parents of children 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 or educational placement of the student through a mediation process. This mediation process is described in subsection (5) of Rule 6A-6.03311, FAC.

(6) State Complaint Procedures. The Department of Education shall provide parents of a child with a disability, enrolled in a private school by their parents, and other interested persons, the opportunity to resolve allegations that a school district has failed to meet the requirements of Title 34, Sections 300.451 through 300.462, Code of Federal Regulations (CFR). The Department of Education's complaint procedures are described in subsection (6) of Rule 6A-6.03311, FAC.

(7) Independent educational evaluation. The parents of a child with a disability, enrolled in a private school by their parents, have the right to an independent educational evaluation as described in subsection (7) of Rule 6A-6.03311, FAC.

(8) Due Process Hearings. Administrative due process hearings, as described in section (11) of Rule 6A-6.03311, FAC., are available if the parent of a child with a disability, enrolled in a private school by their parents, alleges that the school district failed to comply with the requirements for the identification and evaluation of students with disabilities as described in 34 CFR 300.451 and 300.530 through 300.543. Such due process hearings are not available if the parent alleges that the school district failed to comply with the requirements of 34 CFR 300.452 B 300.462 including the provision of services indicated on the student's services plan.

(9) Placement of students with disabilities in private schools by their parents through participation in the Opportunity Scholarship Program.

(a) Funding for the scholarship shall be consistent with Section 1002.38(6), Florida Statutes.

(b) Specially designed instruction and related services provided to students participating in the Opportunity Scholarship Program shall be consistent with the requirements of 34 CFR 300.450 B 300.457 and paragraph (3)(o) of Rule 6A-6.03411, FAC.

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