**VOLUME I-B:**

**Florida Statutes and State Board of Education Rules**

**Excerpts Related to Exceptional Student Education (2014)**

***Corrective Addendum***

*The following replaces 6A-3.0171 found on page 309.*

**6A-3.0171 Responsibilities of School Districts for Student Transportation.**

 Each school district shall exercise specific powers and responsibilities, as follows:

 (1) Responsibilities of Superintendent. It shall be the duty of the superintendent, acting as executive officer for the school board to exercise functions and to perform duties listed below:

 (a) To recommend to the school board such policies, rules and regulations, plans and procedures as the superintendent shall deem desirable or necessary for provisions of satisfactory transportation facilities and equipment in the district, and as executive officer of the board, to administer the transportation service and to make sure that all policies and actions approved by the board are properly executed.

 (b) To recommend to the school board for employment such assistants as are, in his or her judgement, necessary to supervise transportation operation and maintenance and to provide essential records, maps and studies of the service.

 (c) To recommend in writing to the school board for employment qualified bus operators, attendants and mechanics as may be necessary for efficient functioning of the service.

 (d) To develop safety regulations and promote proper safety practices for all operators.

 (e) To prepare and recommend to the school board plans for purchase of or contract for safe school buses to transport students to and from school or school activities.

 (f) To organize or approve an inspection, maintenance and repair service for publicly owned or contracted buses designed to ensure that the condition of each bus is maintained to meet or exceed accepted school bus industry and state standards, and which will be adequate to provide for quick and economical repair of any bus, and to make sure that this service functions efficiently.

 (g) To propose garages at which buses shall be inspected, when arrangements for this service have not been made to use school board employed mechanics, and to see that inspections are systematically made at least once each month at garages approved by the board.

 (h) To make periodic, objective surveys of school bus and garage equipment, routes, safety practices, repair and operating costs, and when unsatisfactory conditions are discovered, to recommend corrective measures to the school board.

 (i) To recommend a medical examiner or medical examiners to give physical examinations to bus operators and to ascertain and ensure that all examinations are carried out as required. A medical examiner shall be defined as a medical physician or physician assistant licensed pursuant to Chapter 458, F.S.; an osteopathic physician or physician assistant pursuant to Chapter 459, F.S., a chiropractic physician licensed pursuant to Chapter 460, F.S.; and an Advanced Registered Nurse Practitioner licensed pursuant to Chapter 464, F.S..

 (2) The school district shall exercise additional specific powers and responsibilities, as follows:

(a) Enforcement of law and rules and formulation of policies.

 (b) To make sure that State Board rules are known, understood and observed by all who have responsibility for student transportation.

 (c) To assure that all transportation rules and statements of policy are in harmony with rules of the State Board and are fully observed.

 (d) To assure that no state funds for transportation are used for transportation of students to schools which cannot qualify for recognition by the Department under the provisions of State Board rules.

 (e) To adopt, after considering recommendations of the superintendent, a school board policy prohibiting the use of a cellular telephone by any school bus operator while actively driving the bus.

 (f) To adopt after considering recommendations of the superintendent, a school board policy that prohibits unnecessary idling of school buses while they are in the vicinity of students.

 (g) To adopt, after considering recommendations of the superintendent statements of policy in harmony with law and with rules of the State Board necessary for maintaining the requirements of adequate transportation. Such policies shall include at least the following responsibilities of the director or supervisor of transportation, the school principal or other designated staff and the bus operator for uniform school bus operating procedures:

 1. Responsibilities of the director or supervisor of transportation:

 a. To counsel with school bus operators regarding safety and efficiency of service to schools and to make recommendations to them for improvement in service.

 b. To confer with the superintendent or the superintendent’s designee regarding bus operators and to recommend such personnel for employment.

 c. To instruct school bus operators in procedures to be followed in conducting school bus emergency evacuation drills and to confer with each school principal regarding scheduling, conducting and documenting school bus evacuation drills. These procedures shall include a requirement that all operators of school buses transporting students, teachers, or chaperones on field and activity trips instruct all passengers in the locations and proper use of school bus emergency exits prior to each such trip.

 d. To counsel with bus operators regarding operator responsibility and authority.

 2. Responsibilities of the school principal or other designated school staff:

 a. To assume responsibility under the direction of the superintendent for all student disciplinary cases which arise in connection with transportation.

 b. To plan the program of the school so that transported students who arrive early or remain late will be under school supervision at all times.

 c. To plan and assign places for students to get on and off school buses at the school, and to ensure the safety of the loading/ unloading zone and to provide supervision of students.

 d. To direct school bus emergency evacuation drills on each bus serving the school during the first six (6) weeks of each semester, and to maintain documentation for all students.

 e. To provide instruction for all transported students in safe practices on and off the bus during the first six (6) weeks of the first semester of the school year.

 f. To request authority in writing for transportation of students on field trips and activity trips, or other special trips, and to plan such trips in accordance with policies approved by the school board.

 3. Responsibilities of the school bus operator:

 a. To pass all required physical examinations and meet such requirements as may be prescribed by law or rules.

 b. To be clean and neat in appearance, and to refrain from wearing shoes which are not securely held on the foot.

 c. To refrain from use of tobacco while operating the bus, and to use no profane language in the presence of the students. Operators shall not use or be under the influence of alcohol, illicit drugs, or any substance which may impair the operator’s alertness or performance while on duty. Operators shall not carry firearms while on school board property.

 d. To prescribe, in cooperation with the principals, the seating arrangements of students on all buses.

 e. To report needed changes in school bus transportation to the director or supervisor of transportation including bus loads, bus deficiencies, road hazards, routes and schedules.

 f. To study and observe all laws and rules of the State Board and the school board relating to the service of transportation.

 g. To attend and participate in conferences and training classes for school bus operators and to be prepared at any time to pass successfully a reasonable examination concerning traffic laws, state and local transportation rules and driving skills.

 h. To ascertain and ensure that transported students observe all rules prescribed by law and by the state and local board.

 i. To maintain order and discipline, under the direction of the school principal, on the part of every passenger.

 j. To permit a student to leave the bus only at their assigned stop, except upon written authorization of the school principal or other district designee.

 k. To observe all procedures incorporated in the Florida Department of Education Basic School Bus Operator’s Curriculum, as incorporated by reference in paragraph 6A-3.0141(4)(b), F.A.C.

 l. To instruct transported students in safe riding practices.

 m. To require all passengers to remain seated and to keep aisles and exits clear.

 n. To participate in emergency evacuation drills at least once each school semester under the direction of the school principal or the principal’s designee.

 o. To use the bus, if it is publicly owned, only to transport students to and from school, except upon specific direction of the superintendent or from the principal upon written authorization by the superintendent.

 p. To prepare immediately after every accident involving the bus or a school bus passenger an accident report to be filed with the director or supervisor of transportation.

 q. To ascertain and ensure that all persons are off the bus before filling fuel tank.

 r. To drive always at a safe speed and never in excess of the legally posted speed limit in business or residential districts or fifty-five (55) miles per hour outside business or residential districts.

 s. To cooperate with duly authorized school officials, mechanics and other personnel in the mechanical maintenance and repair of bus in overcoming hazards which threaten the safety or efficiency of service.

 t. To inspect the bus at least daily prior to the beginning of the first daily trip or more often as required by the school district and to report any defect affecting safety or economy of operation immediately to authorized service personnel. The inspection shall include all items identified in the procedures related to the mandatory daily inspection in the Basic School Bus Operator Curriculum.

 u. To keep the bus clean and neat at all times and not affix any stickers or other unauthorized items to the interior or exterior of buses.

 v. To prepare reports, keep all records required, and otherwise assist school officials in mapping bus routes, planning schedules and in obtaining information for a continuous study of all phases of transportation service.

 w. To wear a seat belt at all times when the bus is in operation.

 x. To use roof-mounted white flashing strobe lights (if equipped) at a minimum, whenever headlights are required to be used due to reduced visibility conditions pursuant to Section 316.217(1)(b), F.S., except that insufficient light due only to the time of day or night shall not require use of the strobe light.

 y. To report immediately to the director or supervisor of transportation, school principal or other designated officials:

 (I) Misconduct on the part of any student while on the bus or under the operator’s immediate supervision,

 (II) Complaints requiring attention of school authorities,

 (III) Any hazards arising which would offer either an actual or a potential threat to the safety of students in the operator’s care,

 (IV) Causes for failure to maintain school bus time schedule, and

 (V) Overloaded conditions on the bus which exceed the rated capacity of the bus.

 z. To perform a complete interior inspection of each bus after each run and trip to ensure no students are left on board.

 aa. To maintain as far as practicable by patient and considerate treatment of parents a feeling of security in the safety of students transported.

 (3) Transportation personnel.

 (a) To employ such assistants as may be recommended by the superintendent and as are necessary in the judgment of the board to supervise operation and maintenance of school buses and to provide records and maps for a continuous study of transportation routes and needs within the district.

 (b) To employ or contract only for services of school bus operators who meet the requirements of Rule 6A-3.0141, F.A.C., and who possess a valid Medical Examiner’s Certificate.

 (c) To officially maintain, after considering recommendations of the superintendent, an approved, current list of properly licensed physicians or medical facilities staffed by licensed physicians other than members of the school board or superintendent, eligible to examine all school bus operator’s and operator applicants, in accordance with Form ESE 479, Florida School Bus Operators Medical Examination Report for Commercial Driver Fitness Determination, and School Bus Driver Physical Standards: Medical Regulatory Criteria for Physical Examinations, as adopted by reference in Rule 6A-3.0151, F.A.C.

 (4) Transported students.

 (a) To consider, and as nearly as possible to provide for, the transit, safety, and comfort of each student who will be transported to and from school.

 (b) To approve, after considering recommendations of the superintendent, policies relating to and governing the conduct of transported students during the time they are riding on the school bus, and during the time spent on the school grounds awaiting the opening of school or in the afternoon hours waiting for the school bus.

 (c) To suspend for a period exceeding ten (10) days, upon recommendation of the superintendent, any student who willfully and persistently violates school board policies.

 (5) Purchases, lease and use of school buses.

 (a) To provide, by purchase or contract, safe, comfortable and adequate transportation facilities and school buses which meet minimum standards of law and State Board rules.

 (b) To purchase transportation equipment in accordance with all provisions of law and State Board rules.

 (c) To assure that contracts entered into by school boards for operation of school buses are in accordance with law and rules of the State Board.

 (d) To adopt policies governing the use of publicly owned and contracted school buses for transportation of students to school and school activities, and to ascertain and ensure that buses and bus bodies are used only after policies have been adopted and upon written instructions signed by the superintendent or designee. Such district policies shall include the provision that any equipment carried in a school bus which could shift on impact or sudden stop shall be securely fastened and shall not block any aisle or exit at any time.

 (6) Routes and schedules.

 (a) To designate school bus routes, following consideration of data and recommendations presented by the superintendent, to provide for students eligible for transportation when transportation by school bus is economical and practicable.

 (b) To propose minimum distances from school centers within which no bus stops will be scheduled except for students with special transportation needs; to propose minimum distances from transportation routes as residence zones within which students must arrange to meet the bus at regularly scheduled stops; and to plan and arrange routes, schedules, and student capacities in accordance with policies adopted by the school board.

 (c) To plan routes, so far as practicable, so that no elementary student shall be on a bus more than fifty (50) minutes or secondary school student more than one (1) hour during the morning or evening, and so that no more than an hour and one-half will elapse between the time the student boards the bus and the time school begins, or the time school closes and the student leaves the bus in the afternoon, and to arrange proposed routes which, insofar as possible, are free from major hazards.

 (d) To assure that county and city officials are advised of hazards on bus routes and hazards involving students walking to and from school.

 (7) School bus operating principles. To assure that all buses are operated in accordance with municipal, county and state traffic requirements and that every precaution is taken to assure the safety of students.

 (8) Inspection and maintenance of school buses.

 (a) To provide, after considering recommendations of the superintendent, adequate storage, maintenance and inspection procedures for all buses owned by the school board, and to assure that all contract buses in use in the district are properly inspected and maintained in accordance with law and rules of the State Board.

 (b) The inspection shall be conducted in accordance with procedures and include all items listed in the State of Florida School Bus Safety Inspection Manual, 2008 Edition which is hereby incorporated by reference and made a part of this rule. This document may be obtained from the Bureau of Career Development, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399, at a cost not to exceed actual production and distribution cost.

 (c) Inspection of buses shall be scheduled and performed at a maximum interval of thirty (30) school days. Any bus that is removed from service or deadlined so as to disrupt the safety inspection schedule shall be inspected prior to being returned to service. All deficiencies discovered during the safety inspection shall be noted on the inspection form. Follow-up repairs of all safety related items shall be made before the bus is returned to service and shall be documented.

 (d) School bus inspections shall be conducted by technicians certified as school bus inspectors in accordance with the State of Florida School Bus Safety Inspection Manual, 2008 Edition. The requirement that inspections be performed by a certified school bus inspector may be waived for a period not to exceed six (6) months when an emergency condition exists, upon written notification to the Commissioner by the district superintendent.

 (e) No person shall knowingly render inoperative or reduce compliance of any school bus equipment required to meet Federal Motor Vehicle Safety Standards applicable at the time of manufacture.

 (9) Transportation records, reports and accounting.

 (a) To ascertain and ensure that all prescribed records are kept and reports made which are required by law, rules or the Commissioner.

 (b) To assure that all records and reports prescribed by the Commissioner are properly completed and are furnished on the dates due to those designated to receive them.

 1. To file with the Deputy Commissioner for Finance and Operations school bus accident reports using the Department’s Automated School Bus Accident Reporting System which may be accessed at http://doeweb-prd.doe.state.fl.us/eds/BusAccident. Districts shall complete a report on any school bus accident meeting the reporting requirements of the automated system. The Department’s Automated School Bus Accident Reporting System (Form ESE 256) as noted above is hereby incorporated by reference to become effective November 2006. For viewing purposes only, hard copies of the reporting requirements in the Automated School Bus Accident Reporting System may be obtained by contacting the Director of the School Transportation Management Section, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399.

 2. To file with the Deputy Commissioner for Finance and Operations the Hazardous Walking Conditions Report for Elementary Students within 2 Miles of Assigned School (Form 422) using the Department’s automated system which may be accessed at http://data.fldoe.org/walking/. The Hazardous Walking Conditions Report for Elementary Students within 2 Miles of Assigned School is hereby incorporated by reference to become effective November 2006. For viewing purposes only, hard copies of the Hazardous Walking Conditions Report for Elementary Students within 2 Miles of Assigned School may be obtained by contacting the Director of the School Transportation Management Section, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399.

 (c) Keep a current file of all Medical Examiner Certificates and required dexterity tests for school bus operators.

 (d) To maintain records of inspection of each school bus in accordance with requirements of subsection (8) of this rule.

 (e) To prepare maps of routes and attendance zones and conduct and carry on such studies of transportation as shall enable the superintendent to measure progress and recommend improvements in the transportation service.

 (f) To prescribe and maintain, upon recommendation of the superintendent, such additional records, reports, accounts and accounting procedures as may be necessary to provide complete information regarding the transportation service.

 (10) Inter-agency relationships. To cooperate with municipal, county, state, and federal agencies to promote the safety of the transportation service through correction of remediable road hazards.

 **Rulemaking Authority 1003.31, 1006.21, 1006.22 FS. Law Implemented 316.183(3), 316.189, 1003.31, 1006.21(3), 1006.22 FS. History–Amended 9-4-64, 3-25-66, 1-17-72, Revised 7-20-74, Repromulgated 12-5-74, Amended 11-24-76, 10-1-81, Formerly 6A-3.17, Amended 9-30-87, 6-26-89, 11-15-94, 8-28-95, 4-18-96, Formerly 6-3.017, Amended 6-11-00, Formerly 6-3.017, Amended 4-21-03, 11-26-08.**

*The following replaces 6A-4.035 found on page 324.*

**6A-4.035 Specialization Requirements for Certification in School Social Worker (Grades PK-12) – Specialty Class.**

 A bachelor’s or higher degree with an undergraduate or graduate major in social work. The program shall be accredited by the National Council on Social Work Education or the institution shall be accredited in accordance with the provisions of Rule 6A-4.003, F.A.C.

 **Rulemaking Authority 1001.02, 1012.55, 1012.56 FS. Law Implemented 1001.02, 1012.54, 1012.55, 1012.56 FS. History–New 4-20-64, Amended 7-7-68, Revised 8-17-74, Repromulgated 12-5-74, Joint Administrative Procedures Committee Objection Filed – See FAW Vol. 11, No. 51, December 20, 1985, Formerly 6A-4.35, Amended 12-4-89, 11-13-96, Joint Administrative Procedures Committee objection resolved by Chapter 86-156, Laws of Florida, Florida Administrative Weekly Vol. 35, No. 27, July 10, 2009.**

*The following replaces 6A-6.03024 found on page 343.*

**6A-6.03024 Provision of Occupational or Physical Therapy to Exceptional Students as a Related Service.**

 (1) Definitions.

 (a) Occupational therapy is defined to mean services provided by a licensed occupational therapist or a licensed occupational therapy assistant pursuant to the provisions of the Occupational Therapy Practice Act found in Part III, Chapter 468, F.S., and sub-subparagraph 6A-6.03411(1)(dd)3.f., F.A.C.

 (b) Physical therapy is defined to mean services provided by a licensed physical therapist or a licensed physical therapist assistant pursuant to the provisions of the Physical Therapy Practice Act found in Chapter 486, F.S., and sub-subparagraph 6A-6.03411(1)(dd)3.i., F.A.C.

 (c) Related service provider is defined to mean the licensed occupational or physical therapist responsible for the assessment and provision of school-based occupational or physical therapy as a related service as defined in Section 1003.01(3)(b), F.S., and subparagraph 6A-6.03411(1)(dd)3., F.A.C.

 (2) Assessments. Assessments as defined in Section 468.203 or 486.021, F.S., shall be conducted by the related service provider prior to the provision of occupational or physical therapy.

 (3) Determination of need for occupational or physical therapy. The individual educational plan (IEP) team in accordance with Rule 6A-6.03028, F.A.C., the educational plan (EP) team in accordance with Rule 6A-6.030191, F.A.C., or the individualized family support plan (IFSP) team, in accordance with Rule 6A-6.03029, F.A.C., shall review assessments conducted by the related service provider and all other relevant data to determine if occupational or physical therapy services are needed to assist a student to benefit from specially designed instruction.

(4) Provision of input to planning teams. The licensed therapist or licensed assistant shall provide input to assist the IEP, EP, or IFSP team when the educational need for occupational or physical therapy as a related service is being determined, and when an IEP, EP, or IFSP for a student who is receiving occupational or physical therapy as a related service is being reviewed by the IEP, EP, or IFSP team.

 (5) Plan of treatment. Once the educational need for occupational or physical therapy has been determined in accordance with the provisions of this rule, a plan of treatment as referenced in Section 468.203 or 486.021, F.S., and the corresponding requirement found Rule 64B17-6.001, F.A.C., shall be developed. The plan of treatment may be included as a part of the IEP, EP, or IFSP.

**Rulemaking Authority 1001.02, 1003.01(3), 1003.57, 1003.571, F.S. Law Implemented 1003.01(3), 1003.57, 1003.571 F.S. History–New 11-25-80, Amended 2-4-81, Formerly 6A-6.3024, Amended 2-12-91, 9-30-96, 8-22-12.**

*The following replaces 6A-6.03312 found on page 373.*

**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), F.S.

(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) school 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, F.S., 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(1), F.S.

(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, F.S., 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.

**Rulemaking Authority 1001.02(1), (2)(n), 1003.31(3), 1003.571, 1006.09 FS. Law Implemented 1003.31(3), 1003.57, 1003.571, 1006.09 FS. History–New 9-20-04, Amended 12-22-08, 4-21-11.**

*The following replaces 6A-6.0333 found on page 379.*

**6A-6.0333 Surrogate Parents.**

 A surrogate parent is an individual appointed to act in the place of a parent in educational decision-making and in safeguarding a student’s rights under the Individuals with Disabilities Education Act and Section 39.0016, F.S., when no parent can be identified; 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; the student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a(6)); or a court of competent jurisdiction over the student has determined that no person has the authority, willingness, or ability to serve as the educational decisionmaker for the student without judicial action. In addition to the requirements of Section 39.0016, F.S., the following requirements regarding the appointment of a surrogate parent for a student who has or is suspected of having a disability apply.

 (1) Appointment of a surrogate parent. A surrogate parent for a student who is eligible for or who is 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. The surrogate parent for a student who is eligible for or who is 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 subparagraph (3)(b)2. of Section 39.0016, F.S.

 (2) Compensation of a 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 school district or Department of Education contracted program solely because he or she is paid by the school district or Department of Education contracted program to serve as a surrogate parent.

 (3) 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 subparagraph (3)(b)2. of Section 39.0016, F.S., until a surrogate can be appointed who meets all of the requirements in subparagraph (3)(b)2. of Section 39.0016, F.S.

 **Rulemaking Authority 1001.02(1), 1003.571 FS. Law Implemented 1003.57, 1003.571 FS. History–New 6-28-83, Formerly 6A-6.333, Amended 12-22-08, 4-21-11.**

*The following replaces 6A-6.0361 found on page 385.*

**6A-6.0361 Contractual Agreements With Nonpublic Schools and Residential Facilities.**

 (1) Requirement for contractual agreement.

 (a) Each school district shall provide special education and related services to an exceptional student with a disability through a contractual agreement with an approved nonpublic school or community facility under the following circumstances:

 1. When the school district has determined that no special educational program offered by it, a cooperating school district, or a state agency can adequately provide the educational program for the student, or

 2. For the provision of the educational component of a residential placement for an exceptional student with a disability when such a placement is made by another public agency for the primary purpose of addressing residential or other non-educational needs in accordance with subsections (3) and (4) of Section 1003.57, F.S. The student’s individual educational plan (IEP) developed in accordance with Rule 6A-6.03028, F.A.C., may reflect that the residential placement is not required in order for the student to benefit from special education which could otherwise be provided by the school district during the day.

 (b) Each school district may provide special education and related services to an exceptional student with a disability through a contractual agreement with an approved nonpublic school or community facility for the provision of a non-residential interagency program that includes the provision of educational programming in accordance with the student’s IEP.

 (c) In collaboration with the Part C Early Steps Program, each school district may provide early intervention services for an infant or toddler with a disability through a contractual agreement with approved nonpublic or community facilities when the school district has determined that a nonpublic or community facility can provide appropriate services for the infant or toddler. The early intervention services shall be provided in accordance with an individualized family support plan (IFSP) developed in accordance with Rule 6A-6.03029, F.A.C.

 (d) The requirements of this subsection do not apply when a school district provides educational assessments and a program of instruction and special education services to students in the custody of Department of Juvenile Justice programs who are served in residential and nonresidential care facilities and juvenile assessment facilities located in the school district in accordance with Section 1003.52(3), F.S.

 (2) Placement in a residential facility of a student with a disability by a public agency other than the school district.

 (a) In accordance with subsection (3) of Section 1003.57, F.S., an exceptional student with a disability may be placed in a private residential care facility by the Department of Children and Families, Agency for Persons with Disabilities, or Agency for Health Care Administration. For the purposes of this subsection, “placement” means the funding or arrangement of funding by an agency for all or a part of the cost for an exceptional student to with a disability to reside in a private residential care facility and the placement crosses school district lines.

 (b) The private residential care facility or a residential facility that is operated, licensed, or regulated by a public agency shall ensure that, within ten (10) business days of a student with a disability being placed in the facility, written notification of the placement is provided to the school district where the student is currently enrolled and counted for funding purposes under Section 1011.62, F.S., (sending school district) and the school district where the residential facility is located (receiving school district). If the student is not currently counted for funding purposes in the school district in which the legal residence of the student is located, the school district in which the legal residence of the student is located also shall be notified by the residential facility in writing within the required timeline. The placing agency shall collaborate with the residential facility to determine how that notification will be provided within the required timeline.

 (c) In accordance with subsection (3) of Rule 6A-6.0334, F.A.C., the sending school district shall take reasonable steps to promptly respond to the residential facility’s request for transmittal of the student’s educational records. If the student’s placement in the residential care facility occurs while the notification and procedures regarding payment are pending, the student shall remain enrolled in the sending school district and the sending school district shall collaborate with the residential care facility to ensure that the student receives a free and appropriate public education, special education, and related services, including services comparable to those in the described in the current IEP, until the notification and procedures regarding payment are completed.

 (3) Each school district is responsible for assuring the proposed program at the nonpublic school or community facility is appropriate to meet the educational needs of the exceptional student with a disability, or early intervention needs of the infant or toddler with a disability, placed through a contractual agreement. This subsection shall not be construed to limit the responsibility of agencies in the state other than the district school boards from providing or paying some or all of the cost of a free appropriate public education or early intervention services to be provided children with disabilities ages birth through twenty-one (21) years old.

 (4) Before a contractual agreement with a nonpublic school or community facility is executed by the school district, the school district shall determine that the school or community facility meets the following criteria:

 (a) The nonpublic school or community facility program is staffed by qualified personnel as defined in Rule 6A-1.0503, F.A.C., or appropriate licensing entities. Personnel in an out-of-state nonpublic school or community facility shall be certified or licensed in accordance with the standards established by the state in which the nonpublic school or community facility is located.

 (b) For the appointment of persons as noncertificated instructional personnel, the governing body of the nonpublic school or community facility shall adopt the policies required in Rule 6A-1.0502, F.A.C.

 (c) The nonpublic school’s or community facility’s instructional school day and year shall be consistent with Section 1011.61, F.S., taking into account the number of school hours or school days provided by the school district.

 (d) The nonpublic school or community facility maintains current sanitation and health certificates and fire inspections for each appropriate building and will be open for inspection by appropriate authorities.

 (e) The nonpublic school or community facility fully complies with the school district’s procedures to protect the confidentiality of student records and information and assures it will provide the parent, or the student whose rights have transferred upon reaching the age of majority (age 18), the right of access, copies, amendments and hearings as specified in Rule 6A-1.0955, F.A.C.

 (f) The nonpublic school or community facility will designate a staff member to be responsible for the administration of the provisions of the contract and for the supervision of the educational program provided to each student, or early intervention services provided to each child age birth through two (2), under the contract.

 (g) The nonpublic school or community facility has written procedures for admission, dismissal, and separation of students, if appropriate.

 (h) The nonpublic school or community facility has a written description of the support services that are available and will be provided to each student placed under a contract in accordance with each student’s IEP or each child’s IFSP.

 (i) The nonpublic school or community facility has written policies concerning: care of the student in emergencies; clinical and administrative records; personnel policies; staff duties; fee schedules; food services; and insurance coverage.

 (j) The school district has determined that the nonpublic school or community facility is in compliance with the United States Department of Education Office for Civil Rights requirements with respect to nondiscrimination on matters related to race, color, national origin under Title VI of the Civil Rights Act of 1964; disability under Title II of the Americans with Disabilities Act of 1990 and its implementing regulations, 28 C.F.R. Part 35, and Section 504 of the Rehabilitation Act of 1973 and its implementing regulations, 34 C.F.R. Part 104; sex under Title IX of the Education Amendments of 1972; age under the Age Discrimination Act of 1975, or fair access to facilities under the Boy Scouts of America Equal Access Act (Section 9525 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001).

 (k) The nonpublic school or community facility has filed reports with the Department of Education as prescribed in Section 1002.42, F.S., if applicable.

 (5) Contents of contract. A contract between a district school board and a nonpublic school or community facility to provide educational programs for an exceptional student with a disability, or early intervention services to a child with disability age birth through two (2), shall not extend beyond the school district’s fiscal year and shall include at least the following:

 (a) Written assurance that the nonpublic school or community facility is staffed by qualified personnel as defined by Rule 6A-1.0503, F.A.C., or an appropriate and identified licensing entity.

 (b) A description of the scope of service provided by the nonpublic school or community facility and how it relates to the IEP of the exceptional student with a disability or the IFSP of the infant or toddler with a disability.

 (c) Provision for reporting to appropriate school district personnel and the parent on the student’s progress in meeting the annual goals in accordance with the IEP or the child’s and family’s progress in meeting the major outcomes in accordance with the IFSP.

 (d) Provision for appropriate school district personnel to review the program provided by the nonpublic school or community facility and to confer with the staff of the nonpublic school or community facility at reasonable times.

 (e) Provision for reporting to appropriate school district personnel any non-attendance of the exceptional student with a disability or the infant or toddler with a disability.

 (f) Provision for notifying appropriate school district personnel and the parent of the use of seclusion or restraint of the student, in accordance with Section 1003.573, F.S.

 (g) The method of determining charges and sharing costs with other agencies for the placements under the contract, including the projected total cost to the school district.

 (h) Identification of financial responsibility.

 (i) Method of resolving interagency disputes. Such methods may be initiated by district school boards to secure reimbursement from other agencies.

 (j) A schedule for review of the program being provided the exceptional student with a disability or the infant or toddler with a disability, through the contract.

 (k) Provision for terminating the contract.

 (l) Written assurance that the nonpublic school or community facility is in compliance with applicable provisions of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1974, and section 504 of the Rehabilitation Act of 1973.

 (6) When contracting with a nonpublic school or community facility in accordance with paragraph (1)(a) of this rule, the school district shall be responsible for at least the following:

 (a) Selecting an appropriate nonpublic school or community facility in consultation with the parent and other appropriate agency personnel.

 (b) Providing for transportation for students age three (3) through twenty-one (21).

 (c) Maintaining a case file including progress reports and periodic evaluations of the exceptional student with a disability, or infant or toddler with a disability.

 (d) Verifying that the exceptional student with a disability, or the infant or toddler who has been determined eligible by the Part C Early Steps Program, is a resident of the school district and is enrolled in, or has made application for admittance to, a school district program.

 (e) Providing for the cost of the student’s educational program or early intervention services as specified in the contract.

 (f) Maintaining documentation of the qualifications of personnel in nonpublic schools or community facilities as required in this rule or by the appropriate licensing entity, including the out-of-field notification requirements of Section 1012.42, F.S.

 (g) Providing an appropriate educational program for the student in the least restrictive environment based on an annual or more frequent review of the student’s IEP, or early intervention services in a natural environment based on six-month or more frequent review of the child’s IFSP.

 (h) Maintaining copies of the IEPs or IFSPs in the school district and providing copies of the IEPs of students who are in residential placements to the Department of Education, Bureau of Exceptional Education and Student Services.

 (i) Reporting, data collection, and monitoring the use of seclusion or restraint of the student, in accordance with Section 1003.573, F.S.

 (7) When an exceptional student with a disability, or infant or toddler with a disability, is enrolled in a nonpublic school or community facility program under a contractual arrangement for providing a special educational program or early intervention services as provided herein, the student, or infant or toddler, shall generate Florida Education Finance Program funds for the school district in the appropriate cost categories as established in Section 1011.62, F.S., under the following conditions:

 (a) The nonpublic school or community facility program meets the criteria established in subsection (4) of this rule.

 (b) The student is regularly attending the program, and the length of the school day and minimum number of days are in compliance with Rule 6A-1.045111, F.A.C.

 (c) The student is appropriately identified as an exceptional student with a disability by the school district, or the infant or toddler has been determined eligible as an infant or toddler with a disability by the Part C Early Steps Program, as required by Sections 1003.01(3)(a) and 1003.57(1)(b), F.S., and Rules 6A-6.03011 through 6A-6.03411, F.A.C., but does not include students who are gifted as defined under Rules 6A-6.03019 and 6A-6.030191, F.AC.

 (d) An IEP or IFSP for the student has been developed as required by subsection (6) of Rule 6A-6.0331, F.A.C.

 (e) Full-time equivalent student membership for each exceptional student with a disability, or infant or toddler with a disability, under a contractual arrangement is included in the school district’s report of membership.

 (f) Annually and prior to the first report of full-time equivalent membership for a student in a residential placement in a nonpublic school or community facility program, a copy of the contracts signed by all participating parties shall be filed with the Department of Education, Division of Public Schools, Bureau of Exceptional Education and Student Services, 325 West Gaines Street, Tallahassee, Florida 32399.

 (8) When a school district contracts for the educational component of a residential placement for a group of students, one (1) contract with student names or individual contracts shall be filed.

 (9) When an exceptional student with a disability is offered an appropriate educational program by the school district and the parent waives this opportunity in favor of a program selected by the parent, the parent shall assume full financial responsibility for the student’s education.

 **Rulemaking Authority 1001.02 FS. Law Implemented 1003.57(3), 1003.571, 1003.58, 1011.62 FS. History–New 6-17-74, Repromulgated 12-5-74, Amended 3-28-78, 8-8-78, 7-13-83, Formerly 6A-6.361, Amended 2-18-93, 5-15-11.**