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

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

(1) through (7) No change.

(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, F.S.), the right to notice under this rule 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 public agency, including a school district, shall notify the student and the parent of the transfer of rights, when the student attains the age of eighteen (18). The student and the parent must be notified a year prior to the student’s age of majority regarding self-determination and the legal rights and responsibilities of educational decisions that transfer to the student upon attaining the age of eighteen (18).

(d) At least one (1) year before the student reaches the age of majority, provision of information and instruction is required to the student and his or her parent on self-determination and the legal rights and responsibilities regarding the educational decisions that transfer to the student upon attaining the age of eighteen (18). The information must include the ways in which the student may provide informed consent to allow his or her parent to continue to participate in educational decisions, including:

1. Informed consent to grant permission to access confidential records protected under the Family Educational Rights and Privacy Act (FERPA) as provided in s. 1002.22, F.S.
2. Powers of attorney as provided in chapter 709, F.S.
3. Guardian advocacy as provided in s. 393.12, F.S.
4. Guardianship as provided in chapter 744, F.S.

(e) (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.

(f) (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, F.S.;
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, F.S.

(9) No changes.

Rulemaking Authority 1001.02(1), (2)(m), 1003.01(3), 1003.57, 1003.571, 1003.5715, 1008.212 FS. Law Implemented 1003.01(3), 1003.57, 1003.571, 1003.5715, 1008.212 FS. History–New 7-13-83, Amended 12-20-83, 4-26-84, Formerly 6A-6.3311, Amended 7-17-90, 9-20-04, 12-22-08, 3-25-14, 7-14-21, 6-14-22, 8-22-23.