

§120.81 FS | EXCEPTIONS AND SPECIAL REQUIREMENTS; GENERAL AREAS

(1) EDUCATIONAL UNITS. —

(a) Notwithstanding s. 120.536(1) and the flush left provisions of s. 120.52(8), district school boards may adopt rules to implement their general powers under s. 1001.41.

(b) The preparation or modification of curricula by an educational unit is not a rule as defined by this chapter.

(c) Notwithstanding s. 120.52(16), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.4282, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

(d) Notwithstanding any other provision of this chapter, educational units shall not be required to include the full text of the rule or rule amendment in notices relating to rules and need not publish these or other notices in the Florida Administrative Register, but notice shall be made:

1. By publication in a newspaper of general circulation in the affected area;
2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and
3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

(e) Educational units, other than the Florida School for the Deaf and the Blind, shall not be required to make filings with the committee of the documents required to be filed by s. 120.54 or s. 120.55(1)(a)4.

(f) Notwithstanding s. 120.57(1)(a), hearings which involve student disciplinary suspensions or expulsions may be conducted by educational units.

(g) Sections 120.569 and 120.57 do not apply to any proceeding in which the substantial interests of a student are determined by a state university or a community college.

(h) Notwithstanding ss. 120.569 and 120.57, in a hearing involving a student disciplinary suspension or expulsion conducted by an educational unit, the 14-day notice of hearing requirement may be waived by the agency head or the hearing officer without the consent of parties.

(i) For purposes of s. 120.68, a district school board whose decision is reviewed under the provisions of s. 1012.33 and whose final action is modified by a superior administrative decision shall be a party entitled to judicial review of the final action.

(j) Notwithstanding s. 120.525(2), the agenda for a special meeting of a district school board under authority of s. 1001.372(1) shall be prepared upon the calling of the meeting, but not less than 48 hours prior to the meeting.

(k) Students are not persons subject to regulation for the purposes of petitioning for a variance or waiver to rules of educational units under s. 120.542.

(l) Sections 120.54(3)(b) and 120.541 do not apply to the adoption of rules pursuant to s. 1012.22, s. 1012.27, s. 1012.335, s. 1012.34, or s. 1012.795.

(2) LOCAL UNITS OF GOVERNMENT. —

(a) Local units of government with jurisdiction in only one county or part thereof shall not be required to make filings with the committee of the documents required to be filed by s. 120.54.

(b) Notwithstanding any other provision of this chapter, units of government with jurisdiction in only one county or part thereof need not publish required notices in the Florida Administrative Register, but shall publish these notices in the manner required by their enabling acts for notice of rulemaking or notice of meeting. Notices relating to rules are not required to include the full text of the rule or rule amendment.

(3) PRISONERS AND PAROLEES. –

(a) Notwithstanding s. 120.52(13), prisoners, as defined by s. 944.02, shall not be considered parties in any proceedings other than those under s. 120.54(3)(c) or (7), and may not seek judicial review under s. 120.68 of any other agency action. Prisoners are not eligible to seek an administrative determination of an agency statement under s. 120.56(4). Parolees shall not be considered parties for purposes of agency action or judicial review when the proceedings relate to the rescission or revocation of parole.

(b) Notwithstanding s. 120.54(3)(c), prisoners, as defined by s. 944.02, may be limited by the Department of Corrections to an opportunity to present evidence and argument on issues under consideration by submission of written statements concerning intended action on any department rule.

(c) Notwithstanding ss. 120.569 and 120.57, in a preliminary hearing for revocation of parole, no less than 7 days' notice of hearing shall be given.

(4) REGULATION OF PROFESSIONS. – Notwithstanding s. 120.569(2)(g), in a proceeding against a licensed professional or in a proceeding for licensure of an applicant for professional licensure which involves allegations of sexual misconduct:

(a) The testimony of the victim of the sexual misconduct need not be corroborated.

(b) Specific instances of prior consensual sexual activity between the victim of the sexual misconduct and any person other than the offender is inadmissible, unless:

1. It is first established to the administrative law judge in a proceeding in camera that the victim of the sexual misconduct is mistaken as to the identity of the perpetrator of the sexual misconduct; or

2. If consent by the victim of the sexual misconduct is at issue and it is first established to the administrative law judge in a proceeding in camera that such evidence tends to establish a pattern of conduct or behavior on the part of such victim which is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.

(c) Reputation evidence relating to the prior sexual conduct of a victim of sexual misconduct is inadmissible.

(5) HUNTING AND FISHING REGULATION. – Agency action which has the effect of altering established hunting or fishing seasons, or altering established annual harvest limits for saltwater fishing if the procedure for altering such harvest limits is set out by rule of the Fish and Wildlife Conservation Commission, is not a rule as defined by this chapter, provided such action is adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting by electronic media.

(6) RISK IMPACT STATEMENT. – The Department of Environmental Protection shall prepare a risk impact statement for any rule that is proposed for approval by the Environmental Regulation Commission and that establishes or changes standards or criteria based on impacts to or effects upon human health. The Department of Agriculture and Consumer Services shall prepare a risk impact statement for any rule that is proposed for adoption that establishes standards or criteria based on impacts to or effects upon human health.

(a) This subsection does not apply to rules adopted pursuant to federally delegated or mandated programs where such rules are identical or substantially identical to the federal regulations or laws being adopted or implemented by the Department of Environmental Protection or Department of Agriculture and Consumer Services, as applicable. However, the Department of Environmental Protection and the Department of Agriculture and Consumer Services shall identify any risk analysis information available to them from the Federal Government that has formed the basis of such a rule.

(b) This subsection does not apply to emergency rules adopted pursuant to this chapter.

(c) The Department of Environmental Protection and the Department of Agriculture and Consumer Services shall prepare and publish notice of the availability of a clear and concise risk impact statement for all applicable rules. The risk impact statement must explain the risk to the public health addressed by the rule and shall identify and summarize the source of the scientific information used in evaluating that risk.

(d) Nothing in this subsection shall be construed to create a new cause of action or basis for challenging a rule nor diminish any existing cause of action or basis for challenging a rule.

History - (s. 42, ch. 96-159; s. 17, ch. 97-176; s. 49, ch. 99-2; s. 65, ch. 99-245; s. 7, ch. 99-379; s. 28, ch. 99-398; s. 4, ch. 2000-214; s. 897, ch. 2002-387; s. 17, ch. 2008-104; s. 4, ch. 2010-78; s. 9, ch. 2011-225; s. 13, ch. 2013-14; s. 37, ch. 2013-35; s. 21, ch. 2014-17; s. 3, ch. 2014-39; s. 24, ch. 2014-184.)