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Technical Assistance Paper

Guidelines for Implementation of the Revised Rule for Exceptional Student Education Eligibility for Students with Emotional/Behavioral Disabilities

Summary:

This document revises information previously provided on the implementation of Rule 6A-6.03016, Florida Administrative Code (F.A.C.), *Exceptional Student Education Eligibility for Students with Emotional/Behavioral Disabilities*, based on the most recent revision of this rule. This document includes information on the general intervention requirements, evaluation, eligibility, and the bureau's monitoring of implementation of this rule.

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A. Introduction and Definition

A-1. What is the purpose of this technical assistance paper (TAP)?

Rule 6A-6.03016, Florida Administrative Code (F.A.C.), *Exceptional Education Eligibility for Students with Emotional/Behavioral Disabilities*, was revised in 2007 and then again in 2009, with most recent revisions effective December 15, 2009. The 2007 revisions in this State Board of Education rule were designed to ensure that students with emotional/behavioral disabilities receive appropriate interventions in general education settings; are identified in a responsive manner; and, when necessary, receive special education services in the least restrictive setting.

Revisions made in 2009 incorporate revisions in Rule 6A-6.0331, F.A.C., *General Education Intervention Procedures, Identification Evaluation, Reevaluation and the Initial provision of Exceptional Education*. Because of the revisions to this rule, attention now focuses on developing, implementing, and assessing targeted interventions prior to consideration for eligibility as a student with a disability. By developing targeted interventions and effective assessment measures, schools and parents or guardians will find it easier to communicate, develop interventions, monitor progress, and become equal partners in the education of students.

A-2. What is the definition of a student with an emotional/behavioral disability?

In accordance with Rule 6A-6.03016, F.A.C., a student with an emotional or behavioral disability has persistent (is not sufficiently responsive to implemented, evidence-based interventions) and consistent emotional or behavioral responses that adversely affect performance in the educational environment that cannot be attributed to age, culture, gender, or ethnicity.

B. General Questions

B-1. What are the general education intervention requirements for students suspected of having an emotional/behavioral disability?

Districts are obliged to address the requirements found in Rule 6A-6.0331(1)(a) through (e), F.A.C., which describe the need for parent involvement in general education intervention procedures; observations of the student in the learning environment to document the learning or behavioral areas of concern; review of existing data, vision, and hearing screenings; and the implementation of evidence-based interventions addressing the identified areas of concern.

Interventions should be implemented for a reasonable period of time and with a level of intensity that matches the student's needs. The student's problem-solving team determines a reasonable period of time on a case-by-case basis,

dependent on the nature of the problem(s), the nature and intensity of interventions, the frequency of progress monitoring, and the ability to evaluate trends.

Using the Response to Instruction/Intervention (RtI) framework, ongoing progress-monitoring data should be collected throughout the pre-intervention process. There should be evidence that school, classroom, and small group interventions are effective with the majority of students before implementing individual interventions. The progress of an individual student is compared to schoolwide or classroom expectations and peer performance. Peer comparisons should be made with peers of the same gender and ethnicity to ensure that emotional/behavioral manifestations (as described in D-2) are not attributable to age, culture, gender, or ethnicity (Rule 6A-6.03016(1), F.A.C.).

For students requiring individual interventions, a functional behavioral assessment should be conducted to identify the specific behavior(s) of concern, conditions under which the behavior is most and least likely to occur, and function of the behavior. Individual interventions should be developed and implemented based on the functional behavioral assessment. There should be documentation that interventions have been implemented as designed prior to referring a student for evaluation.

B-2. How does Response to Instruction/Intervention (RtI) relate to Rule 6A-6.03016, F.A.C.?

Response to instruction/intervention is the practice of providing high-quality instruction/intervention matched to student needs and using learning rate over time and level of performance to make important educational decisions. The school-based, problem-solving team is responsible for developing and implementing intervention procedures to support academic and behavioral success and collecting data to monitor the effectiveness of the interventions implemented of students in the general education environment, as required by Rule 6A-6.0331, F.A.C.

Through ongoing progress monitoring and data analysis, RtI provides the information necessary for making decisions about the focus and intensity of interventions. This information contributes to more appropriate referrals for evaluation and special education need. The emotional/behavioral disabilities rule references RtI in its definition of “persistent” emotional/behavioral responses as those that are “not sufficiently responsive to evidence-based interventions” (Rule 6A-6.03016(1), F.A.C.). On-going progress monitoring and data analysis inform decision making and adjustments concerning instruction and intervention for students receiving services and resources provided through the Individuals with Disabilities Education Act (IDEA).

B-3. Is written consent required for functional behavioral assessments and other assessments used for intervention development and monitoring as part of general education intervention procedures?

No, written consent is not required if functional behavioral assessments and other assessments used for intervention development are conducted to assist in the planning and development of general education interventions. It is the **purpose** for which the data are being collected, not the **nature** of the assessment or data collections procedures, which drives the need for parental consent. In accordance with Rule 6A-6.0331(1), F.A.C.:

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...

However, if the purpose of the assessment is to assist in the determination of eligibility for an exceptional student education (ESE) program, **written consent is required**. IDEA requires written consent when a district proposes to conduct an evaluation to determine eligibility for special education (34 Code of Federal Regulations [CFR] §300.300). Districts should consider the intent of the functional behavioral assessment and other assessments to guide decisions concerning consent, as it is the intent and not the evaluation procedure that drives the decision about obtaining parental consent.

B-4. How should parents be involved during the intervention and evaluation processes?

Rule 6A-6.0331(1)(a), F.A.C., clearly establishes the requirement for parent involvement in the process to address the student's areas of concern. This includes discussion with parents regarding the student's response to intervention, supporting data, potential adjustments to the interventions, and anticipated future action to address the areas of concern. For students experiencing emotional and behavioral challenges at school, the need for a functional behavioral assessment is often an effective juncture at which to engage and further include parents. Their input is essential in understanding why behaviors may be occurring.

Parents should be engaged as partners in the process of determining and monitoring the effectiveness of interventions implemented. If it is determined that a formal evaluation is needed to determine if the student is eligible as a student with a disability, written parent consent must be sought in accordance with Rule 6A-6.0331(3)(b) and (4), F.A.C.

B-5. How does Rule 6A-6.03016, F.A.C., apply to preschool children?

The requirements of Rule 6A-6.03016, F.A.C., are not limited to school-age students; they apply to ages three through 21. However, many preschool children with disabilities receive special education and related services based on the eligibility requirements found in Rule 6A-6.03027, F.A.C., *Special Programs for Children Three Through Five Years Old Who are Developmentally Delayed*. Social or emotional development is one of the domains identified in this rule, therefore providing services based on this consideration remains available but should be used with caution. If a preschool student is referred for an evaluation to determine eligibility as a student with a disability, evidence-based interventions must be implemented and the child's response to intervention must be analyzed. Although activities prior to referral in accordance with Rule 6A-6.03016, F.A.C., are not required for preschool-age children, the emotional/behavioral disabilities definition of "persistent" (i.e., not sufficiently responsive to implemented evidence-based interventions) does apply. Additionally, a functional behavioral assessment, as specified in Rule 6A-6.03016, F.A.C., would apply.

B-6. What is the eligibility process for preschool-age children who attend an early education and care program? What about children at home with their parents or caregivers during the day?

Rule 6A-6.03016, F.A.C., does present unique challenges when evaluating preschool-age children who may be served in private, community-based settings rather than a public school-operated, "regular education" preschool program (e.g., Voluntary Prekindergarten Education Program, Title I preschool, school district operated Head Start). District staff need to work with families and community providers to collect needed data, including conducting a functional behavioral assessment.

Unless there are extraordinary circumstances, children who have not participated in a preschool program could not be considered for eligibility as a student with a disability because the characteristics delineated in Rule 6A-6.03016(4)(c), F.A.C., must be demonstrated in two or more settings, one of which is the school environment.

C. Evaluation for Eligibility

C-1. What minimum evaluation components are required?

Prior to the referral for evaluation, general education activities and interventions are required as found in Rule 6A-6.0331, F.A.C. Additionally, in accordance with Rule 6A-6.03016(3), F.A.C., evaluation components shall include:

- A functional behavioral assessment must be conducted. It must identify the specific behavior(s) of concern, conditions under which the behavior is most and least likely to occur, and function or purpose of the behavior. A review and, if necessary, a revision of a functional behavioral assessment completed as part of general education interventions may meet this requirement if it

- meets the conditions described in this section. If a functional behavioral assessment was not completed to assist in the development of general education interventions, one must be completed and a well-delivered, scientific, research-based behavioral intervention plan of reasonable intensity and duration must be implemented with fidelity prior to determining eligibility.
- The evaluation must include documentation of the student's response to general education interventions implemented to target the function of the behavior as identified in the functional behavioral assessment.
 - A social/developmental history compiled from a structured interview with the parent or guardian that addresses developmental, familial, medical/health, and environmental factors impacting learning and behavior, and which identifies the relationship between social/developmental and socio-cultural factors, and the presence or non-presence of emotional/behavioral responses beyond the school environment.
 - A psychological evaluation conducted in accordance with Rule 6A-6.0331, F.A.C. The psychological evaluation shall include a review of general education interventions that have already been implemented and the criteria used to evaluate their success. The psychological evaluation should include assessment procedures necessary to identify the factors contributing to the development of an emotional/behavioral disability, which include behavioral observations and interview data relative to the referral concerns, and assessment of emotional and behavioral functioning, and may also include information on developmental functioning and skills.
 - A review of educational data, which includes information on the student's academic levels of performance and the relationship between the student's academic performance and the emotional/behavioral disability. Additional academic evaluation may be completed if needed.
 - A medical evaluation must be conducted when the administrator of the exceptional student program or the designee determines that the emotional/behavioral responses may be precipitated by a physical problem.

C-2. Must the psychological evaluation include a test of intellectual functioning?

No. The primary purpose of the psychological evaluation is to identify the presence of internal or external factors that constitute an emotional/behavioral disability. Behavioral observations, clinical interviews, rating scales, and other empirically validated assessment procedures that contribute to the presence of an emotional/behavioral disability should be included in the psychological evaluation. Decisions about additional assessment procedures and specific tests should be made on a case-by-case basis using professional judgment and best practice guidelines.

D. Eligibility

D-1. What are the criteria for eligibility?

The eligibility determination is based upon the student's response to interventions, etiology of the emotional and/or behavioral difficulties, and the need for special education services. In accordance with Rule 6A-6.03016(4), F.A.C., a student with an emotional/behavioral disability has an inability to maintain adequate educational performance that cannot be explained by physical, sensory, socio-cultural, developmental, medical, or health (with the exception of mental health) factors; demonstrates one or more of the internal or external factors that constitute an emotional/behavioral disability for more than six months and in multiple settings; and needs special education as a result of the emotional/behavioral disability.

D-2. What are the characteristics of a student with an emotional/behavioral disability?

In accordance with Rule 6A-6.03016(4)(a) and (b), F.A.C., a student must exhibit one or more of the following factors/characteristics that constitute an emotional/behavioral disability:

- Feelings of sadness, or frequent crying, or restlessness, or loss of interest in friends and/or school work, or mood swings, or erratic behavior.
- The presence of symptoms such as fears, phobias, or excessive worrying and anxiety regarding personal or school problems.
- Behaviors that result from thoughts and feelings that are inconsistent with actual events or circumstances, or difficulty maintaining normal thought processes, or excessive levels of withdrawal from persons or events.
- An inability to build or maintain satisfactory interpersonal relationships with peers, teachers, and other adults in the school setting.
- Behaviors that are chronic and disruptive, such as noncompliance; verbal and/or physical aggression; and/or poorly developed social skills that are manifestations of feelings, symptoms, or behaviors found in the first three factors of this list.

D-3. What are extraordinary circumstances for emotional/behavioral disability eligibility?

As identified in Rule 6A-6.03016, F.A.C., some students may have an acute onset of emotional/behavioral characteristics where the severity of the emotional/behavioral manifestations requires immediate ESE services. In cases when the student's emotional/behavioral disability requires immediate intervention to prevent harm to the student or others, Rule 6A-6.0331(1), F.A.C., permits a team of qualified professionals and the parent to determine that general education interventions are inappropriate. Implementation of the

behavioral intervention plan is not required in extraordinary circumstances described in paragraph (4)(e) of Rule 6A-6.03016, F.A.C. However, the need for such immediate ESE services should be infrequent and closely monitored.

D-4. Which students would be determined ineligible as students with emotional/behavioral disabilities?

Students who are not eligible for ESE according to Rule 6A-6.03016, F.A.C., include the following:

- Students whose presenting behavior is a normal or temporary (less than six months) reaction to life events. *This is not six months from the request for an eligibility evaluation but, rather, six months from the time the presenting behavior was first evident.*
- Students whose emotional/behavioral difficulties significantly improve following the implementation of evidence-based interventions.
- Students who are socially maladjusted unless also found to have an emotional/behavioral disability. *Because social maladjustment may co-occur with other disorders, eligibility decisions should focus on assessing the student's response to interventions in conjunction with the severity, intensity, and etiology of the presenting behavior.*

E. Bureau Monitoring Procedures

E-1. How will bureau staff monitor a district's implementation of Rule 6A-6.03016, F.A.C.?

In accordance with IDEA and its implementing regulations, to be considered a student with a disability eligible for ESE services, the evaluation team must determine that the student has a specific disability (e.g., emotional/behavioral disability, traumatic brain injury, language impairment) and needs special education and related services. The intent of this second component is to prevent identifying a student as disabled who can be successful with interventions and supports implemented in the general education setting. Because of the nature of the evaluation process for emotional/behavioral disabilities, thorough and meaningful consideration of this component is particularly significant.

When monitoring for compliance of the requirements above, bureau staff will look for evidence of the following:

- A functional behavioral assessment identifying the specific behavior(s) of concern, conditions under which the behavior is most and least likely to occur, and function or purpose of the behavior.
- A well-delivered, research-based behavioral intervention plan of reasonable intensity and duration implemented with fidelity prior to determining eligibility.
- Data reflecting the student's response to general education interventions implemented to target the function of the behavior as identified in the functional behavioral assessment, including the criteria used to evaluate their success, was collected and analyzed.

- A social/developmental history conducted that addressed developmental, familial, medical/health, and environmental factors impacting learning and behavior, and which identifies the relationship between social/developmental and socio-cultural factors and the presence or non-presence of emotional/behavioral responses beyond the school environment.
- A psychological evaluation administered that included assessment procedures necessary to identify the factors contributing to the development of an emotional/behavioral disability, behavioral observations and interview data relative to the referral concerns, and assessment of emotional and behavioral functioning.
- Educational data that includes information on the student's academic levels of performance, and the relationship between the student's academic performance and the emotional/behavioral disability was reviewed.
- A complete medical evaluation, if the administrator of the exceptional student program or the designee determined that the emotional/behavioral responses may be precipitated by a physical problem.

E-2. Is there anything else that bureau staff will look for when monitoring a district's implementation of Rule 6A-6.03016, F.A.C.?

Bureau staff will also look for evidence that during the problem-solving process teams worked collaboratively to ensure a comprehensive assessment of the student. Questions for consideration may include the following:

- Did the functional behavioral assessment clearly inform the replacement behaviors defined in the behavioral intervention plan (e.g., Was the replacement behavior likely to serve the same function as the target behavior?)?
- Were the replacement behaviors logical for a particular student?
- Were replacement behaviors taught and to what level of mastery?
- Were the findings in the social/developmental history adequately considered in relation to the planning of interventions?
- Were interventions implemented with fidelity?
- Were data analyzed when making the eligibility decision?

For example, checklists with initiation and duration dates of interventions would not be considered sufficient evidence. Evidence should include representations of intervention effectiveness, such as graphs representing pre- and post-intervention performance and summary descriptions of conferences, intervention team meetings, and observations of the student. Functional behavioral assessments should be clearly documented.

Appendix A

Rule 6A-6.03016, F.A.C., Exceptional Student Education Eligibility for Students with Emotional/Behavioral Disabilities.

(1) Definition. Students with an emotional/behavioral disability (EB/D). A student with an emotional/behavioral disability has persistent (is not sufficiently responsive to implemented evidence based interventions) and consistent emotional or behavioral responses that adversely affect performance in the educational environment that cannot be attributed to age, culture, gender, or ethnicity.

(2) General education interventions and activities. Prior to referral for evaluation, the requirements in subsection 6A-6.0331(1), F.A.C., must be met.

(3) Evaluation. In addition to the provisions in subsection 6A-6.0331(5), F.A.C., the evaluation for determining eligibility shall include the following:

(a) A functional behavioral assessment (FBA) must be conducted. The FBA must identify the specific behavior(s) of concern, conditions under which the behavior is most and least likely to occur, and function or purpose of the behavior. A review, and if necessary, a revision of an FBA completed as part of general education interventions may meet this requirement if it meets the conditions described in this section. If an FBA was not completed to assist in the development of general education interventions, one must be completed and a well-delivered scientific, research-based behavioral intervention plan of reasonable intensity and duration must be implemented with fidelity prior to determining eligibility. Implementation of the behavioral intervention plan is not required in extraordinary circumstances described in paragraph (4)(e) of this rule;

(b) The evaluation must include documentation of the student's response to general education interventions implemented to target the function of the behavior as identified in the FBA;

(c) A social/developmental history compiled from a structured interview with the parent or guardian that addresses developmental, familial, medical/health, and environmental factors impacting learning and behavior, and which identifies the relationship between social/developmental and socio-cultural factors, and the presence or non-presence of emotional/behavioral responses beyond the school environment;

(d) A psychological evaluation conducted in accordance with Rule 6A-6.0331, F.A.C. The psychological evaluation should include assessment procedures necessary to identify the factors contributing to the development of an emotional/behavioral disability, which include behavioral observations and interview data relative to the referral concerns, and assessment of emotional and behavioral functioning, and may also include information on developmental functioning and skills. The psychological evaluation shall include a review of general education interventions that have already been implemented and the criteria used to evaluate their success;

(e) A review of educational data which includes information on the student's academic levels of performance, and the relationship between the student's academic performance and the emotional/behavioral disability; additional academic evaluation may be completed if needed; and,

(f) A medical evaluation must be conducted when it is determined by the administrator of the exceptional student program or the designee that the emotional/behavioral responses may be precipitated by a physical problem.

(4) Criteria for eligibility. A student with an emotional/behavioral disability must demonstrate an inability to maintain adequate performance in the educational

environment that cannot be explained by physical, sensory, socio-cultural, developmental, medical, or health (with the exception of mental health) factors; and must demonstrate one or more of the following characteristics described in paragraph (4)(a) or (4)(b) of this rule and meet the requirements of paragraphs (4)(c) and (4)(d) of this rule:

(a) Internal factors characterized by:

1. Feelings of sadness, or frequent crying, or restlessness, or loss of interest in friends and/or school work, or mood swings, or erratic behavior; or
2. The presence of symptoms such as fears, phobias, or excessive worrying and anxiety regarding personal or school problems; or
3. Behaviors that result from thoughts and feelings that are inconsistent with actual events or circumstances, or difficulty maintaining normal thought processes, or excessive levels of withdrawal from persons or events; or

(b) External factors characterized by:

1. An inability to build or maintain satisfactory interpersonal relationships with peers, teachers, and other adults in the school setting; or
2. Behaviors that are chronic and disruptive such as noncompliance, verbal and/or physical aggression, and/or poorly developed social skills that are manifestations of feelings, symptoms, or behaviors as specified in subparagraphs (4)(a)1.-3. of this rule.

(c) The characteristics described in paragraph (4)(a) or (b) of this rule must be present for a minimum of six (6) months duration and in two (2) or more settings, including but not limited to, school, educational environment, transition to and/or from school, or home/community settings. At least one (1) setting must include school.

(d) The student needs special education as defined in paragraph 6A-6.03411(1)(kk), F.A.C.

(e) In extraordinary circumstances, general education interventions and activities as described in subsection (2) of this rule and criteria for eligibility described in paragraph (4)(c) of this rule may be waived when immediate intervention is required to address an acute onset of an internal emotional/behavioral characteristic as listed in paragraph (4)(a) of this rule.

(5) Characteristics not indicative of a student with an emotional/behavioral disability:

- (a) Normal, temporary (less than six (6) months) reactions to life event(s) or crisis, or
- (b) Emotional/behavioral difficulties that improve significantly from the presence of evidence based implemented interventions, or
- (c) Social maladjustment unless also found to have an emotional/behavioral disability.

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