

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA EDUCATION ASSOCIATION,
FLORIDA FREEDOM TO READ PROJECT,
and FAMILIES FOR STRONG PUBLIC
SCHOOLS,

Petitioners,

v.

CASE NO.:

STATE OF FLORIDA DEPARTMENT OF
EDUCATION,

Respondent.

_____ /

PETITION TO DETERMINE INVALIDITY OF RULES 6A-7.0715 AND 6A-7.0713,
FLORIDA ADMINISTRATIVE CODE

Preliminary Statement

The Florida Education Association (“FEA”), the Florida Freedom to Read Project (“FFTRP”), and Families for Strong Public Schools (“FSPS”) (collectively “Petitioners”) bring this action pursuant to the Administrative Procedure Act codified at sections 120.56(1) and (3), Florida Statutes, to invalidate Rules 6A-7.0715 (“Training Rule”) and 6A-7.0713 (“Elementary School Rule”) (collectively “the Rules”), Florida Administrative Code. The Rules substantially harm hundreds of thousands of teachers, librarians, students, and families by upending Florida’s public education system. Through new restrictions and requirements imposed through an invalid

exercise of delegated legislative authority, the Rules exceed the statutory grant of authority and change the effect of the law by adopting an unprecedented and illogical definition of “library media center” that should be struck down.

The Rules prevent most teachers from selecting materials for their own classrooms, foist uncompensated and time-consuming duties on teachers and librarians, effectively forbid parents from contributing books to their children’s classrooms, and impose a costly and burdensome requirement that schools catalog nearly every book, periodical, or other media on their premises.

In 2022, the legislature authorized the Florida Department of Education (“FLDOE”) to take two actions in implementing H.B. 1467: 1) prescribe the format for certain lists; and 2) develop a specific training program for educators. The FLDOE’s Rules at issue here far exceed that narrow authority. This attempt to rewrite the statute through the rulemaking process is an invalid exercise of delegated legislative authority that violates four provisions of the Florida Administrative Procedure Act (“APA”):

- First, by defining “library media center,” a term that the legislature did not instruct the FLDOE to define, the agency exceeded the legislature’s specific grant of rulemaking authority in violation of Section 120.52(8)(b), Florida Statutes;
- Second, the novel definition of “library media center” changes the meaning of the statute in a fashion contrary to the statutory text and the legislature’s intent and thus expands and revises the reach of the statute in violation of Section 120.52(8)(c), Florida Statutes;
- Third, throughout the rulemaking process, the FLDOE failed to comply with its obligations under Section 120.52(8)(a), Florida Statutes, in various ways, including by not adequately accounting for the cost of implementing the Rules, which will affect every one of the nearly 4,000 K-12 public schools within the state and nearly 200,000 public employees; and

- Finally, in adopting the unprecedented definitions and vastly expanding the scope of the statute, the FLDOE lacked adequate justification and acted arbitrarily and capriciously in violation of Section 120.52(8)(c), Florida Statutes.

Petitioners, on behalf of their hundreds of thousands of teacher, librarian, and parent members whose well-being, livelihoods, and futures are substantially affected, respectfully seek a Final Order that the Rules are an invalid exercise of delegated legislative authority in violation of the APA and ask that the FLDOE be ordered to notify Florida public schools that the Rules are invalid, have been set aside, and will not be enforced. Petitioners further ask that the Division of Administrative Hearings order all other relief that may be deemed appropriate. In support of this petition, Petitioners state the following:

Parties

1. Petitioner FLORIDA EDUCATION ASSOCIATION (“FEA”) is a professional association of educators and education support employees, representing over 140,000 member educators in Florida on all matters associated with their working conditions. Its mailing address is 213 South Adams Street, Tallahassee, Florida, 32301. FEA’s address, telephone number, and email address shall be the same as FEA’s undersigned counsel, et al.
2. Petitioner FLORIDA FREEDOM TO READ PROJECT (“FFTRP”) is a parent-led organization that unites parent voices to ensure that school districts’ decisions are student centered and to protect students’ rights to access information and ideas. FFTRP’s main email address is FIFreedomToReadProject@gmail.com. FFTRP’s address, telephone number, and email address shall be the same as FFTRP’s undersigned counsel, et al.
3. Petitioner FAMILIES FOR STRONG PUBLIC SCHOOLS (“FSPS”) is dedicated to centering Florida’s students in education policy by unifying, educating, and empowering parents

to support a strong public education agenda at all levels of government. Its mailing address is 95 Merrick Way, Coral Gables, Florida, 33134. FSPS's address, telephone number, and email address shall be the same as its undersigned counsel, et al.

4. The affected state agency is the State of Florida Department of Education ("FLDOE"), which is located at 325 West Gaines Street, Tallahassee, Florida, 32399. The Florida State Board of Education ("the Board") is the head of the Department of Education and appoints the Commissioner of Education, who serves as the Director of the Department of Education. Section 20.15(1) and (2), Florida Statutes. Tom Grady is the Chair of the Board and Manny Diaz, Jr. is the Commissioner of Education.

Background Facts

The legislature's adoption of H.B. 1467 and delegation of specific authority to the FLDOE

5. On March 25, 2022, Governor Ron DeSantis signed into law H.B. 1467, a law that imposes a series of requirements on public schools related to their curricula and library media center collections. A copy of H.B. 1467 is attached hereto as **Exhibit 1**, and codified, as relevant here, at Sections 1006.28(2)(a), 1006.28(2)(d), and 1006.29(2), Florida Statutes.

6. Section 1006.28(2)(d), Florida Statutes, states as follows:

(2) DISTRICT SCHOOL BOARD.—The district school board has the constitutional duty and responsibility to select and provide adequate instructional materials for all students in accordance with the requirements of this part. The district school board also has the following specific duties and responsibilities:

(d) *School library media services; establishment and maintenance.*—Establish and maintain a program of school library media services for all public schools in the district, including school library media centers, or school library media centers open to the

public, and, in addition such traveling or circulating libraries as may be needed for the proper operation of the district school system. Beginning January 1, 2023, school librarians, media specialists, and other personnel involved in the selection of school district library materials must complete the training program developed pursuant to s. 1006.29(6) before reviewing and selecting age-appropriate materials and library resources. Upon written request, a school district shall provide access to any material or book specified in the request that is maintained in a district school system library and is available for review.

1. Each book made available to students through a school district library media center or included in a recommended or assigned school or grade-level reading list must be selected by a school district employee who holds a valid educational media specialist certificate, regardless of whether the book is purchased, donated, or otherwise made available to students.

2. Each district school board shall adopt procedures for developing library media center collections and post the procedures on the website for each school within the district. The procedures must:

a. Require that book selections meet the criteria in s. 1006.40(3)(d).

b. Require consultation of reputable, professionally recognized reviewing periodicals and school community stakeholders.

c. Provide for library media center collections based on reader interest, support of state academic standards and aligned curriculum, and the academic needs of students and faculty.

d. Provide for the regular removal or discontinuance of books based on, at a minimum, physical condition, rate of recent circulation, alignment to state academic standards and relevancy to curriculum, out-of-date content, and required removal pursuant to subparagraph (a)2.

3. Each elementary school must publish on its website, in a searchable format prescribed by the department, a list of all materials maintained in the school library media center or required as part of a school or grade-level reading list.

7. Among other new mandates, the statute requires that “[e]ach book made available to students through a school district library media center or included in a recommended or assigned

school or grade-level reading list must be selected by a school district employee who holds a valid educational media specialist certificate.” H.B. 1467, 2022 Leg., Reg. Sess. (Fla. 2022), at 6:148-7:153; Section 1006.28(2)(d)1., Florida Statutes. It also mandates that “[e]ach elementary school must publish on its website, in a searchable format prescribed by the department, a list of all materials maintained in the school library media center or required as part of a school or grade-level reading list.” H.B. 1467, at 7:71-74; Section 1006.28(2)(d)3., Florida Statutes.

8. The legislation did not include a “definitions” section but it did amend one pre-existing definition, changing the meaning of the term “instructional materials.” H.B. 1467, at 11:252-265; Section 1006.29(2), Florida Statutes. Section 1006.29(2), Florida Statutes, states:

(2) For purposes of this part, the term “instructional materials” means items having intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software. A publisher or manufacturer providing instructional materials as a single bundle shall also make the instructional materials available as separate and unbundled items, each priced individually. A publisher may also offer sections of state-adopted instructional materials in digital or electronic versions at reduced rates to districts, schools, and teachers.

9. Other pre-existing definitions were untouched by H.B. 1467. *See, e.g.*, Section 1006.28(1), Florida Statutes.

10. In H.B. 1467, the legislature delegated certain authority to the FLDOE, including the duty to develop and publicize a training program for certain school personnel¹; to prescribe a searchable

¹ H.B. 1467, at 11:266-12:276, Section 1006.29(6), Florida Statutes.

format for certain lists to be published on school websites²; and, to publish and disseminate a regularly updated “list of materials that were removed or discontinued as a result of an objection.”³

11. The legislature did not delegate authority to the FLDOE to define terms in the statute, nor did it authorize the FLDOE to restrict who may select materials for schools. *See generally* H.B. 1467, 2022 Leg., Reg. Sess. (Fla. 2022).

12. During debate on the proposed legislation, the legislature never suggested or revealed an intention that teachers and other non-librarians should be precluded from selecting books. Further, the legislature never discussed requiring schools to catalog books in classrooms, nor did it define the term “library media center,” or contemplate delegating authority to the FLDOE to define that or any other term.

Training Rule

13. On November 1, 2022, the FLDOE notified the public that it was in the process of developing a rule to detail the “[p]rocedures relating to library media and instructional materials in district schools.” Dep’t. of Educ., Notice of Development of Rulemaking, Rule 6A-7.0715, Vol. 48/213, ID 26484218, Nov. 1, 2022, https://flrules.org/gateway/notice_Files.asp?ID=26484218. A copy of the Notice of Development of Rulemaking is attached hereto as **Exhibit 2**.

14. The agency published the proposed rule on December 23, 2022 (“proposed Training Rule”), opened a public comment period to run through January 13, 2023, and scheduled a hearing for January 18, 2023. Dep’t. of Educ., Notice of Proposed Rule, 6A-7.0715, Vol. 48/248, ID 26644365, Dec. 23, 2022, https://flrules.org/gateway/notice_Files.asp?ID=26644365; *Notice: 26644365*, Fla. Admin. Code & Fla. Admin. Reg.,

² H.B. 1467, at 7:171-8:179, Section 1006.28(2)(d)3., Florida Statutes.

³ H.B. 1467, at 9:1-4, Section 1006.28(2)(e), Florida Statutes.

https://flrules.org/Gateway/View_notice.asp?id=26644365. A copy of the Notice of Proposed Rule is attached hereto as **Exhibit 3**.

15. The proposed Training Rule fulfills the mandate of H.B. 1467, codified in Section 1006.29(6), Florida Statutes, that the FLDOE “develop an online training program” and collect annual certifications from superintendents “that all school librarians and media specialists employed by the district have completed the online training program.”

16. The Training Rule also claims to require that “[m]aterials maintained in a school district library media center that are accessible to students or included in a recommended or assigned school or grade-level reading list must be selected by a school district employee who holds an Educational Media Specialist Certificate.” Rule 6A-7.0715(6)(a), Fla. Admin. Code.⁴

17. The proposed Training Rule cites four other subsections of H.B. 1467 as the law implemented, Sections 1006.28(3), 1006.283(1), 1006.283(4), and 1011.67(2), Florida Statutes, and none of those subsections address non-instructional materials (such as library materials) or include the phrase “library media center.”

18. Section 1006.28(3), Florida Statutes states:

(3) DISTRICT SCHOOL SUPERINTENDENT.—

(a) The district school superintendent has the duty to recommend such plans for improving, providing, distributing, accounting for, and caring for instructional materials and other instructional aids as will result in general improvement of the district school system, as prescribed in this part, in accordance with adopted district school board rules prescribing the duties and responsibilities of the district school superintendent regarding the requisition, purchase, receipt, storage, distribution, use, conservation, records, and reports of, and

⁴ That language is similar, but not identical to, a requirement imposed by Section 1006.28(2)(d)1., Florida Statutes, which as noted above was adopted as part of H.B. 1467. However, throughout the rulemaking process, the FLDOE never cited Section 1006.28(2)(d)1., Florida Statutes as one of the laws implemented by the Training Rule. That particular statutory provision does not specify any role for the FLDOE or authorize the agency to take any action.

management practices and property accountability concerning, instructional materials, and providing for an evaluation of any instructional materials to be requisitioned that have not been used previously in the district's schools. The district school superintendent must keep adequate records and accounts for all financial transactions for funds collected pursuant to subsection (4).

(b) Each district school superintendent shall notify the department by April 1 of each year the state-adopted instructional materials that will be requisitioned for use in his or her school district. The notification shall include a district school board plan for instructional materials use to assist in determining if adequate instructional materials have been requisitioned.

19. Sections 1006.283(1) and (4), Florida Statutes state:

(1) A district school board or consortium of school districts may implement an instructional materials program that includes the review, recommendation, adoption, and purchase of instructional materials. The district school superintendent shall certify to the department by March 31 of each year that all instructional materials for core courses used by the district are aligned with applicable state standards. A list of the core instructional materials that will be used or purchased for use by the school district shall be included in the certification.

(4) Instructional materials that have been reviewed by the district instructional materials reviewers and approved must have been determined to align with all applicable state standards pursuant to s. 1003.41 and the requirements in s. 1006.31. The district school superintendent shall annually certify to the department that all instructional materials for core courses used by the district are aligned with all applicable state standards and have been reviewed, selected, and adopted by the district school board in accordance with the school board hearing and public meeting requirements of this section.

20. Section 1011.67(2), Florida Statutes states:

(2) Annually by July 1 and before the release of instructional materials funds, each district school superintendent shall certify to the Commissioner of Education that the district school board has approved a comprehensive staff development plan that supports fidelity of implementation of instructional materials programs, including verification that training was provided; that the materials are being implemented as designed; and, beginning July 1, 2021, for core reading materials and reading intervention materials used in kindergarten through grade 5, that the materials meet the requirements of s. 1001.215(8). Such instructional materials, as evaluated and identified pursuant to s. 1001.215(4), may be purchased by the school district with funds under this section without undergoing the adoption procedures under s. 1006.40(4)(b). The certification must identify any material that received an objection pursuant to s. 1006.28 for the school year and the specific objections thereto, each material that was removed or discontinued as a result of an objection, and the grade level and course for which a removed or discontinued material was used, as applicable. This subsection does not preclude school districts from purchasing or using other materials to supplement reading instruction and provide additional skills practice.

21. While “Library Media Center” is not defined in H.B. 1467 or elsewhere in the Florida Statutes, the proposed Training Rule defines “Library Media Center” to mean “any collection of books, ebooks, periodicals, and videos maintained and accessible to students on the site of a school, including classrooms.” [Emphasis added] Rule 6A-7.0715(2)(e), Fla. Admin. Code.

22. Not only does the proposed Training Rule’s definition of “library media center” specifically mention “classrooms” on its face, but it also, by its terms, reaches materials maintained in administrative offices⁵ and that parents contribute to their children’s classrooms, as applied.

⁵ These may include guidance or nurses’ offices, for instance.

23. By adopting such an expansive definition of “library media center” to include nearly every collection of books and other materials in schools and applying that definition to a training requirement for people selecting materials, the breadth of the proposed Training Rule effectively prohibits teachers from choosing books for their own classrooms, and even parents from donating books or otherwise contributing media to their local schools, unless those individuals have completed a state-designed training. Clearly that was not the intent of the legislature in passing H.B. 1467. In fact, the “House of Representatives Staff Final Bill Analysis” (“Staff Bill Analysis”) never touched on that subject for any consideration. A copy of the Staff Bill Analysis is attached hereto as **Exhibit 4**.

24. The proposed Training Rule also includes definitions for the terms “core courses,” “department,” “instructional materials,” “librarians,” “library media center,” “media specialist,” “state academic standards,” and “superintendent.” Rule 6A-7.0715(2), Fla. Admin. Code. “Instructional materials,” “librarians,” “media specialist,” “state academic standards,” and “superintendent” are defined by reference to other sections of the Florida Statutes. *See* 6A-7.0715(2)(c)-(d), (f)-(h), Fla. Admin. Code. The definition for “core courses” references a statutory section but also expands beyond that section. *Compare* 6A-7.0715(2)(a), Fla. Admin. Code *with* Section 1003.01(14), Florida Statutes. The definitions for “Department” and “Library Media Center” do not refer to statutory sections. Rule 6A-7.0715(2)(b), (e), Fla. Admin. Code.

25. As rulemaking authority for the proposed Training Rule, the FLDOE cites Section 1001.02(1), (2)(n), and 1006.28(2)(d), Florida Statutes.

26. Sections 1001.02(1) and (2)(n), Florida Statutes, state as follows:

(1) The State Board of Education is the chief implementing and coordinating body of public education in Florida except for the State University System, and it shall focus on high-level policy decisions. It has authority to adopt rules pursuant to ss. 120.536(1) and 120.54

to implement the provisions of law conferring duties upon it for the improvement of the state system of Early Learning-20 public education except for the State University System. Except as otherwise provided herein, it may, as it finds appropriate, delegate its general powers to the Commissioner of Education or the directors of the divisions of the department.

(2) The State Board of Education has the following duties:

(n) To adopt cohesive rules pursuant to ss. 120.536(1) and 120.54, within statutory authority.

[Emphasis added]

27. Section 1001.02, Florida Statutes, describes the general powers of the Board and was not revised by H.B. 1467. It does not include a specific authorization for the FLDOE to define otherwise undefined statutory terms. In fact, Section 1001.02(2)(n), Florida Statutes, explicitly cabins the power of the FLDOE to adopt cohesive rules by stating that those rules must be “*within statutory authority.*” [Emphasis added]. Section 1001.02(2)(n), Florida Statutes.

28. Section 1006.28(2)(d), Florida Statutes, revised as part of H.B. 1467 and also cited by the FLDOE, imposes a myriad of responsibilities on school districts and only references the FLDOE when authorizing the agency to prescribe a format for a list of materials, which the Training Rule clearly did not do. *See supra* ¶ 6.

29. Section 1006.29(6), Florida Statutes, states:

(6) The department shall develop an online training program for school librarians, media specialists, and other personnel involved in the selection and maintenance of library media and collections or materials maintained on a reading list. This training must assist reviewers in complying with the requirements of s. 1006.31(2). The department shall make this training available no later than January 1, 2023. No later than July 1, 2023, and annually thereafter, each superintendent must certify to the department that all school

librarians and media specialists employed by the district have completed the online training program.

This subsection, as one of the laws the proposed Training Rule cites as a “law implemented” (but not “rulemaking authority,”) authorizes the FLDOE to develop an online training program for school personnel involved in selecting and maintaining school libraries or reading lists.

30. Upon information and belief, during the comment period, members of the public submitted nearly 40 unique comments opposing the reference to “classrooms” in the Training Rule’s definition of Library Media Center.⁶

31. Commenters opposing the Training Rule noted the onerous and unnecessary responsibilities that the Training Rule would impose on certified educators. Those new duties include requiring certified educators to assume the responsibility of reviewing materials in classroom libraries. Classroom libraries—which focus on reading levels and cater to the specific students in a class—serve a different purpose than school libraries—which are designed to serve the broader school community across reading levels and interests. These collections are maintained separately and are typically stocked through donations as well as teachers’ own books. As many as fifteen opposing commenters who work as teachers and library media specialists also stated that the additional burdens associated with the Training Rule would likely dissuade teachers from keeping classroom libraries, thereby potentially decreasing students’ access to books on a variety of topics.⁷

⁶ Petitioners’ counsel submitted a public records request pursuant to a Chapter 119, Florida Statutes on February 7, 2023, seeking all comments submitted by the public related to the Training Rule as proposed. That request remains pending.

⁷ See, e.g., Fla. Dep’t of Educ., Comment from Julia Gaskins on Proposed Training Rule 6A-7.0715 (on file with Petitioners’ Counsel) (noting that the rules requirements “not only put[] a burden on the media specialists in schools,” but also “tak[e] away the teacher’s ability to tailor their classroom materials to suit the needs of their students”); Fla. Dep’t of Educ., Comment

32. At the January 18 hearing, Board members discussed the Board's role in implementing Florida law. *1/18/23 Board of Education Meeting Part 1*, The Florida Channel, <https://thefloridachannel.org/videos/1-18-23-board-of-education-meeting-part-1/>, 2:59:30.

Therein, the Commissioner of Education specifically commented and conceded that the Board cannot change the language of a statute. *Id.* at 3:02:43.

33. The Board then voted to adopt the proposed Training Rule without any revisions. Dep't. of Educ., Rule 6A-7.0715, ID 26800535, https://www.flrules.org/gateway/notice_Files.asp?ID=26800535 ("Training Rule").

34. The final Training Rule is nearly identical to the Training Rule proposed on November 1, 2022. *Compare* Dep't. of Educ., Rule 6A-7.0715, ID 26800535 *with* Dep't. of Educ., Notice of Proposed Rule 6A-7.0715, Vol. 48/248, ID 26644365, Dec. 23, 2022 (containing substantively identical regulatory language); *see also* Dep't. of Educ., Notice of Change/Withdrawal, Rule 6A-7.0175, Vol. 48/252, ID 26665511, Dec. 30, 2022 (noting that the training materials incorporated by reference had been revised but failing to provide specific information on the revisions made).

from John Boyd on Proposed Training Rule 6A-7.0715 (on file with Petitioners' Counsel) (highlighting that the Rule would lead to "teachers [] feel[ing] compelled to remove [existing classroom library] books to comply with this rule"); Fla. Dep't of Educ., Comment from Michelle Jarrett on Proposed Training Rule 6A-7.0715 (on file with Petitioners' Counsel) ("Books for self selected reading are very different than books used in the curriculum."); Fla. Dep't of Educ., Comment from Lou Cleveland on Proposed Training Rule 6A-7.0715 (on file with Petitioners' Counsel) ("Having the media specialist [] approve [] books [bought with personal funds and parent donations] would be a year long process as collections increase and teachers move from school to school and grade to grade."); Fla. Dep't of Educ., Comment from Ilene Richman on Proposed Training Rule 6A-7.0715 (on file with Petitioners' Counsel) ("The proposed training overreaches and overstates the application of the Parental Rights in Education Act, which does *not* apply to libraries."); Fla. Dep't of Educ., Comment of Karen Babor on Proposed Training Rule 6A-7.0715 (on file with Petitioners' Counsel) ("While I understand the why of this rule, what I don't think the DOE . . . understand[s] is the financial impact of this rule. . . . We are already in a teacher shortage, . . . All this rule will do will [be to] eliminate classroom libraries. So instead of working on encouraging our students to read, we will literally be taking books out of their hands.").

35. A copy of the Training Rule as adopted is attached hereto as **Exhibit 5**.

Elementary School Rule

36. On August 12, 2022, the FLDOE notified the public that it was in the process of developing a rule to “describe the process and format for school district elementary schools to post” lists of materials required by H.B. 1467. Dep’t. of Educ., Notice of Development of Rulemaking, Rule 6A-7.0713, Vol. 48/157, ID 26171684, Aug. 12, 2022,

https://www.flrules.org/gateway/notice_Files.asp?ID=26171684. The notice cites Section 1006.28(2)(d)3., Florida Statutes, the provision of H.B.1467 that authorizes the FLDOE to prescribe the “searchable format” for lists, as rulemaking authority for the forthcoming rule. A copy of the Notice of Development of Rulemaking is attached hereto as **Exhibit 6**.

37. The agency published the proposed rule on September 26, 2022 (the “proposed Elementary School Rule”), opened a public comment period to run through October 17, 2022, and scheduled a hearing for October 19, 2022. Dep’t. of Educ., Notice of Proposed Rule, 6A-7.0713, Vol. 48/187, ID 26331540, Sept. 26, 2022, https://www.flrules.org/gateway/notice_Files.asp?ID=26331540;

Notice: 26331540, Fla. Admin. Code & Fla. Admin Reg., https://www.flrules.org/Gateway/View_notice.asp?id=26331540. A copy of the proposed rule is attached hereto as **Exhibit 7**.

38. The proposed Elementary School Rule implements the H.B. 1467 requirement, codified in Section 1006.28(2)(d)3., Florida Statutes, that the FLDOE prescribe the “searchable format” that elementary schools must use when posting lists of materials maintained in the library media center or included on certain reading lists. Rule 6A-7.0713(3), Fla. Admin. Code. Although the Rule claims to implement the entirety of Section 1006.28(2), Florida Statutes, describing the duties of District School Boards, only subsection 1006.28(2)(d), Florida Statutes, relates to the content of

the proposed Elementary School Rule, and only subsection 1006.28(2)(d)3., Florida Statutes, authorizes the FLDOE to take any specific action.

39. Section 1006.28(2), Florida Statutes, states in relevant part:

(2) DISTRICT SCHOOL BOARD.—The district school board has the constitutional duty and responsibility to select and provide adequate instructional materials for all students in accordance with the requirements of this part. The district school board also has the following specific duties and responsibilities:

(d) *School library media services; establishment and maintenance.*—Establish and maintain a program of school library media services for all public schools in the district, including school library media centers, or school library media centers open to the public, and, in addition such traveling or circulating libraries as may be needed for the proper operation of the district school system. Beginning January 1, 2023, school librarians, media specialists, and other personnel involved in the selection of school district library materials must complete the training program developed pursuant to s. 1006.29(6) before reviewing and selecting age-appropriate materials and library resources. Upon written request, a school district shall provide access to any material or book specified in the request that is maintained in a district school system library and is available for review.

3. Each elementary school must publish on its website, in a searchable format prescribed by the department, a list of all materials maintained in the school library media center or required as part of a school or grade-level reading list.

40. Beyond fulfilling the format mandate, the proposed Elementary School Rule defines “Library media center” to mean “any collection of books, ebooks, periodicals, and videos maintained and accessible on the site of an elementary school including classrooms.” Rule 6A-

7.0713(2)(c), Fla. Admin. Code. “[L]ibrary media center” was not defined in H.B. 1467 or elsewhere in the Florida Statutes. In addition, the Staff Bill Analysis did not reference nor contemplate an expansive definition of “library media center,” as articulated in this rule.

41. Practically speaking, that definition, combined with the obligations in Section 1006.28(2)(d)3., Florida Statutes, means schools must catalog and post on their website the contents of any collection of two or more books or other materials that are accessible to students anywhere in an elementary school building, in addition to material in school libraries. The proposed Elementary School Rule explicitly mentions classrooms but also reaches materials maintained in administrative offices and books and media that parents contribute to school classrooms. This creates an onerous task for the schools and one that was not a specific requirement in the enabling statutes.

42. The proposed Elementary School Rule also establishes definitions for the terms “elementary school,” “elementary school grade level,” “school or grade-level reading list,” and “school district.” Rule 6A-7.0713(2), Fla. Admin. Code. Other than “school district,”⁸ terms including “library media center” are likewise not defined in H.B. 1467 or elsewhere in the Florida Statutes.

43. As rulemaking authority for the Elementary School Rule, the FLDOE cites Sections 1001.02(1), (2)(n), and 1006.28(2)(d)3., Florida Statutes. Section 1001.02, Florida Statutes describes the general powers of the Board and neither of the cited subsections of that provision specifically authorizes the FLDOE to define otherwise undefined statutory terms. *See supra* ¶¶ 26-27. Likewise, Section 1006.28(2)(d)3., Florida Statutes, adopted as part of H.B. 1467, requires the FLDOE to prescribe the “searchable format” for elementary schools’ lists of library and reading

⁸ The definition of “school district” in the Rule references three statutory sections and one constitutional provision.

list materials, but it does not authorize FLDOE to define statutory terms. The Rule does not cite any other authority to define terms or any statutory basis for the definitions it purports to adopt.

44. Upon information and belief, during the public comment period, members of the public submitted nearly 100 unique comments, of which approximately two-thirds specifically opposed including classroom libraries in H.B. 1467's requirement to post a catalog of materials.⁹

45. In opposing the proposed Elementary School Rule, commenters argued that the Rule would impose additional burdens on teachers and library media specialists; the potential impact of closing classroom libraries and preventing book donations; the differences between school libraries and classroom libraries; processes that already exist for parents to obtain information about the contents of classroom libraries; Florida's ongoing teacher shortage; the state's high levels of illiteracy; and the fact that many elementary schools did not have dedicated library staff or dedicated school websites. At least 56 commenters specifically noted that the proposed definition expanded H.B. 1467 beyond the statutory requirements.¹⁰ In addition, multiple educators who commented suggested they would be forced to either close their classroom libraries or would consider leaving teaching altogether if the FLDOE adopted the Elementary School Rule.

46. At the hearing on October 19, 2022, parents, teachers, libraries, and other school staff, and educator- and parent-support organizations opposed the proposed Elementary School Rule. Their

⁹ Petitioners' counsel submitted a public records request pursuant to Chapter 119, Florida Statutes, on January 9, 2023, seeking all comments submitted by the public related to the Elementary School Rule as proposed. In response to an invoice from FLDOE, Petitioners' counsel sent payment in mid-February. FLDOE cashed Petitioners' counsel's check on February 28, 2023, yet that request remains pending.

¹⁰ See, e.g., Fla. Dep't of Educ., Comment from Kimberly DeFusco, on Proposed Training Rule 6A-7.0713 (on file with Petitioners' Counsel) (noting that the rule "expands the scope of the bill" and that if the statute intended to reach classroom libraries "it would have specifically stated that" because the Rule "effectively changes the definition of a school library"); Fla. Dep't of Educ., Comment from Catlin Cibula, on Proposed Training Rule 6A-7.0713 (on file with Petitioners' Counsel) ("Florida statute does not specifically state classroom libraries in the law.").

statements echoed objections in the written comments and often cited the substantial burden on teachers, library media specialists, and students that would result from the FLDOE unilaterally extending H.B. 1467 to encompass the majority of book collections in an elementary school. Many objected that classroom libraries and other non-curricular collections of books, magazines, and other material are beyond the scope of H.B. 1467 and thus beyond the statute's legislative intent. Others pointed out that the proposed Elementary School Rule failed to include an assessment of fiscal costs. *See 10/19/22 State Board of Education Meeting*, The Florida Channel, (3:11:00 - 3:47:30), <https://thefloridachannel.org/videos/10-19-22-state-board-of-education-meeting/>.

47. Following the conclusion of the public comment period, Board Chair Tom Grady asked then-FLDOE Senior Chancellor Jacob Oliva to address the inclusion of classroom libraries in the Elementary School Rule's definition of library media center. *Id.* at 3:41:50. Mr. Oliva acknowledged the burden the Elementary School Rule would impose and noted that it would take time for classroom teachers to cross-correlate book data between classroom and library collections. *Id.*

48. The Board did not address comments or otherwise solicit advice from the FLDOE personnel on whether it had the legal authority to adopt the Rule as proposed.

49. At the conclusion of Mr. Oliva's remarks, the Board voted to adopt the proposed Elementary School Rule without any revisions. Dep't. of Educ., Rule 6A-7.0713, ID 26516810 ("Elementary School Rule").

50. The final Elementary School Rule is nearly identical to the Elementary School Rule proposed on September 26, 2022. *Compare* Dep't. of Educ., Rule 6A-7.0713, ID 26516810 *with* Dep't. of Educ., Notice of Proposed Rule, 6A-7.0713, Vol. 48/187, ID 26331540, Sept. 26, 2022 (containing substantively identical regulatory language other than one small revision not relevant

to the outcome of this matter); *see also* Dep't. of Educ., Notice of Change/Withdrawal, Rule 6A-7.0173, Vol. 48/199, ID 26406424, Oct. 12, 2022 (changing "it must be" to "or" in 6A-7.0713(2)(d)).

51. A copy of the Elementary School Rule as adopted is attached hereto as **Exhibit 8**.

Petitioners are Substantially Affected

52. "Any person substantially affected by a rule . . . may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority." Section 120.56(1)(a), Florida Statutes. To establish standing, a party must show "1) that the rule or policy will result in a real or immediate injury in fact; and 2) that the alleged interest is within the zone of interest to be protected or regulated." *Jacoby v. Fla. Bd. of Med.*, 917 So. 2d 358, 360 (Fla. 1st DCA 2005).

53. The "'substantially affected' requirement is satisfied" for parties that "work[] in the area that is regulated," and are affected by rules that concern licensing or other employment qualifications. *Jacoby*, 917 So. 2d at 360. *See also Pro. Firefighters of Fla., Inc. v. Dep't of Health & Rehab. Servs.*, 396 So. 2d 1194, 1196 (Fla. 1st DCA 1981) (finding standing where a rule change affected licensing and certification requirements that had a "direct effect" on the ability of members of the petitioner organization "to continue to earn their livelihood"). Where a rule has the effect of regulating an industry, representatives of that industry have standing to challenge the proposed rule. *Televisual Commc'ns., Inc. v. Dep't of Labor & Emp. Sec.*, 667 So. 2d 372, 374 (Fla. 1st DCA 1995).

54. Generally, the fact that an organization's members are regulated by a rule "is alone sufficient to establish that their substantial interests will be affected and there is no need for further

factual elaboration.” *Coal. of Mental Health Pros. v. Dep’t of Pro. Regul.*, 546 So. 2d 27, 28 (Fla. 1st DCA 1989).

55. A professional association qualifies as a “substantially affected person” with standing to challenge rules on behalf of its members. *See, e.g., Fla. Home Builders Ass’n v. Dep’t of Labor & Emp. Sec.*, 412 So. 2d 351 (Fla. 1982). To establish standing, an association must demonstrate that a substantial number of its members are substantially affected by the rule, the subject matter of the rule is within the association’s general scope of interest and activity, and the relief sought is appropriate for an association to receive on behalf of its members. *Id.*; *see also NAACP, Inc., v. Fla. Bd. of Regents*, 863 So. 2d 294, 300 (Fla. 2003) (finding standing for an organization where the petitioner demonstrated a “substantial effect of the rule change on a substantial number of the association’s members.”). Organizations proceeding on behalf of their members is particularly appropriate where “the cost for individuals to [bring a] challenge . . . may be prohibitive.” *Rosenzweig v. Dep’t of Transp.*, 979 So. 2d 1050, 1054 (Fla. 1st DCA 2008).

56. FEA is the state’s largest professional association for educators and education support employees, with more than 140,000 members and more than 100 local affiliates. More than 70 percent of FEA’s members are kindergarten through twelfth grade instructional personnel as defined by Section 1012.01, Florida Statutes. FEA state and local staff and officers all work on behalf of the members to provide services and benefits.

57. FEA is committed to advocating for a free, quality, public education for all students through membership advocacy and representation. FEA and its affiliates represent both school library media specialists and classroom teachers. The Training Rule and Elementary School Rule both have a substantial impact on FEA itself, as well as FEA’s members, who are each affected by the FLDOE’s unlawful mandates. As such, FEA is a substantially affected “person” within the

meaning of Section 120.56(1)(a), Florida Statutes, and therefore has standing to challenge the Rules.

58. FEA, in supporting its members—classroom teachers and library media specialists—works to ensure that FEA members have manageable workloads and are able to access resources necessary to provide a rich learning environment for students in classrooms. As a result of the Rules, FEA has expended additional resources, including increased staff and local leaders' time, to address the unauthorized obligations that the Rules place on FEA members. FEA has experienced an influx of inquiries and complaints from FEA members relating to the Rules, requiring the organization to divert substantial staff time away from other tasks. Among other topics, FEA members seek guidance on the impact of the Training Rule on their ability to select books and other media; language in the FLDOE's training materials, incorporated by reference into the Training Rule, that suggests FEA members may face criminal penalties for simply doing their jobs;¹¹ whether they should self-censor to comply with the Rules; and, the impact of both Rules on how and whether they can maintain classroom libraries.

59. Similarly, FEA has spent considerable time and resources analyzing the Rules, developing training and guidance, and facilitating communication initiatives, sharing news coverage, and media campaigns, in an effort to assist FEA's members in their efforts to comply with the vague, confusing, and unauthorized requirements as articulated in the Training Rule and the Elementary School Rule.

60. FEA members are subject to the regulations of the Training Rule and Elementary School Rule. The Training Rule regulates FEA members—including classroom teachers and library media

¹¹ The training states that educators are subject to criminal penalties for violations of Section 847.012, Florida Statutes. The Training Rule also encourages those selecting library and instructional material for use in their classrooms and libraries to “[e]rr on the side of caution.”

specialists—in all kindergarten through twelfth grade public schools. The Elementary School Rule regulates FEA members—including classroom teachers and library media specialists—working in elementary schools. Within the state’s nearly 4,000 public schools, 1,892 of which are elementary schools, a substantial portion of classroom teachers who comprise FEA’s membership maintain classroom libraries as a crucial component of their classrooms, in order to ensure success for their students and to provide opportunities for independent and individualized learning. Because most Florida school districts do not fund these classroom libraries, most FEA classroom teacher members are forced to fund and establish classroom libraries with their own resources, rely on donations, or forgo them entirely. FEA also represents certified library media specialists who work in public schools who, under the Rules, face additional obligations.

61. As a result of the Training Rule and Elementary School Rule, school districts across the state have instructed FEA members to shutter their classroom libraries. FEA’s President estimates that public-school teachers in a third of the counties spanning Florida have been instructed to box up or restrict access to their classroom libraries as a result of the Rules.¹² Those who are able to maintain some semblance of a classroom library face additional and substantial burdens. For example, FLDOE’s promulgation and implementation of the Training Rule resulted in school officials in Manatee, Duval, and Broward Counties directing teachers to remove or cover up their classroom libraries.¹³ According to a Duval County spokesperson, the County’s action came as

¹² Charles Bethea, *Why Some Florida Schools Are Removing Books From Their Libraries*, *The New Yorker* (Feb. 7, 2023), <https://www.newyorker.com/news/letter-from-the-south/why-some-florida-schools-are-removing-books-from-their-libraries>.

¹³ Hannah Natanson, *Hide your books to avoid felony charges, Fla. schools tell teachers*, *Washington Post* (Jan. 31, 2023), <https://www.washingtonpost.com/education/2023/01/31/florida-hide-books-stop-woke-manatee-county-duval-county-desantis/> (Manatee and Duval Counties); Kate Payne, *Censorship fears deepen as Broward teacher told to ‘cover and close all classroom libraries,’* *WLRN* (Feb. 6, 2023) <https://www.wlrn.org/education/2023-02-06/censorship-fears-deepen-as-broward-teacher-told-to-cover-and-close-all-classroom-libraries> (Broward County).

part of the “steps required to comply with Florida laws.”¹⁴ For library media staff, instead of spending their time helping students discover books and other media in centralized school library media centers, they are instead regularly tasked with inventorying and vetting large quantities of books from classroom libraries, a process that may take *years*.¹⁵ Thus, the Rules have resulted in heavy burdens on FEA members, including teachers and library media staff, and has further caused confusion, frustration, and negative impacts to teachers’ and library media staff’s ability to ensure students’ success and reading comprehension.

62. Florida Freedom to Read Project’s thousands of members are comprised of parents and educators from across Florida who advocate for every student’s right to access information and ideas at school. As such, FFTRP is a substantially affected “person” within the meaning of Section 120.56(1)(a), Florida Statutes, and therefore has standing to challenge the Rules.

63. Since FLDOE promulgated the Training Rule and Elementary School Rule, FFTRP has expended time and financial resources submitting public records requests to both the FLDOE and all 67 counties in the state of Florida in an effort to track and document the impact of the FLDOE’s unlawful mandates on a district-by-district basis. In addition, as a result of the classroom library closures resulting from the Rules, FFTRP has had to divert resources from other priorities in order to provide books to students whose classroom libraries closed, while simultaneously securing space to collect and store books removed from classrooms that were subject to destruction.

¹⁴ See Natanson, *supra* note 13.
¹⁵ Richard Hall, *A librarian’s frontline view of Florida’s ‘vetting’ process for school books, and the titles being banned*, Independent (Feb. 13, 2023), <https://www.independent.co.uk/news/world/americas/florida-book-ban-desantis-schools-b2281345.html> see also Brittany Misencik, *Book purge begins in Escambia classrooms as some titles are pulled from shelves for review*, Pensacola News Journal (Feb. 22, 2023), <https://www.pnj.com/story/news/local/education/2023/02/22/escambia-schools-pulling-books-from-classrooms-to-review-after-florida-law-requires-approval/69928665007/>.

64. FFTRP's members have also been substantially affected by the Rules. FFTRP's parent members have been forced to expend personal funds to purchase or otherwise secure books that were historically available in classroom libraries but have been removed. Others have expressed that their children are upset by the reduction or inaccessibility of classroom libraries. And still others have stocks of books that they wish to donate to schools but are prevented from doing so by the new Rules. FFTRP parent members have been instructed not to allow their children to bring books to school as a result of the Rules. And FFTRP's members who are teachers and media specialists have been directly impacted by this change.

65. Families for Strong Public Schools works collaboratively with parents, teachers, families, and within government, to create educational spaces that promote FSPS's primary goal of supporting and educating Florida's children. The Training Rule and the Elementary School Rule harm FSPS's mission and substantially affect FSPS's more than 1,000 members. As such, FSPS is a substantially affected "person" within the meaning of Section 120.56(1)(a), Florida Statutes, and therefore has standing to challenge the Rules.

66. FSPS's members have been deeply impacted by the FLDOE's unlawfully promulgated rules. Some have moved or considered moving their children out of the public school system as a result of the FLDOE's actions and the far-reaching consequences that could result from the Rules, such as limiting students' access to a rich learning environment. One member of FSPS made the difficult decision to move out-of-state in the middle of the school year as a result of the Rules and other restrictions on classroom libraries, books and media in the schools, and the burdensome requirements and responsibilities on teachers and library media staff.

Argument

67. The Florida APA mandates that agencies may exercise only the authority that is granted to them by the legislature. Agency action constitutes an “invalid exercise of delegated legislative authority” if an agency “goes beyond the powers, functions, and duties delegated by the Legislature.” Section 120.52(8), Florida Statutes.

68. Section 120.52(8), Florida Statutes, states:

(8) “Invalid exercise of delegated legislative authority” means action that goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

(a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

(f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency’s class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority

or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

[Emphasis added].

69. The Training Rule and the Elementary School Rule both violate these provisions. In adopting the Rules, the FLDOE effectively enlarged, modified, and contravened the statute; exceeded its grant of rulemaking authority; failed to comply with the requirements of the rulemaking process; and acted arbitrarily and capriciously.

I. The Rules Exceed the Grant of Rulemaking Authority¹⁶

70. Defining terms in a rule that were not previously defined in a statute requires a specific grant of delegated legislative authority.

71. Pursuant to H.B. 1467, the legislature authorized the FLDOE to prescribe a “searchable format” for certain lists and to develop a specific training. *See, e.g.*, Section 1006.28(2)(d)3., Florida Statutes (authorizing the FLDOE to “prescribe” the “searchable format” for lists posted on school websites); Section 1006.28(2)(e), Florida Statutes (same and authorizing the FLDOE to “publish and regularly update” lists of certain materials that have been “removed or discontinued”); Section 1006.29(6), Florida Statutes (authorizing FLDOE to “develop an online training program for school librarians, media specialists, and other personnel involved in the selection and maintenance of library media and collections or materials maintained on a reading list”).

¹⁶ The Training Rule and Elementary School Rule are invalid exercises of delegated legislative authority under both Section 120.52(8)(b), Florida Statutes (exceeds the agency’s authority) and Section 120.52(8)(c), Florida Statutes (modifies, enlarges, or contravenes the statute). “Although [the claims are] interrelated, two different issues are involved.” *State, Bd. of Trustees v. Day Cruise Ass’n, Inc.*, 794 So. 2d 696, 701 (Fla. 1st DCA 2001).

72. When adopting the Training Rule and the Elementary School Rule, the FLDOE exceeded the authority it was delegated and instead defined terms and imposed restrictions and requirements where the legislature declined to do so. Because the FLDOE exceeded the legislature's grant of rulemaking authority when adopting the Training Rule and the Elementary School Rule, both Rules are invalid under Section 120.52(8)(b), Florida Statutes.

73. The APA mandates that "agencies have rulemaking authority only where the Legislature has enacted a specific statute, and authorized the agency to implement it, and then only if the . . . rule implements or interprets specific powers or duties, as opposed to improvising in an area that can be said to fall only generally within some class of powers or duties the Legislature has conferred on the agency." *State Bd. of Trs. of the Internal Improvement Tr. Fund v. Day Cruise Ass'n, Inc.*, 794 So. 2d 696, 700 (Fla. 1st DCA 2001).¹⁷ Rulemaking authority is "statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term 'rule.'" Section 120.52(17), Florida Statutes.

74. To that end, "[a]gency rulemaking must be based on a specific grant of authority delegated by the Legislature." *MB Doral, LLC v. Dep't of Bus. & Pro. Regul., Div. of Alcoholic Beverages & Tobacco*, 295 So. 3d 850, 854 (Fla. 1st DCA 2020) (citing *State Bd. of Trs.*, 794 So. 2d at 700); see also *Jacaranda at Cent. Park Master Ass'n, Inc. v. S. Fla. Water Mgmt. Dist.*, No. 22-000849RX, 2022 WL 4117700 (Fla. DOAH July 18, 2022), at *13 (finding that a rule that purported to regulate public safety exceeded the agency's authority because none of the cited authority authorizing the rule or the statutes to be implemented contained the term "public safety");

¹⁷ The APA also requires that rules "reference . . . the grant of rulemaking authority pursuant to which the rule is adopted" and "reference . . . the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted." Section 120.54(3)(a)(1), Florida Statutes.

cf. Section 120.54(3)(a)(1), Florida Statutes (requiring that rules “reference . . . the grant of rulemaking authority pursuant to which the rule is adopted”).

75. Pursuant to Section 120.52(8), Florida Statutes, agencies do not “have the authority to implement statutory provisions setting forth general legislative intent or policy,” nor may they adopt “a rule merely because” it is “within the agency’s class of powers and duties.” *Sw. Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594, 598-99 (Fla. 1st DCA 2000) (internal citations omitted); *see also MB Doral*, 295 So. 3d at 854 (statutory section authorizing the agency to adopt rules to implement the “Beverage Law” was “insufficient by itself to provide authority for” a rule that imposed geographic restrictions on off-site liquor storage, and “[n]owhere in the [statute] did the Legislature authorize the Division to” specifically impose such restrictions).

76. The APA also prohibits agencies from “adopt[ing] a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious [or is within the agency’s class of powers and duties].” Section 120.52(8), Florida Statutes.

77. Evaluating whether a rule exceeds agency authority requires “a close examination of the statutes cited by the agency as authority for the rule at issue to determine whether those statutes explicitly grant the agency authority to adopt the rule.” *MB Doral, LLC*, 295 So. 3d at 854. If an agency adopts a rule where “[n]o provision listed as being implemented . . . purports to authorize—much less specifically [] direct[s]” it to do so, the agency exceeds its rulemaking authority and the rule constitutes an invalid exercise of delegated legislative authority. *State Bd. of Trs.*, 794 So. 2d at 703-04.

78. Defining terms is precisely the type of power that requires a specific grant of delegated authority. Where an authorizing statute “does not set forth a definition” but a rule “created a definition,” the rule is “an invalid exercise of delegated legislative authority.” *St. Petersburg*

Kennel Club v. Dep't. of Bus. and Pro. Regul., Div. of Pari-Mutuel Wagering, 719 So. 2d 1210, 1211 (Fla. 2d DCA 1998) (striking down a rule defining “poker” where the statutory regime referred to, without defining, the word and did not “provide the specific rule-making authority” such as mandating that the agency “shall have the authority to make rules which set forth the definition of poker”).

79. For the reasons below, both the Training Rule and the Elementary School Rule violate these established principles.

Training Rule

80. The Training Rule cites for its rulemaking authority Sections 1001.02(1), (2)(n), and 1006.28, Florida Statutes. These subsections do not authorize the FLDOE to define any terms, including “library media center.”

81. Section 1001.02, Florida Statutes, outlines the powers of the Board and does not constitute the requisite grant of rulemaking authority that is sufficient under Section 120.52(8), Florida Statutes, to justify specific regulatory actions. The statute is largely indistinguishable from the general grant of rulemaking authority that was insufficient to justify imposing additional restrictions and defining terms in *MB Doral*, 295 So. 3d at 854.

82. More specifically, Section 1001.02(1), Florida Statutes, provides that the Board “shall focus on high-level policy decisions” and “has the authority to adopt rules . . . to implement the provisions of law conferring duties upon it for the improvement of the state system of Early Learning.” Subsection 2(n) provides that the Board may “adopt cohesive rules . . . within statutory authority.” The section as a whole, and the subsections in particular, describe certain duties of the FLDOE and are general grants of rulemaking authority that do not provide the type of specific authorization required by Section 120.52(8), Florida Statutes.

83. The legislature did not specifically authorize the FLDOE to define terms articulated in Section 1006.28, Florida Statutes, or even touch on the FLDOE's authority at all.

84. Section 1006.28, Florida Statutes, describes the duties of district school boards, superintendents, and principals regarding instructional materials. That section includes three specific authorizations¹⁸ for the FLDOE - to determine the format for and publish certain lists:

- “Each elementary school must publish on its website, in a searchable format prescribed by the [FLDOE], a list of all materials maintained in the school library media center or required as part of a school or grade-level reading list.” Section 1006.28(2)(d)3, Florida Statutes;
- “*Public participation.* Publish on [the District school board’s] website, in a searchable format prescribed by the [FLDOE], a list of all instructional materials, including those used to provide instruction required by s. 1003.42.” Section 1006.28(2)(e), Florida Statutes; and
- “The [FLDOE] shall publish and regularly update a list of materials that were removed or discontinued as a result of an objection and disseminate the list to school districts for consideration in their selection procedures.” Section 1006.28(2), Florida Statutes.

85. Those provisions vest the FLDOE with specific authority to determine a “searchable format” for certain lists and to “publish and regularly update” a list of certain materials. They do not, however, empower the FLDOE to define terms, as it purports to do in Rule 6A-7.0715(2), Fla. Admin. Code. Moreover, they do not authorize the FLDOE to further restrict who can select materials that are available for students, as the agency aims to do by combining the definitions

¹⁸In addition to the three provisions that authorize FLDOE action, the FLDOE is only mentioned one other time in Section 1006.28, Florida Statutes, in subsection (3)(b), which requires school district superintendents “to notify the department [of education] by April 1 of each year the state-adopted instructional materials that will be requisitioned for use in his or her school district.”

with the requirements set forth in Rule 6A-7.0175(6)(A), Fla. Admin. Code. The legislature chose to authorize the FLDOE to fulfill certain specific functions and could easily have provided the agency with other specific powers if it chose to do so. The legislature's decision not to provide those other specific powers must be respected. *See e.g., S. Marion Real Estate Holdings v. Dep't of Bus. and Pro. Regul., Div. of Pari-mutuel Wagering*, No. 22-000968RX, 2022 WL 2111212, at ¶ 39, *6 (Fla. DOAH Apr. 29, 2022) (noting that “[t]he existence of [certain] provisions indicates that the Legislature knows how to accomplish [imposing] restrict[ions]. The Legislature could have easily [imposed other] restrict[ions] . . . or explicitly given the [agency] the authority to do so had the Legislature so intended.”).

86. The Training Rule is thus an invalid exercise of delegated legislative authority under Section 120.52(8)(b), Florida Statutes, since the FLDOE exceeded its authority when it defined terms without the requisite specific authorization required by Section 120.52(8), Florida Statutes.

Elementary School Rule

87. The FLDOE violated the same principles as above in purporting to define “library media center” for purposes of the Elementary School Rule. As statutory authority for its action, the Elementary School Rule cites sections 1001.02(1), (2)(n), and 1006.28(2)(d)3., Florida Statutes. None of those provisions, however, authorizes the agency to define any terms, including “library media center.”

88. Section 1001.02, Florida Statutes, is no more adequate of a justification for the Elementary School Rule than for the Training Rule. As a general grant of rulemaking authority that describes the role of an arm of the FLDOE – the State Board of Education, it does not detail “specific powers

and duties” the agency is charged with implementing:

89. By contrast, subsection 1006.28(2)(d)3., Florida Statutes does provide a specific authorization, but that authorization is narrow and does not empower the FLDOE to define terms. Subsection 1006.28(2)(d)3., Florida Statutes tasks the FLDOE with the specific authority to determine the criteria of a data collection format: “Each elementary school must publish on its website, in a *searchable format prescribed by the department*, a list of all materials maintained in the school library, media center or required as part of a school or grade-level reading list.” [Emphasis added]. That specific authorization does not include defining “library media center” or any other terms. The legislature’s decision to provide the FLDOE with authorization to perform specific functions shows that it knew how to do so and could have authorized the agency to perform other specific duties, including defining “library media center,” if it chose. *S. Marion Real Estate Holdings*, 2022 WL 2111212, at ¶ 39.

90. Because the FLDOE exceeded its authority when drafting the Elementary School Rule by defining terms without any authorization, much less the specific authorization required by Section 120.52(8), Florida Statutes, the Elementary School Rule constitutes an invalid exercise of delegated legislative authority.

II. The Rules Enlarge, Modify, and Contravene the Statute

91. The Training Rule and the Elementary School Rule both define “library media center” to include nearly all collections of books and other media located anywhere on a school premises. *See* Rule 6A-7.0715(2)(d), Fla. Admin. Code (“any collection of books, ebooks, periodicals, and videos maintained and accessible to students on the site of a school, including classrooms.”); Rule 6A-7.0713(2)(d), Fla. Admin. Code (“any collection of books, ebooks, periodicals, and videos maintained and accessible on the site of an elementary school including classrooms”). In doing so, the FLDOE effectively designates the *entire school* as a library media center. These definitions

not only defy common sense and contravene plain meaning, but also stretch H.B. 1467's reach beyond what the legislature intended. Because the Rules "enlarge[], modif[y], [and] contravene[] the specific provisions of law" they purport to implement, they constitute an invalid exercise of delegated legislative authority under Section 120.52(8)(c), Florida Statutes.

92. The power to interpret the meaning and reach of a statute rests with the legislature, unless otherwise specifically articulated in the statute, rather than the agency, and rules are valid only if they are substantively consistent with legislative intent.¹⁹ See, e.g., *S. Baptist Hosp. of Fla. v. Agency for Health Care Admin.*, 270 So. 3d 488, 502 (Fla. 1st DCA 2019). Whether a rule is consistent with legislative intent can be determined by a "plain reading" of "clear and unambiguous" statutory language. *Id.*; *Smith v. Fla. Dep't of Corr.*, 920 So. 2d 638, 641-42 (Fla. 1st DCA 2005) (finding that where a statute authorized an agency "to collect monetary assessments" but did not "in any way authorize [it] to make monetary assessments," a rule allowing the agency to make such assessments was inconsistent with legislative intent, and that "such a policy decision should be made by the Legislature rather than the executive branch").

93. To be valid, rules must "give[] effect to a 'specific law to be implemented,' and implement[] or interpret[] 'specific powers and duties.'" *State, Bd. of Trs.*, 794 So. 2d at 704 (Fla. 1st DCA 2001) (citing Section 120.52(8), Florida Statutes). The APA requires that rules are "based on an explicit power or duty identified in the enabling statute." *Sw. Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d at 599 (citing Section 120.52(8)(c), Florida Statutes) (finding

¹⁹ The 2018 amendment to the Florida Constitution reiterates that the legislative intent, rather than the agency's interpretation, governs. Art. V, § 21, Fla. Const. ("In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule *de novo*.") Moreover, an agency's interpretation of a statute never warrants deference where, as here, "it is contrary to the statute's plain meaning." *S. Baptist Hosp. of Fla.*, 270 So. 3d at 502 (internal citations omitted).

an invalid exercise of delegated authority where a rule exempted certain types of land development permits from environmental requirements because the statute limited the circumstances where the agency could grant exemptions); *cf.* Section 120.54(3)(a)(1), Florida Statutes (requiring that rules “reference [] the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted”). A rule is invalid where “[n]one of the cited constitutional or statutory provisions make reference to, much less gives specific instructions on the treatment of” a topic the rule attempts to implement. *State Bd. of Trs.*, 794 So. 2d at 703.

94. Moreover, a rule modifies or enlarges a statute in a fashion that violates Section 120.52(8)(c), Florida Statutes, if the “effect of the Board’s rule is . . . adding an additional requirement . . . [or] restriction not included by the Legislature.” *Ortiz v. Dep’t of Health, Bd. of Med.*, 882 So. 2d 402, 407 (Fla. 4th DCA 2004) (invalidating a rule that effectively restricted the practice of non-physician medical staff where the statute only authorized the Board to establish “standards of practice” for physicians, and citing a case that struck down a rule imposing a licensing requirement on physicians that the Legislature had not approved) (citing *Fla. Dep’t of Health & Rehab. Svcs. v. McTigue*, 387 So. 2d 454 (Fla. 1st DCA 1980)); *see also Moreland ex rel. Moreland v. Agency for Persons with Disabilities*, 19 So. 3d 1009, 1012 (Fla. 1st DCA 2009) (striking down regulatory provisions that imposed an age restriction on Medicaid waivers where the statute suggested no such restriction and that mandated a particular categorization not called for by statute).

95. Both the Training Rule and the Elementary Rule violate these principles.

Training Rule

96. The Training Rule is an invalid exercise of delegated legislative authority because it imposes restrictions on educators and parents that go beyond the “specific powers and duties” delegated to the FLDOE and that are not included in the statute.

97. The breadth of the Training Rule’s requirement that books available through a library media center must be selected by school staff with educational media specialist certification,²⁰ combined with the unprecedented definition of “library media center” that incorporates nearly every book in a school building, effectively prevents classroom teachers from choosing books for their own classrooms and parents from donating books or otherwise contributing media to their children’s schools. Rule 6A-7.0715(6)(a), (2)(e), Fla. Admin. Code. Because the Training Rule has the effect of impermissibly enlarging, modifying, or contravening the legislative intent that is discernible from a plain reading of the statute, it is invalid under Section 120.52(8)(c), Florida Statutes.

98. The plain language of the statute is clear and unambiguous that those involved in selecting materials for the school library or reading lists must be certified. Teachers, administrators, other staff, and even parents involved in choosing books for classrooms or materials for other school purposes are not subject to the statutory certification requirement. Yet the Training Rule, allegedly promulgated pursuant to the statute, seeks to eliminate that distinction and forbid uncertified staff from selecting any material at all for a school. This contravenes a plain reading of the statutory section and imposes a requirement that operates as a restriction that is contrary to the legislative intent.

²⁰ The Training Rule’s requirement that materials be selected by certified educational media specialists echoes Section 1006.28(2)(d)1., Florida Statutes, which is not among the laws implemented by the Training Rule. *See supra* ¶¶ 17 and note 4.

99. The legislature showed that it knows how to require certification if it so desires. The statute itself clarifies that certification is required for the two separate functions within schools of selecting library material and developing the contents of a reading list. Section 1006.28(2)(d)1., Florida Statutes. The legislature could have required that all educators be certified education media specialists or restrict book selection outside of the library to those with the relevant certification. It did not do so. The FLDOE cannot, by rule, now impose those requirements or restrictions in its place.

100. Similarly, the Training Rule is invalid because it enlarges, modifies, and contravenes the statute by defining "library media center" where the legislature failed to do so (despite including definitions language in Section 1006.28, Florida Statutes), and by providing a definition inconsistent with a plain reading and with other uses of the term in Florida law. The clear and unambiguous meaning of "library media center" in Sections 1006.28(3), 1006.283(1), (4), 1006.29(6), and 1011.67(2), Florida Statutes, is consistent with how the phrase is used throughout Florida law and other rules: It refers to a collection of books and other media contained in the centralized location of a school library. Beyond H.B. 1467, the phrase "library media center" is used three times in the Florida statutes, each time in a fashion that refers to centralized libraries in schools that are available across classes and grade levels.²¹ School districts throughout the state highlight their "library media centers" on their websites with photos and descriptions of centralized

²¹ See generally Sections 1011.71(2)(j) and 1013.62(4)(i), Florida Statutes (describing permissible uses of capital outlay); Section 257.02(1), Florida Statutes (defining, as part of the chapter on Public Libraries and State Archives, the membership of the State Library Council to include representatives from public libraries, postsecondary libraries, a library professional association, a "multitype library cooperative," and a "school library media center").

library spaces available to all students and not accessible only within a classroom.²² See *infra* ¶¶

104.

101. By including a restriction that the legislature did not intend, the Training Rule enlarges,

modifies, and contravenes Section 1006.28, Florida Statutes.

Elementary School Rule

102. The Elementary School Rule modifies, enlarges, and contravenes Section 1006.28(2),

Florida Statutes, by going beyond the “specific powers and duties” that the statute delegates to the

FLDOE and by defining “library media center” in a way that imposes requirements that go beyond

the “specific powers and duties” delegated to the FLDOE and that are not included in or consistent

with the statute. A plain reading of the statute demonstrates that the only role the legislature

²² See, e.g., Lake Forest Elementary School, *Library Media Center*, <https://www.sbac.edu/site/Default.aspx?PageID=15631> (listing hours of the library media center that are distinct from school hours) (last visited Mar. 9, 2023); Polk County Public Schools, *Library Media Center*, <https://polkschoolsfl.com/librarymediacenter/> (discussing resources available through the central school library) (last visited Mar. 9, 2023); St. Johns County School, *Library Media Center*, <https://www.stjohns.k12.fl.us/media/libraries/> (using the term “library media center” to refer to the central location in schools where particular staff are assigned) (last visited Mar. 9, 2023); Crawford Mosley High School, *2022-2023 Student Handbook*, <https://mhsfins.com/content/UserFiles/DefaultUser/images/StudentHandbook2022-2023.pdf> (noting that the “Marvin McCain Technology Center is the media center/library for” the school and providing information about hours and processes for accessing the site); Bennett C. Russell Elementary School, *Library Media Center*, <https://br.santarosaschools.org/ea-US/library-media-center-5b22962f> (using the term “library media center” and the word “library” interchangeably when listing two staff members assigned to the central school library media center) (last visited Mar. 9, 2023); West Florida High School, *School Library*, https://wfhs-ecsd-fl.schoolloop.com/school_library (“Libraries became Media Centers, and now, Media Centers are becoming Innovation Centers.”) (last visited Mar. 9, 2023); Mila Elementary School, *Access to Resource and Services in the School Library Media Program*, <https://fl02201431.schoolwires.net/Domain/8134> (offering that “Your school has a wonderful room . . . That room is the library media center” and showing a photograph of a space marked “media center”); Storm Grove Middle School, *Welcome to SGMS Media Center*, https://sgms.indianriverschools.org/students_families/media_center (referring to the Storm Grove Middle School Library Media Center as a “facility,” explaining that students may be “sent in from class” or “come in during their lunch”) (last visited Mar. 15, 2023).

intended for FLDOE to play in implementing the statute is for the agency to prescribe a searchable format for lists of materials. Section 1006.28(2)(d)3., Florida Statutes.

103. Like the Training Rule, the Elementary School Rule's definition of "library media center" is inconsistent with how the phrase is otherwise used in Florida law.

104. The statute cited in the Elementary School Rule as the law implemented, Section 1006.28(2), Florida Statutes, distinguishes between libraries and classrooms. It notes that school boards are responsible for "instructional materials and any other materials used in a classroom, made available in a school library, or included on a reading list." Section 1006.28(2)(a), Florida Statutes. This statutory distinction shows that the legislature understood the two locations as separate and distinct. By not specifically extending the cataloging requirement to "other materials used in a classroom," as it did in Section 1006.28(2)(a), Florida Statutes, the legislature demonstrated its intent to limit the requirement to those materials contained in a centralized library media center or on specific reading lists. *See also supra* ¶ 38.

105. Moreover, the same statute cited in the Elementary School Rule, specifically Section 1006.28(1), Florida Statutes, includes language specifying the meaning of four terms. The fact that the legislature defined certain terms in the very statutory section that the Elementary School Rule implements, but declined to define "library media center," demonstrates that the legislature knew how to specify a particular meaning but chose not to do so for "library media center" or any of the other four terms defined in the Elementary School Rule. Had the legislature intended a more expansive meaning similar to the one promulgated by the FLDOE in the Elementary School Rule, it could have used any other phraseology and made specific reference to, for example, "any collection" of materials at a school, or omitted the key limiting modifier "library," or referenced

“classrooms.” Instead, by defining those terms in a way that enlarges, modifies, and contravenes the statutory text, the FLDOE engaged in an invalid exercise of delegated legislative authority.

III. The Agency Failed to Comply with the Requisite Rulemaking Procedures when Adopting the Rules

106. The FLDOE failed to comply with the procedural requirements of the Florida Administrative Procedure Act when adopting the Training Rule and Elementary School Rule in at least two respects.

107. Section 120.541, Florida Statutes, states in relevant part:

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice required under s. 120.54(3)(a), a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and either adopt the alternative or provide a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(b) If a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

(2) A statement of estimated regulatory costs shall include:

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general

description of the types of individuals likely to be affected by the rule.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

108. First, Section 120.541, Florida Statutes, requires that "if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b)." Section 120.541(1)(b), Florida Statutes; Section 120.54(3)(b)1.b., Florida Statutes.

109. Florida law imposes several considerations that the FLDOE was obligated to take into account in a statement of estimated regulatory costs ("SERC"), including a good faith estimation of the number of individuals or entities required to comply with the proposed rule, estimated costs to state and local government entities to implement and enforce the proposed rule and any anticipated effects on their revenue, as well as transactional costs (including such considerations as "the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule."). *Id.* Sections 120.541(2)(b)-(d), Florida Statutes. An agency's failure to conduct a SERC constitutes "a material failure to follow

the applicable rulemaking procedures or requirements set forth in this chapter.” *Id.* Section 120.541(1)(e), Florida Statutes.²³

110. The FLDOE ignored these obligations and concedes that it failed to conduct any regulatory cost analysis with regard to either the Training Rule or the Elementary School Rule.

111. This omission is made even more significant in light of the fact that the Staff Bill Analysis states, “The bill has an indeterminate fiscal impact to the DOE for development of a training program for library media reviewers District school boards may incur costs . . .” It is thus clear that the legislature anticipated there to be regulatory costs associated with the bill and its implementation in agency rules.

Training Rule

112. Without analysis, FLDOE made the conclusory determination that the Training Rule would not increase regulatory costs to an amount that would trigger the obligation to conduct a SERC. Notice of Proposed Rule, 6A-7.0715.

113. The FLDOE incorrectly and arbitrarily concluded that by virtue of the nature of the Training Rule, a SERC was not necessary. To the contrary, the costs of implementing the Training Rule are quite high because it reaches beyond materials in a school library to cover nearly all collections of books and other media material on a school’s premises. This necessarily imposes compliance obligations on teachers and other school staff, in the form of labor, equipment, material costs, and training. According to the FLDOE’s most recently published data, there are a total of

²³ In addition, Florida law requires that an agency consider a rule’s impact on small counties, and when practicable, an “agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address.” Section 120.54(3)(b)(2)(a), Florida Statutes. FLDOE did not consider the impact to small counties, and their small and often under-resourced school districts, at all, despite the Rules’ application to all school districts within the state.

3,697 kindergarten through twelve public schools in Florida as of 2021, every one of which is affected by the Training Rule. FLDOE, Number of Public Elementary, Middle, High and Combination Schools (K-12 General Education) by District,

<https://www.fldoe.org/core/fileparse.php/7588/urlt/K12GeneralEd2122.xlsx>. And there are more than 175,000 teachers now affected by the Rule. See FLDOE, Staff in Florida's Public Schools Full-Time Instructional Staff Summary 2022-23,

<https://www.fldoe.org/core/fileparse.php/7584/urlt/ARInstructionalDistStaff2223.xlsx>. Because the high number of affected entities and public employees, the FLDOE was obligated to conduct a SERC for the Training Rule.

114. Regardless of whether the FLDOE considered the Training Rule's fiscal impact from a per-school or per-educator perspective, the expected cost far exceeds the \$200,000 threshold necessary to conduct a SERC: the FLDOE would be required to conduct a SERC if each public school spends \$55 or each teacher spends more than \$1.15 to comply with the Rule.

115. The FLDOE language summarily disavowing its obligation to conduct a SERC for the Training Rule demonstrates that it made no effort to determine the costs associated with the Rule, despite several public commenters raising this concern. Notice of Proposed Rule, 6A-7.0715 ("The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency."). The FLDOE's failure to conduct a SERC is a material violation of rulemaking procedural requirements, in violation of Section 120.52(8)(a), Florida Statutes (a rule is an invalid exercise of legislative authority when the "agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter.").

116. It is also unclear the nature of the data and analysis, if any, or the methodology utilized by the FLDOE to reach the conclusion that a SERC was not necessary.

117. Other FLDOE actions further demonstrate that the agency failed to comply with the requirements of the rulemaking process when adopting the Training Rule. For instance, Section 120.54(3)(d), Florida Statutes, requires the agency to provide adequate notice of a change to a proposed rule, and FLDOE failed to do so here. The Notice of Change to the Training Rule published on December 30, 2022, merely stated that: “In response to public comment the library media training incorporated by reference is amended for clarification and better alignment with the law.” Notice of Change, 6A-7.0715 (ID 26665511). The Notice did not contain any information on what those amendments to the training were. The public had no understanding of, or opportunity to meaningfully comment on, those amendments before the FLDOE voted to adopt the Training Rule. This failure to provide adequate notice constitutes a material failure to adhere to procedural requirements, and therefore, the Training Rule is an invalid exercise of legislative authority in violation of Section 120.52(8)(a), Florida Statutes. *See* Section 120.54(1)(h), Florida Statutes.

Elementary School Rule

118. Like the Training Rule, the FLDOE failed to adequately account for the costs and impacts of the Elementary School Rule, coming to the same unfounded conclusion that the Rule did not trigger an obligation to conduct a SERC. Notice of Proposed Rule, 6A-7.0713 (“The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency”).

119. The Elementary School Rule stands to impact thousands of public schools and tens of thousands of public employees, imposing compliance obligations on teachers and other school staff, in the form of labor, equipment, material costs, and training. *See supra* ¶¶ 112-16.

120. There are 1,892 public elementary schools in Florida as of 2021, every one of which is affected by the Elementary School Rule. FLDOE, Number of Public Elementary, Middle, High and Combination Schools (K-12 General Education) by District. And there are over 70,000 elementary school teachers now affected by the Rule. *See* FLDOE, Staff in Florida's Public Schools Full-Time Instructional Staff Summary 2022-23.

121. In order to reach the \$200,000 threshold to trigger a SERC, each elementary school would need to expend only \$106 and each teach only \$2.83 in resources to implement or comply with the Elementary School Rule. The FLDOE's decision to conclude—without analysis—that a SERC was not required was unreasonable.

122. Both the Training Rule and the Elementary School Rule constitute invalid exercises of delegated legislative authority because the FLDOE failed to comply with its statutory obligation in the rulemaking process.

IV. The Rules are Arbitrary and Capricious

123. Both the Training Rule and the Elementary School Rule are arbitrary and capricious in violation of the APA because they (1) conflict with the widespread understanding and interpretation in Florida of the phrase “library media center,” (2) are not supported by logic or necessary facts, and (3) are adopted without thought or reason by failing to logically connect with the enabling statutes.

124. Agency rules are arbitrary if they are “not supported by logic or the necessary facts” and capricious if they are “adopted without thought or reason” or if they are “irrational.” Section 120.52(8)(e), Florida Statutes.

125. If a rule’s terms are inconsistent with their meaning in the real world, the rule must fall as it is “not supported by the necessary facts and does not operate according to reason.” *Fla. Dep’t of Bus. & Pro. Regul., Div. of Alcoholic Beverages & Tobacco v. Target Corp.*, 321 So. 3d 320 (Fla. 1st DCA 2021) (striking down a rule because its allegedly exclusive list of items customarily sold in restaurants was contrary to the evidence, which showed that other items, which were omitted from the list, were also typically sold in restaurants).

Training Rule

126. Defining “library media center” in the Training Rule to reach beyond the location of a school district’s centralized collection is illogical in light of how the phrase is routinely, and traditionally, understood. Every other time “library media center” is referred to in the Florida statutes, it either explicitly or implicitly references a central location accessible to all students—that is a school library—rather than all collections of books located virtually anywhere on the premises of a school, as the FLDOE seeks to define the term here. *See supra* ¶ 100.

127. Further, throughout the rulemaking process, the FLDOE did not provide any basis or reasoned explanation for changing the understood meaning of the defined term. The FLDOE pointed to no facts or offered any analysis that supports reading “library media center” to reach classrooms or other parts of the school. To the contrary, the FLDOE acted unilaterally to define the phrase “library media center” in an illogical, unsupported way as a pretext for exercising legislative authority over policy issues.

128. The FLDOE engaged in an invalid exercise of delegated legislative authority by adopting the Training Rule because it is contrary to fact, logic, and reason, and thus is arbitrary and capricious.

Elementary School Rule

129. For the same reasons, FLDOE acted arbitrarily and capriciously in violation of Section 120.52(8)(e), Florida Statutes, when defining "Library Media Center" in the Elementary School Rule to reach beyond the scope of the centralized library system and to include all collections of books on an elementary school's premises. *See supra* ¶¶ 126-28. The definition provided in the Rule defies logic and common sense and does not comport with how "library media center" is used in other provisions of Florida law or how the term is naturally understood.

130. By defining terms in an illogical manner, divorced from the enabling statutes, FLDOE acted arbitrarily and capriciously in violation of the APA when promulgating the Training Rule and Elementary School Rule.

Requests for Relief

Petitioners respectfully request that the Division of Administrative Hearings determine that the Training Rule, 6A-7.0715, and the Elementary School Rule, Rule 6A-7.0713, constitute invalid exercises of delegated legislative authority and be set aside. Petitioners further request the Division of Administrative Hearings direct the FLDOE to discontinue enforcement of and reliance on the Rules and notify Florida public schools of the Division's instruction. Petitioners also ask that the Division award attorneys' fees and costs to Petitioners' counsel pursuant to section 120.595(3) of the Florida Statutes. Finally, Petitioners ask that the Division order any other relief as may be deemed appropriate.

RESPECTFULLY SUBMITTED this 16th day of March 2023.



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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been filed with the Division of Administrative Hearings on this 16th day of March 2023. A courtesy copy has been electronically mailed to the following:

Andrew King
General Counsel
Florida Department of Education
1544 Turlington Building
Tallahassee, Florida 32399-0400
Email: Andrew.King@fldoe.org


Colin M. Roopnarine

Exhibit 1

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CS/HB 1467, Engrossed 2

2022 Legislature

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An act relating to K-12 education; amending s. 1001.35, F.S.; establishing term limits for school board members; amending s. 1006.28, F.S.; deleting a requirement that district school boards maintain a specified list on their websites; requiring certain meetings relating to instructional materials to be noticed and open to the public; providing requirements for the membership of committees related to instructional materials; requiring certain individuals involved in selecting library materials to complete a specified training by a certain date; requiring certain materials to be selected by employees who meet specified criteria; requiring district school boards to adopt procedures for developing library media center collections; providing requirements for such procedures; requiring elementary schools, district school boards, and the Department of Education to post on their websites specified information relating to instructional materials and other materials in certain formats; providing district school board requirements; providing that school principals are responsible for overseeing compliance with specified procedures relating to library media center materials; amending s. 1006.29, F.S.; requiring the department to develop

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2022 Legislature

26 a training program for the selection of materials used
 27 in schools and library media centers by a certain
 28 date; amending s. 1006.40, F.S.; revising district
 29 school board requirements for the selection and
 30 adoption of certain materials; amending s. 1011.67,
 31 F.S.; requiring that the certification by district
 32 school superintendents to the Commissioner of
 33 Education identifies instructional materials that are
 34 the subject of an objection and provides specified
 35 information related to the objection; providing an
 36 effective date.

37

38 Be It Enacted by the Legislature of the State of Florida:

39

40 Section 1. Section 1001.35, Florida Statutes, is amended
 41 to read:

42 1001.35 Term of office.—District school board members
 43 shall be elected at the general election in November for terms
 44 of 4 years except that a person may not appear on the ballot for
 45 reelection to the office of school board member if, by the end
 46 of his or her current term of office, the person will have
 47 served, or but for resignation would have served, in that office
 48 for 12 consecutive years. Service of a term of office which
 49 commenced before November 8, 2022, will not be counted toward
 50 the limitation imposed by this section.

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51 Section 2. Paragraphs (a) and (d) of subsection (2) and
 52 subsection (4) of section 1006.28, Florida Statutes, are
 53 amended, and paragraph (e) is added to subsection (2) of that
 54 section, to read:

55 1006.28 Duties of district school board, district school
 56 superintendent; and school principal regarding K-12
 57 instructional materials.—

58 (2) DISTRICT SCHOOL BOARD.—The district school board has
 59 the constitutional duty and responsibility to select and provide
 60 adequate instructional materials for all students in accordance
 61 with the requirements of this part. The district school board
 62 also has the following specific duties and responsibilities:

63 (a) *Courses of study; adoption.*—Adopt courses of study,
 64 including instructional materials, for use in the schools of the
 65 district.

66 1. Each district school board is responsible for the
 67 content of all instructional materials and any other materials
 68 used in a classroom, made available in a school library, or
 69 included on a reading list, whether adopted and purchased from
 70 the state-adopted instructional materials list, adopted and
 71 purchased through a district instructional materials program
 72 under s. 1006.283, or otherwise purchased or made available.
 73 ~~Each district school board shall maintain on its website a~~
 74 ~~current list of instructional materials, by grade level,~~
 75 ~~purchased by the district.~~

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76 2. Each district school board must adopt a policy
 77 regarding an objection by a parent or a resident of the county
 78 to the use of a specific ~~instructional~~ material, which clearly
 79 describes a process to handle all objections and provides for
 80 resolution. The process must provide the parent or resident the
 81 opportunity to proffer evidence to the district school board
 82 that:

83 a. An instructional material does not meet the criteria of
 84 s. 1006.31(2) or s. 1006.40(3)(d) if it was selected for use in
 85 a course or otherwise made available to students in the school
 86 district but was not subject to the public notice, review,
 87 comment, and hearing procedures under s. 1006.283(2)(b) 8., 9.,
 88 and 11.

89 b. Any material used in a classroom, made available in a
 90 school library, or included on a reading list contains content
 91 that is pornographic or prohibited under s. 847.012, is not
 92 suited to student needs and their ability to comprehend the
 93 material presented, or is inappropriate for the grade level and
 94 age group for which the material is used.

95
 96 If the district school board finds that an instructional
 97 material does not meet the criteria under sub-subparagraph a. or
 98 that any other material contains prohibited content under sub-
 99 subparagraph b., the school district shall discontinue use of
 100 the material for any grade level or age group for which such use

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101 is inappropriate or unsuitable.

102 3. Each district school board must establish a process by
 103 which the parent of a public school student or a resident of the
 104 county may contest the district school board's adoption of a
 105 specific instructional material. The parent or resident must
 106 file a petition, on a form provided by the school board, within
 107 30 calendar days after the adoption of the instructional
 108 material by the school board. The school board must make the
 109 form available to the public and publish the form on the school
 110 district's website. The form must be signed by the parent or
 111 resident, include the required contact information, and state
 112 the objection to the instructional material based on the
 113 criteria of s. 1006.31(2) or s. 1006.40(3)(d). Within 30 days
 114 after the 30-day period has expired, the school board must, for
 115 all petitions timely received, conduct at least one open public
 116 hearing before an unbiased and qualified hearing officer. The
 117 hearing officer may not be an employee or agent of the school
 118 district. The hearing is not subject to the provisions of
 119 chapter 120; however, the hearing must provide sufficient
 120 procedural protections to allow each petitioner an adequate and
 121 fair opportunity to be heard and present evidence to the hearing
 122 officer. The school board's decision after convening a hearing
 123 is final and not subject to further petition or review.

124 4. Meetings of committees convened for the purpose of
 125 ranking, eliminating, or selecting instructional materials for

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2022 Legislature

126 recommendation to the district school board must be noticed and
 127 open to the public in accordance with s. 286.011. Any committees
 128 convened for such purposes must include parents of district
 129 students.

130 (d) *School library media services; establishment and*
 131 *maintenance.*—Establish and maintain a program of school library
 132 media services for all public schools in the district, including
 133 school library media centers, or school library media centers
 134 open to the public, and, in addition such traveling or
 135 circulating libraries as may be needed for the proper operation
 136 of the district school system. Beginning January 1, 2023, Each
 137 school district shall provide training to school librarians, and
 138 media specialists, and other personnel involved in the selection
 139 of school district library materials must complete the training
 140 program developed pursuant to s. 1006.29(6) before reviewing and
 141 selecting regarding the prohibition against distributing harmful
 142 materials to minors under s. 847.012 and applicable case law,
 143 and best practices for providing students access to age-
 144 appropriate materials and library resources. Upon written
 145 request, a school district shall provide access to any material
 146 or book specified in the request that is maintained in a
 147 district school system library and is available for review.

148 1. Each book made available to students through a school
 149 district library media center or included in a recommended or
 150 assigned school or grade-level reading list must be selected by

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151 a school district employee who holds a valid educational media
 152 specialist certificate, regardless of whether the book is
 153 purchased, donated, or otherwise made available to students.

154 2. Each district school board shall adopt procedures for
 155 developing library media center collections and post the
 156 procedures on the website for each school within the district.

157 The procedures must:

158 a. Require that book selections meet the criteria in s.
 159 1006.40 (3) (d).

160 b. Require consultation of reputable, professionally
 161 recognized reviewing periodicals and school community
 162 stakeholders.

163 c. Provide for library media center collections based on
 164 reader interest, support of state academic standards and aligned
 165 curriculum, and the academic needs of students and faculty.

166 d. Provide for the regular removal or discontinuance of
 167 books based on, at a minimum, physical condition, rate of recent
 168 circulation, alignment to state academic standards and relevancy
 169 to curriculum, out-of-date content, and required removal
 170 pursuant to subparagraph (a) 2.

171 3. Each elementary school must publish on its website, in
 172 a searchable format prescribed by the department, a list of all
 173 materials maintained in the school library media center or
 174 required as part of a school or grade-level reading list.

175 (e) Public participation.—Publish on its website, in a

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176 searchable format prescribed by the department, a list of all
 177 instructional materials, including those used to provide
 178 instruction required by s. 1003.42. Each district school board
 179 must:

180 1. Provide access to all materials, excluding teacher
 181 editions, in accordance with s. 1006.283(2)(b)8.a. before the
 182 district school board takes any official action on such
 183 materials. This process must include reasonable safeguards
 184 against the unauthorized use, reproduction, and distribution of
 185 instructional materials considered for adoption.

186 2. Select, approve, adopt, or purchase all materials as a
 187 separate line item on the agenda and must provide a reasonable
 188 opportunity for public comment. The use of materials described
 189 in this paragraph may not be selected, approved, or adopted as
 190 part of a consent agenda.

191 3. Annually, beginning June 30, 2023, submit to the
 192 Commissioner of Education a report that identifies:

193 a. Each material for which the school district received an
 194 objection pursuant to subparagraph (a)2. for the school year and
 195 the specific objections thereto.

196 b. Each material that was removed or discontinued as a
 197 result of an objection.

198 c. The grade level and course for which a removed or
 199 discontinued material was used, as applicable.

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201 The department shall publish and regularly update a list of
 202 materials that were removed or discontinued as a result of an
 203 objection and disseminate the list to school districts for
 204 consideration in their selection procedures.

205 (4) SCHOOL PRINCIPAL.—The school principal has the
 206 following duties for the management and care of ~~instructional~~
 207 materials at the school:

208 (a) *Proper use of instructional materials.*—The principal
 209 shall assure that instructional materials are used to provide
 210 instruction to students enrolled at the grade level or levels
 211 for which the materials are designed, pursuant to adopted
 212 district school board rule. The school principal shall
 213 communicate to parents the manner in which instructional
 214 materials are used to implement the curricular objectives of the
 215 school.

216 (b) *Money collected for lost or damaged instructional*
 217 *materials; enforcement.*—The school principal shall collect from
 218 each student or the student's parent the purchase price of any
 219 instructional material the student has lost, destroyed, or
 220 unnecessarily damaged and to report and transmit the money
 221 collected to the district school superintendent. The failure to
 222 collect such sum upon reasonable effort by the school principal
 223 may result in the suspension of the student from participation
 224 in extracurricular activities or satisfaction of the debt by the
 225 student through community service activities at the school site

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226 as determined by the school principal, pursuant to policies
 227 adopted by district school board rule.

228 (c) *Sale of instructional materials.*—The school principal,
 229 upon request of the parent of a student in the school, shall
 230 sell to the parent any instructional materials used in the
 231 school. All such sales shall be made pursuant to rule adopted by
 232 the district school board, and the principal shall annually
 233 provide information to parents that they may purchase
 234 instructional materials and how to purchase the materials.

235 (d) *Disposition of funds.*—All money collected from the
 236 sale, exchange, loss, or damage of instructional materials shall
 237 be transmitted to the district school superintendent to be
 238 deposited in the district school board fund and added to the
 239 district appropriation for instructional materials.

240 (e) *Accounting for instructional materials.*—Principals
 241 shall see that all instructional materials are fully and
 242 properly accounted for as prescribed by adopted rules of the
 243 district school board.

244 (f) *Selection of library media center materials.*—School
 245 principals are responsible for overseeing compliance with school
 246 district procedures for selecting school library media center
 247 materials at the school to which they are assigned.

248 Section 3. Subsection (2) of section 1006.29, Florida
 249 Statutes, is amended, and subsection (6) is added to that
 250 section, to read:

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251 1006.29 State instructional materials reviewers.—
 252 (2) For purposes of this part ~~state adoption~~, the term
 253 "instructional materials" means items having intellectual
 254 content that by design serve as a major tool for assisting in
 255 the instruction of a subject or course. These items may be
 256 available in bound, unbound, kit, or package form and may
 257 consist of hardbacked or softbacked textbooks, electronic
 258 content, consumables, learning laboratories, manipulatives,
 259 electronic media, and computer courseware or software. A
 260 publisher or manufacturer providing instructional materials as a
 261 single bundle shall also make the instructional materials
 262 available as separate and unbundled items, each priced
 263 individually. A publisher may also offer sections of state-
 264 adopted instructional materials in digital or electronic
 265 versions at reduced rates to districts, schools, and teachers.
 266 (6) The department shall develop an online training
 267 program for school librarians, media specialists, and other
 268 personnel involved in the selection and maintenance of library
 269 media and collections or materials maintained on a reading list.
 270 This training must assist reviewers in complying with the
 271 requirements of s. 1006.31(2). The department shall make this
 272 training available no later than January 1, 2023. No later than
 273 July 1, 2023, and annually thereafter, each superintendent must
 274 certify to the department that all school librarians and media
 275 specialists employed by the district have completed the online

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276 training program.

277 Section 4. Paragraph (b) of subsection (4) of section
278 1006.40, Florida Statutes, is amended to read:

279 1006.40 Use of instructional materials allocation;
280 instructional materials, library books, and reference books;
281 repair of books.—

282 (4) Each district school board is responsible for the
283 content of all materials used in a classroom or otherwise made
284 available to students. Each district school board shall adopt
285 rules, and each district school superintendent shall implement
286 procedures, that:

287 (b) Provide a process for public review of, public comment
288 on, and the adoption of ~~instructional~~ materials, including those
289 ~~instructional materials~~ used to provide instruction required by
290 s. 1003.42 ~~teach reproductive health or any disease, including~~
291 ~~HIV/AIDS, under ss. 1003.42(3) and 1003.46,~~ which satisfies the
292 requirements of s. 1006.283(2)(b) 8., 9., and 11.

293 Section 5. Subsection (2) of section 1011.67, Florida
294 Statutes, is amended to read:

295 1011.67 Funds for instructional materials.—

296 (2) Annually by July 1 and before the release of
297 instructional materials funds, each district school
298 superintendent shall certify to the Commissioner of Education
299 that the district school board has approved a comprehensive
300 staff development plan that supports fidelity of implementation

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301 of instructional materials programs, including verification that
 302 training was provided; that the materials are being implemented
 303 as designed; and, beginning July 1, 2021, for core reading
 304 materials and reading intervention materials used in
 305 kindergarten through grade 5, that the materials meet the
 306 requirements of s. 1001.215(8). Such instructional materials, as
 307 evaluated and identified pursuant to s. 1001.215(4), may be
 308 purchased by the school district with funds under this section
 309 without undergoing the adoption procedures under s.
 310 1006.40(4)(b). The certification must identify any material that
 311 received an objection pursuant to s. 1006.28 for the school year
 312 and the specific objections thereto, each material that was
 313 removed or discontinued as a result of an objection, and the
 314 grade level and course for which a removed or discontinued
 315 material was used, as applicable. This subsection does not
 316 preclude school districts from purchasing or using other
 317 materials to supplement reading instruction and provide
 318 additional skills practice.

319 Section 6. This act shall take effect July 1, 2022.

Exhibit 2

Notice of Development of Rulemaking

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: RULE TITLE:

6A-7.0715 Certification for Instructional Materials and Library Media Training

PURPOSE AND EFFECT: To set forth the certifications that must be filed by school district superintendents with the Florida Department of Education relating to instructional and library materials, and incorporate the library media training required by s. 1006.29(6), F.S.

SUBJECT AREA TO BE ADDRESSED: Procedures relating to library media and instructional materials in district schools.

RULEMAKING AUTHORITY: 1001.02(1), (2)(n), 1006.28, 1006.34, F.S.

LAW IMPLEMENTED: 1006.28(3), (6), 1006.283(1), (4), 1006.29(6), 1006.34, 1011.67(2), F.S.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: November 15, 2022, 11:00 a.m. – 12:00 Noon ET or upon conclusion of business, if earlier.

PLACE: https://teams.microsoft.com/l/meetup-join/19%3ameeting_MDc0N2QwYTYtYTk3My00ZjdkLTk3ZTQtOTUzZjA1NjFhOTZl%40thread.v2/0?context=%7b%22Tid%22%3a%2263bf107b-cb6f-4173-8c1c-1406bb5cb794%22%2c%22Oid%22%3a%2295bc51d1-7f63-422f-8ac1-3e524e721905%22%7d Meeting ID: 263 818 355 872, Passcode: rBEmfQ

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Amber Baumbach, Director of Library Media and Instructional Materials, Bureau of Standards and Instructional Support, Amber.Baumbach@fldoe.org. To comment on this rule development, please go to <https://web02.fldoe.org/rules> or contact: Chris Emerson, Director, Office of Executive Management, Department of Education, email Christian.Emerson@fldoe.org.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

Exhibit 3

Notice of Proposed Rule

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: RULE TITLE:

6A-7.0715 Certifications and Plans for Instructional Materials and Library Media

PURPOSE AND EFFECT: To set forth the certifications and plans that must be filed by school district superintendents with the Florida Department of Education relating to instructional and library materials.

SUMMARY: This new rule is designed, in part, to implement House Bill 1467 regarding certification of training of persons who select library materials. It is also designed to incorporate existing forms, certifications, and plans required for the release of the instructional materials allocation to school districts. This rule clarifies that library materials, including classroom libraries, must be approved and selected by a media specialist.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The proposed rule is not expected to have any adverse impact on economic growth or business competitiveness, or increase regulatory costs or any other factor set forth in s. 120.541(2), F.S., and will not require legislative ratification. This is based upon the nature of the proposed rule, which describes the instructional materials and library media certifications and plans that must be filed by school district superintendents with the Florida Department of Education.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 1001.02(1), (2)(n), 1006.28(2)(d), 1006.29(6), F.S.

LAW IMPLEMENTED: 1006.28, 1006.283, 1006.29, 1011.67, F.S.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: January 18, 2023, 9:00 a.m.

PLACE: Nassau County School Board Office, 1201 Atlantic Avenue, Fernandina Beach, FL 32034.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Amber Baumbach, Bureau of Standards and Instructional Support, Florida Department of Education; (850)245-9115 or Amber.Baumbach@fldoe.org.

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-7.0715 Certifications and Plans for Instructional Materials and Library Media.

(1) Purpose. The purpose of this rule is to set forth the certifications and plans that must be filed by school district superintendents with the Florida Department of Education relating to instructional and library materials.

(2) Definitions. In this rule, the following definitions apply:

(a) "Core courses" means core-curricula courses as defined in section (s.) 1003.01(14), Florida Statutes (F.S.), and any course covering a subject area for which instructional materials have been adopted by the Department;

(b) "Department" means the Department of Education;

(c) "Instructional materials" means the definition set forth in s. 1006.29(2), F.S.;

(d) "Librarians" means school district employees who meet the definition set forth in s. 1012.01(2)(c), F.S.;

(e) "Library Media Center" means any collection of books, ebooks, periodicals, and videos maintained and accessible to students on the site of a school, including classrooms;

(f) "Media specialist" means school district employee who meets the definition set forth in s. 1012.01(2)(c), F.S.;

(g) "State academic standards" means the standards set forth in s. 1003.41, F.S., and Rule 6A-1.09401, F.A.C.;

(h) "Superintendent" means the president of the Florida Virtual School under s. 1002.37, F.S., the president of the Florida School for the Deaf and the Blind under s. 1002.36, F.S., the directors of developmental research (laboratory) schools under s. 1002.32, F.S., and school district superintendents under s. 1001.46, F.S.;

(3) School District Annual Requisition Plan for Instructional Materials under s. 1006.28(3)(b), F.S.

(a) Each superintendent must provide notice of the instructional materials the school district intends to requisition for use in the following school year. This notice must include the following:

1. Core courses offered by the school district in kindergarten through grade 12;

2. The instructional materials the school district intends to requisition by International Standard Book Number, publisher, and course; and

3. A school district plan for the use of instructional materials.

(b) This information must be submitted electronically to <https://districts.flimadoption.org>.

(c) The notice is due annually by April 1.

(4) Certification Requirements for School District Instructional Materials Programs under s. 1006.283(1) and (4), F.S.

(a) Where a school district implements its own instructional materials program under the provisions of s. 1006.283, F.S., a superintendent must certify annually on the form entitled "Certification of Alignment and Adoption of Instructional Materials" (Form IM-A), the following:

1. Instructional materials used by the school district in core courses are aligned with state academic standards, as set forth in s. 1003.41, F.S., and Rule 6A-1.09401, F.A.C.; and

2. The school district's process for the review, selection and adoption of instructional materials complies with hearing requirements established by a district school board and the public meeting requirements set forth in s. 1006.283(2)(b)8., F.S.

(b) This certification must be submitted electronically to <https://districts.flimadoption.org>.

(c) The certification is due annually by March 31.

(5) Certification Requirements for Release of Funds for Instructional Materials under s. 1011.67(2), F.S.

(a) Each superintendent must certify on the form entitled "Certification of Implementation of Instructional and Library Media Materials" (Form IM-B), the following:

1. The school board has approved a comprehensive staff development plan that supports fidelity of implementation of instructional materials and includes a process for verifying completion of the training;

2. Instructional materials are being implemented as designed;

3. All instructional materials for core courses used in the school district are aligned to applicable state academic standards;

4. Core reading materials and reading intervention materials used in kindergarten through grade 5 meet the requirements of s. 1001.215(8), F.S.; and

5. Any material objected to by a parent or resident of the county where the school district is located during the preceding school year, under the provisions of s. 1006.28, F.S., has been identified, along with the reason for the objection and the grade and courses for which the material was removed or discontinued, in accordance with the requirements of Rule 6A-7.0714, F.A.C.

(b) This certification must be submitted electronically to <https://districts.flimadoption.org>.

(c) The certification is due annually by July 1.

(6) Selection, Training and Certification Requirements Regarding School District Library Materials under ss. 1006.28(2)(d) and 1006.29(6), F.S.

(a) Media Specialist. Materials maintained in a school district library media center that are accessible to students or included in a recommended or assigned school or grade-level reading list must be selected by a school district employee who holds an Educational Media Specialist Certificate, as described in Rule 6A-4.0251, F.A.C.

(b) Training Requirements. School librarians, educational media specialists and other persons employed by a school district who are involved in the selection of school district library materials must complete the online training, entitled Library Media Training, before selecting library materials. This training must be completed annually and can be accessed at <https://www.fl DOE.org/academics/standards/instructional-materials/>.

(c) Certification of Training. In accordance with s. 1006.29(6), F.S., each superintendent must certify that school librarians and media specialists who are employed by the school district and who are involved in the

selection of library media materials for students, have completed the Library Media Training incorporated in this rule.

1. This certification must be made on the form entitled "Certification of Library Media Training" (Form IM-C) and include the number of those who completed the training by job code.

2. This certification must be submitted electronically to <https://districts.flmadoption.org>.

3. The certification is due annually by July 1.

(7) Documents Incorporated by Reference. The following documents are incorporated by reference and may be obtained at <https://www.fldoe.org/academics/standards/instructional-materials/>.

(a) Certification of Alignment and Adoption of Instructional Materials, Form IM-A, (DOS Link) effective February 2023, due annually on or before March 31.

(b) Certification of Implementation of Instructional and Library Media Materials, Form IM-B, (DOS Link) effective February 2023, due annually on or before July 1.

(c) Certification of Library Media Training, Form IM-C, (DOS Link) effective February 2023, due annually on or before July 1.

(d) Library Media Training, (DOS Link) effective February 2023.

Rulemaking Authority 1001.02(1), (2)(n), 1006.28 FS. Law Implemented 1006.28(3), (6), 1006.283(1), (4), 1006.29(6), 1011.67(2) FS. History-New

NAME OF PERSON ORIGINATING PROPOSED RULE: Amber Baumbach, Bureau of Standards and Instructional Support.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Manny Diaz Jr., Commissioner, Department of Education.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 15, 2022

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: November 1, 2022

Exhibit 4

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1467 K-12 Education
SPONSOR(S): Appropriations Committee, Garrison and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1300

FINAL HOUSE FLOOR ACTION: 79 Y's 41 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1467 passed the House on February 10, 2022, and subsequently passed the Senate on March 10, 2022.

Florida's Constitution provides that each school district must be governed by a school board composed of five or more elected members elected to staggered, 4-year terms, as provided by law. The bill prohibits a school board member from appearing on a ballot for reelection if the member will have served, or would have served if not for resignation, in that office for 12 consecutive years. The proposed limitation would apply only to terms of office beginning on or after November 8, 2022, and is prospective, so that school board members reelected to a consecutive term in 2022 could serve another 12 consecutive years before reaching the term limit.

The bill also increases school district transparency and accountability for selecting and using instructional materials and library materials by:

- requiring that certain school district instructional materials review committee meetings be noticed and open to the public;
- requiring school district personnel who are involved in reviewing and selecting library media and collections or materials maintained on a reading list to complete training developed by the Department of Education (DOE), prior to making selections;
- requiring school districts to adopt and post procedures for developing library media center collections;
- requiring each elementary school to post on its website a list of all materials maintained in the school library or recommended or assigned as part of a school- or grade-level reading list;
- requiring that each material in a school library or assigned school- or grade-level reading list be selected by a certified educational media specialist;
- requiring school districts to publish on its website a searchable list of all instructional materials available to students;
- requiring school districts to provide a public review process for district-adopted materials consistent with current instructional materials adoption requirements and to select, approve, adopt, or purchase materials as a separate line item on a board meeting agenda; and
- beginning June 30, 2023, requiring school districts annually to report to the Commissioner of Education, and identify in the superintendent's annual certification of approved instructional materials programs, materials for which the school district received an objection for the school year, and requiring the DOE to publish removed or discontinued materials as a result of an objection.

The bill has an indeterminate fiscal impact. See fiscal comments, *infra*.

The bill was approved by the Governor on March 25, 2022, ch. 2022-21, L.O.F., and will become effective on July 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

District School Board Member Terms of Office

Present Situation

The Florida Constitution provides that "[i]n each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law."¹ This provision has been interpreted to allow school board member qualifications to be established by statute.² Neither the Florida Constitution nor Florida Statutes address the number of terms a school board member may serve.³

However, Florida's Constitution establishes term limits for the following elected officials:⁴

- Florida Governor;
- Florida representatives;
- Florida senators;
- Florida Lieutenant Governor;
- Florida Cabinet members;
- U.S. representatives from Florida; and
- U.S. senators from Florida.

Term limits imposed by states for federal elected officials were held to be unconstitutional, and thus unenforceable, by the U.S. Supreme Court in 1995.⁵

The Florida Constitution states that none of these officials, except for the office of Governor which is governed by a slightly different provision, may appear on a ballot for reelection if, by the end of the current term of office, the person will have served or, but for resignation, would have served in that office for eight consecutive years.⁶ These term limits became effective in 1992 and were prospective, so that officials reelected to a consecutive term in 1992 could serve another consecutive eight years before reaching the term limit.⁷

Currently, Duval County is the only school district in Florida with established term limits for its members, with two consecutive full terms of 4 years.⁸

¹ Art. IX, s. 4(a), Fla. Const.

² In *Askew v. Thomas*, 293 So.2d 40, 42 (Fla. 1974), the court interpreted section 4(a) of article IX and refused to invoke the constitutional principle that "statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already undertaken to set forth those requirements" because that section does not address school board member qualifications. Similarly, in *Telli v. Broward County*, 94 So. 3d 504 (Fla. 2012), the court receded from prior opinions which held that article VI, section 4(b), Florida Constitution, listing the state elected offices with mandatory term limits, prohibited the imposition of term limits on other officials. The court held that "[i]nterpreting Florida's Constitution to find implied restrictions on powers otherwise authorized is unsound in principle" and that "express restrictions must be found not implied." *Id.* at 513.

³ Art. IX, s. 4(a), Fla. Const.

⁴ Art. VI, s. 4(c), Fla. Const.

⁵ See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995). See also *Ray v. Mortham*, 742 So. 2d 1276 (Fla. 1999) (holding that term limits imposed on elected state officials were severable from provisions imposing term limits on elected federal officials).

⁶ Art. VI, s. 4(c), Fla. Const.

⁷ See Art. VI, s. 4, Fla. Const. (1992); Billy Buzzett and Steven J. Uhlfelder, *Constitution Revision Commission: A Retrospective and Prospective Sketch*, *The Florida Bar Journal* (April 1997), <https://www.floridabar.org/the-florida-bar-journal/constitution-revision-commission-a-retrospective-and-prospective-sketch> (last visited Feb. 18, 2022).

⁸ Charter of the City of Jacksonville, Florida, art. 13, s. 13.15 (Jan. 27, 2022), available at https://library.municode.com/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA_PTACHLACHJAFI_ART13DUCOSCB.

Effect of Proposed Changes

The bill prohibits a school board member from appearing on a ballot for reelection if, by the end of his or her current term of office, the member will have served, or would have served if not for resignation, in that office for 12 consecutive years. The proposed limitation would apply only to terms of office beginning on or after November 8, 2022, and is prospective, so that school board members reelected to a consecutive term in 2022 could serve another 12 consecutive years before reaching the term limit.

The bill does not preempt term limits of less than 12 years. Consequently, a school board member who resides in Duval County would not appear on the ballot after the eighth year.

Curriculum and Library Materials in Traditional Public Schools

Present Situation

Instructional Materials Adoption

Each district school board has the constitutional duty and responsibility to select and provide adequate instructional materials to each student for core courses in mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12.⁹ "Adequate instructional materials" are defined by law as a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as the basis for instruction for students.¹⁰

The Florida Department of Education (DOE) facilitates the instructional materials adoption process statewide through evaluation of materials submitted by publishers and manufacturers.¹¹ Expert reviewers chosen by the DOE must objectively evaluate materials based on alignment to Florida's state-adopted standards, accuracy, and appropriateness for age and grade level.¹² Instructional materials selected by reviewers must:

- accurately portray the ethnic, socioeconomic, cultural, religious, physical, and racial diversity of our society, including men and women in professional, career, and executive roles, and the role and contributions of the entrepreneur and labor in the total development of this state and the United States;
- accurately portray humankind's place in ecological systems, including the necessity for the protection of our environment and conservation of our natural resources and the effects on the human system of the use of tobacco, alcohol, controlled substances, and other dangerous substances;
- encourage thrift, fire prevention, and humane treatment of people and animals;
- contain the Declaration of Independence and the Constitution of the United States when appropriate to the comprehension of students for social science, history, or civics classes; and
- not contain any matter reflecting unfairly upon persons because of their race, color, creed, national origin, ancestry, gender, religion, disability, socioeconomic status, or occupation.¹³

Based on reviewer recommendations of materials that are "suitable, usable, and desirable," the Commissioner of Education then selects and adopts instructional materials for each subject and grade

⁹ See s. 1006.40(2), F.S.

¹⁰ Section 1006.28(1), F.S. Digital and instructional materials, including software applications, must be provided by each school board, in consultation with the district school superintendent, to students with disabilities in prekindergarten through grade 12. Section 1003.4203(2), F.S.

¹¹ Section 1006.34(1), F.S.

¹² Section 1006.31, F.S.

¹³ Section 1006.31(2)(a)-(d), F.S.

under consideration.¹⁴ The DOE must provide training to instructional materials reviewers on competencies for making valid, culturally sensitive, and objective recommendations prior to the reviewers beginning the review and selection process.¹⁵

After adoption, the DOE must make the final report of instructional materials available at all times for public inspection. The DOE Office of Instructional Materials announces the adoption by publicly posting the list on its website, as well as emailing district instructional materials contacts with the newly approved materials.¹⁶

School districts receive an allocation of state funds each year for instructional materials, library books, and reference books.¹⁷ Unless a school district has implemented its own instructional materials review process,¹⁸ at least 50 percent of the allocation of funds must be used to purchase instructional materials on the state-adopted list.¹⁹ The remaining 50 percent of the annual allocation may be used for the purchase of library and reference books, nonprint materials, and the repair and renovation of materials; however, such materials are not subject to the same school-district adoption procedures as instructional materials.²⁰

Each school district superintendent must annually, by July 1, certify to the Commissioner of Education that the district school board has approved a comprehensive staff development plan supporting fidelity of implementation of instructional materials programs. Certification includes verification that:²¹

- training was provided;
- materials are being implemented as designed; and
- core reading and reading intervention materials used in kindergarten through grade 5 meet minimum requirements.²²

Each district school board must maintain a list of all purchased instructional materials, by grade level, on its website.²³ Materials purchased, including instructional materials and library media and reference books, must be free of pornography and harmful materials to minors²⁴; suited to student needs and their ability to comprehend the materials presented; and appropriate for the grade level and age group for which the materials are used or made available.²⁵

Prior to the purchase of any instructional material, whether from the state-adopted list or through a district-established instructional materials review process, a district school board must:

- establish a process to allow student editions of recommended instructional materials to be accessed and viewed online by the public at least 20 calendar days before the required school board hearing and public meeting;
- conduct an open, noticed school board hearing to receive public comment on the recommended instructional materials;
- conduct an open, noticed public meeting, on another date, to approve an annual instructional materials plan to identify any instructional materials that will be purchased;

¹⁴ Section 1006.34(2)(a), F.S. Generally, the commissioner adopts instructional materials according to a 5-year rotating schedule. The commissioner may approve a shorter schedule if the content area requires more frequent revision. Section 1006.36(1), F.S.

¹⁵ Section 1006.29(5), F.S.

¹⁶ Florida Department of Education, Instructional Materials, *Archive*, <https://www.fdoe.org/academics/standards/instructional-materials/archive/> (last visited Jan. 1, 2022). The DOE website has all adopted instructional materials lists from 2005 to present.

¹⁷ See s. 1011.67, F.S.

¹⁸ See s. 1006.283, F.S.

¹⁹ Section 1006.34, F.S. All adopted materials are posted on the DOE Instructional Materials webpage. Florida Department of Education, *Instructional Materials*, <https://www.fdoe.org/academics/standards/instructional-materials/> (last visited January 17, 2022).

²⁰ See s. 1006.40(3)(b), F.S.

²¹ Section 1011.67(2), F.S.

²² See s. 1001.215(8), F.S. (requirements for reading programs are established by the Just Read, Florida! Office at DOE).

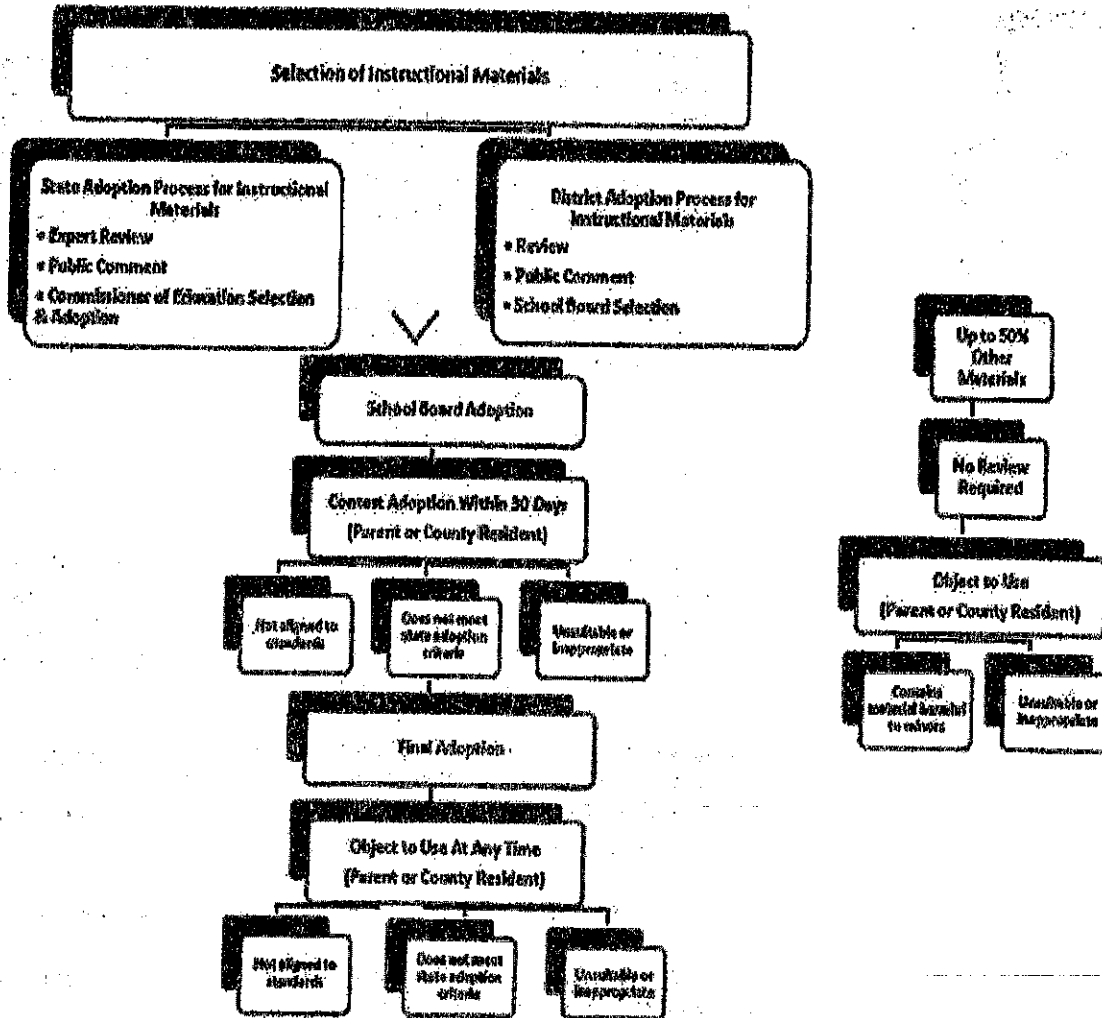
²³ Section 1006.28(2)(a)(1), F.S.

²⁴ See s. 847.012, F.S.

²⁵ Section 1006.40(3)(d), F.S.

- provide notice for the school board hearing and the public meeting that specifically states the instructional materials being reviewed and how they can be accessed for public review; and
- establish a process for public comment on, and review of, the recommended instructional materials.²⁶

The below graphic portrays the state and district level adoption of instructional materials compared to the adoption of all other materials, including library media materials.²⁷



As part of the adoption process, some school districts convene a committee composed of teachers and other stakeholders to provide a preliminary review of instructional materials and make recommendations to the district school board for adoption.²⁸ Not all instructional materials review committee meetings are noticed and open to the public. However, in September 2021, the Second District Court of Appeal held that when a district school board delegates decision-making authority to an instructional materials review committee, any meeting in which the committee exercises the authority to

²⁶ Sections 1006.40(4)(b) and 1006.283(2)(b)8., 9., and 11., F.S.

²⁷ Florida House of Representatives, Education and Employment Committee, *Instructional Materials Fact Sheet* (2020).

²⁸ See The School District of Palm Beach County, *District Instructional Materials Guidelines for Selection Procedures*, available at https://p14cdn4static.sharpschool.com/UserFiles/Servers/Server_270532/File/Students%20&%20Parents/Textbooks/Guidelines%20for%20District%20Adoptions.pdf.

rank, eliminate, or select materials for final approval by the school board must be noticed and open in accordance with the Sunshine Law.²⁹

Library Media and Other Materials

In addition to instructional materials, each district school board is responsible for the content of any other materials used in the classroom, made available in a school library, or included on a reading list, whether adopted and purchased from the state-adopted instructional materials list, adopted and purchased through a district instructional materials program, or otherwise purchased or made available.³⁰

Librarians/Media Specialists

Librarians/media specialists are defined by law as staff members responsible for evaluating, selecting, organizing, and managing media and technology resources, equipment, and related systems. They are also responsible for working with teachers and students to make resources available in instructional programs, media productions, and location and use of information resources.³¹ Educators in Florida may become certified educational media specialists through the DOE certification process, but Florida schools are not required to employ a certified educational media specialist.

To become a certified educational media specialist in prekindergarten through grade 12, an individual must complete one of the following pathways:³²

- a bachelor's degree or higher with an undergraduate or graduate major in educational media or library science; or
- a bachelor's degree or higher with thirty semester hours in educational media or library science to include credit in management of library media programs, collection development, library media resources, reference sources and services, organization of collections, and design and production of educational media.

Each school district must provide training to school librarians and media specialists regarding the prohibition against distributing harmful materials to minors, and best practices for providing students access to age-appropriate materials and library resources.³³

The Office of Library Media Services at the DOE supports district library media supervisors to help create and maintain quality library programs and foster a love of reading and effective use of ideas and information by students and faculty.³⁴

Selection Processes of Library Media Materials

The selection of instructional materials, library media, and other reading materials used in the public-school system must include consideration of the age of the students who normally could be expected to have access to the material, the educational purpose to be served by the material, the degree to which the material would be supplemented and explained by classroom programs, and the consideration of the diversity of the students in Florida.³⁵ As provided, *supra*, library media books and materials are not included in state-level instructional materials adoption, and are reviewed and selected at the school level.

²⁹ *Florida Citizens Alliance, Inc. v. School Bd. of Collier Cnty.*, 328 So.3d 22 (Fla. 2d DCA 2021). Florida's Sunshine Law is established in s. 286.011, F.S.

³⁰ Section 1006.28(2)(a)1., F.S.

³¹ Section 1012.01(2)(c), F.S.

³² Rule 6A-4.0251, F.A.C.

³³ Section 1006.28(2)(d), F.S.

³⁴ Florida Department of Education, *Library Media Services*, <https://www.fdoe.org/academics/standards/subject-areas/library-media-services-instructional/> (last visited Jan. 18, 2022).

³⁵ Section 1006.34(2)(b), F.S.

School district policies regarding library media materials selection vary. Some school districts have policies that provide criteria for the selection of materials, with consideration being given to the needs of the school based on the knowledge of curriculum and existing collection, and the needs of the students attending the school.³⁶ Such procedures may include the school media specialist evaluating reputable, unbiased, and professionally prepared aids such as those published by companies and accepted by the educational media profession. The school media specialist may also consult with other staff members of a school regarding evaluation of materials. Some school districts also utilize district handbooks that provide support for library media specialists.³⁷

Best practices for developing a school library collection include research on potential books and basing selections on the goals and objectives of the school and the students' personal interests and learning. Materials should be appropriate for the subject area and age, emotional development, ability level, learning styles, and development of the students for whom the materials are selected.³⁸ Resources such as Association for Library Service to Children, Booklist, School Library Journal, Kirkus, and Young Adult Library Services Association are commonly recommended review sources for school librarians.³⁹

Several school districts in Florida implement an online, searchable catalogue of all library materials at each school for parents, students, and the public to access materials.⁴⁰

Objection to Materials

Each district school board is required to establish a process by which a parent or resident of the county may contest the district school board's adoption of a specific material.⁴¹ The parent or resident must file a petition, on a form provided by the school board, within 30 calendar days after the adoption of the material. The school board is required to conduct at least one open public hearing before an unbiased and qualified hearing officer that is not an employee or agent of the school district. Following the hearing, the school board's decision is made and not subject to further petition or review.⁴²

In addition, each school district must have a process by which a parent or resident of the county can object to the use of a specific instructional material that was not subject to public adoption procedures or other material used in a classroom, made available in a school library, or included on a reading list.⁴³ If, through this process, the district school board finds that an instructional material does not meet state standards for adoption or that a material contains content harmful to a minor, is not suited to student needs and ability to comprehend the material, or is inappropriate for the grade level and age group it is used for, the district must discontinue the use of the material for that grade level or age group.⁴⁴ There is no requirement that a current list of removed or discontinued materials be published.

³⁶ See, e.g., The School District of Osceola County, Florida, 2021-22 School Board Rules, 4.22 Educational Media Materials Selection (2021) at 189, available at

<https://www.osceolaschools.net/site/handlers/filedownload.ashx?moduleinstanceid=15041&dataid=75567&FileName=OCSBR%202021-22%20121421.pdf>.

³⁷ Santa Rosa County School District, *Library Media Handbook* (2016), available at <https://sites.santarosa.k12.fl.us/files/lmsfdbk.pdf> (providing a mission statement, the role of the school library media specialist, and the library media center management, evaluation, and selection protocol).

³⁸ American Library Association, Selection Criteria, *School Library Selection Criteria*, <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/criteria> (last visited Jan. 17, 2022).

³⁹ *Id.*

⁴⁰ See, e.g., Orange County Public Schools, *Orange County Library System Website* (2021), available at https://ocps.follettdestiny.com/common/welcome.jsp?context=saas065_0960615. See also Miami-Dade County Public Schools, *Destiny Catalog* (2021), available at <http://virtuallibrary.dadeschools.net/>. School districts including Orange County and Miami-Dade County use Follett Destiny Library Manager, a commonly used platform for school library management. See Follett Destiny Library Manager, <https://www.follettlearning.com/education-technology/library-management-system> (last visited Jan. 20, 2022).

⁴¹ Section 1006.28(2)(a)(3), F.S.

⁴² *Id.*

⁴³ Section 1006.28(2)(a)2., F.S.

⁴⁴ *Id.*

Required Instruction

Florida law requires certain topics to be taught in kindergarten through grade 12 public schools annually to ensure coverage of all State Board of Education adopted standards in reading and language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts.⁴⁵ Instructional personnel must teach these topics efficiently and faithfully, utilizing materials that meet the highest standards for professionalism and historical accuracy.⁴⁶

Districts must submit a report to the Commissioner of Education annually describing how instruction was provided during the previous school year, including specific courses in which instruction was delivered, a description of materials and resources utilized to deliver instruction, and the professional qualifications of the person delivering instruction for specified topics.⁴⁷

Required instruction topics are not correlated with the instructional materials adoption process at the DOE; therefore, instructional materials that are purchased by a school district to teach these topics may not go through a public adoption process as with instructional materials for core courses.⁴⁸ For example, the most recent state instructional materials adoption that included a call for health and physical education materials was in the 2015-2016 adoption; however, no materials were adopted for health and physical education for kindergarten through grade 8.⁴⁹ The previous year's adoption, in 2014-2015, adopted three instructional materials for health and physical education courses in high school grade levels.⁵⁰

Effect of Proposed Changes

The bill improves transparency and accountability relating to the selection and use of instructional materials and library materials in schools.

Specifically, the bill requires each school district to publish on its website, in a searchable format prescribed by the DOE, a list of all instructional materials, including those used to teach required instruction topics. Before the district adoption of a material, the district must provide public access to the material, excluding teacher editions, for public inspection, consistent with current procedures and safeguards for school district instructional materials adoption. The selection, approval, adoption, or purchase of the material must be a separate line item on the school board meeting agenda, with reasonable opportunity for public comment.

The bill also codifies the holding of the Second District Court of Appeal by requiring that any meeting of a school district instructional review committee in which materials are ranked, eliminated, or selected for recommendation to the school board be noticed and open to the public as required by state

⁴⁵ Section 1003.42(1), F.S.

⁴⁶ Section 1003.42(2), F.S.

⁴⁷ Rule 6A-1.094124, F.A.C. The DOE provides the Required Instruction Portal website for districts to annually submit information on required topics. Florida Department of Education, *Florida Required Instruction Portal*, <https://www.flrequiredinstruction.org/> (last visited Jan. 18, 2022).

⁴⁸ Instructional materials adoption at the state level focuses on one or more related subject areas per year, on 5-year rotating basis. Florida Department of Education, Instructional Materials, *FLORIDA INSTRUCTIONAL MATERIALS ADOPTION SCHEDULE FOR ADOPTION YEARS 2020-2021 THROUGH 2023-2024 (2020)*, available at <https://www.fldoe.org/core/fileparse.php/5574/urlt/AdoptionCycle.pdf>. The DOE posts the instructional materials adoption cycle for 5 years. K-12 Mathematics is the subject area in the 2021-2022 year.

⁴⁹ Florida Department of Education, Instructional Materials, *2015-2016 Florida Department of Education 6-12 Career and Technical Education, K-8 Physical and Health Education, K-12 Visual and Performing Arts, and K-12 World Languages: Chinese, German, Italian and Latin Adopted Instructional Materials* (July 12, 2016), available at <https://www.fldoe.org/core/fileparse.php/5574/urlt/2015-2016AdoptedIMUpdate.pdf>.

⁵⁰ Florida Department of Education, Instructional Materials, *2014-2015 Florida Department of Education Adopted Instructional Materials* (Jan. 28, 2016), available at <https://www.fldoe.org/core/fileparse.php/5574/urlt/1415AIMDec2015.pdf>.

sunshine laws. Any committee convened for this purpose must include parents of students in the district.

Beginning June 30, 2022, school districts must annually submit to the Commissioner of Education a report identifying materials for which the school district received an objection for the school year, materials that are removed or discontinued as a part of the objection, and the grade level and course for which a removed material was used. Superintendents must include removed or discontinued materials in the annual certification of approved instructional materials programs annually due to the Commissioner of Education. The DOE must publish, regularly update, and disseminate to school districts a list of materials that are removed or discontinued as a result of an objection.

The bill also requires the DOE to develop an online training for school librarians, media specialists, and other personnel involved in selecting library media and collections or materials maintained on a reading list. Personnel involved in the selection of school district library materials must complete the training prior to reviewing and selecting materials and library resources. The bill specifies that the training must be available no later than January 1, 2023, and must assist reviewers in complying with section 1006.31(2), F.S., which requires, among other things, reviewers to include materials portraying the ethnic, socioeconomic, cultural, religious, physical, and racial diversity of our society, and to exclude materials containing pornography and prohibited under section 847.012, F.S.⁵¹ Personnel must complete the training by July 1, 2023, and annually thereafter, as certified by each school district superintendent.

With respect to the selection of library materials, the bill requires that each book included in a school library collection or recommended or assigned as part of a school- or grade-level reading list be selected by a certified educational media specialist, regardless of how the book is acquired. The bill also requires each elementary school to publish on its website, in a searchable format prescribed by the DOE, a list of all materials maintained in the school library media center or required as part of a school or grade-level reading list.

The bill provides consistency for selecting library materials within each district by requiring each district school board to adopt and post on its website procedures for developing library media center collections. The procedures must:

- require that book selections be free of pornography and prohibited materials harmful to minors, suited to student needs, and appropriate for the grade level and age group;
- require consultation of reputable, professionally recognized reviewing periodicals and school community stakeholders for each selection;
- consider reader interest, support of academic standards and aligned curriculum, and academic needs of students and faculty; and
- provide for regular removal or discontinuance of books based on physical condition, rate of recent circulation, alignment to state standards and relevancy to curriculum, out-of-date content, and required removal.

The bill provides that school principals are responsible for overseeing compliance with school library media center materials selection procedures at their schools.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁵¹ Section 1006.31(2), F.S.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill has an indeterminate fiscal impact to the DOE for development of a training program for library media reviewers. The bill allows for more than one training program for other personnel involved in the selection of school district library materials. District school boards may incur costs to ensure approval of all district materials have been evaluated and selected by certified library media specialists.

Exhibit 5

6A-7.0715 Certifications and Plans for Instructional Materials and Library Media.

(1) Purpose. The purpose of this rule is to set forth the certifications and plans that must be filed by school district superintendents with the Florida Department of Education relating to instructional and library materials.

(2) Definitions. In this rule, the following definitions apply:

(a) "Core courses" means core-curricula courses as defined in Section (s.) 1003.01(14), Florida Statutes (F.S.), and any course covering a subject area for which instructional materials have been adopted by the Department;

(b) "Department" means the Department of Education;

(c) "Instructional materials" means the definition set forth in Section 1006.29(2), F.S.;

(d) "Librarians" means school district employees who meet the definition set forth in Section 1012.01(2)(c), F.S.;

(e) "Library Media Center" means any collection of books, ebooks, periodicals, and videos maintained and accessible to students on the site of a school, including classrooms;

(f) "Media specialist" means school district employee who meets the definition set forth in Section 1012.01(2)(c), F.S.;

(g) "State academic standards" means the standards set forth in Section 1003.41, F.S., and Rule 6A-1.09401, F.A.C.;

(h) "Superintendent" means the president of the Florida Virtual School under Section 1002.37, F.S., the president of the Florida School for the Deaf and the Blind under Section 1002.36, F.S., the directors of developmental research (laboratory) schools under Section 1002.32, F.S., and school district superintendents under Section 1001.46, F.S.;

(3) School District Annual Requisition Plan for Instructional Materials under Section 1006.28(3)(b), F.S.

(a) Each superintendent must provide notice of the instructional materials the school district intends to requisition for use in the following school year. This notice must include the following:

1. Core courses offered by the school district in kindergarten through grade 12;

2. The instructional materials the school district intends to requisition by International Standard Book Number, publisher, and course; and

3. A school district plan for the use of instructional materials.

(b) This information must be submitted electronically to <https://districts.flimadoption.org>.

(c) The notice is due annually by April 1.

(4) Certification Requirements for School District Instructional Materials Programs under Sections 1006.283(1) and (4), F.S.

(a) Where a school district implements its own instructional materials program under the provisions of Section 1006.283, F.S., a superintendent must certify annually on the form entitled "Certification of Alignment and Adoption of Instructional Materials" (Form IM-A), the following:

1. Instructional materials used by the school district in core courses are aligned with state academic standards, as set forth in Section 1003.41, F.S., and Rule 6A-1.09401, F.A.C.; and

2. The school district's process for the review, selection and adoption of instructional materials complies with hearing requirements established by a district school board and the public meeting requirements set forth in Section 1006.283(2)(b)8., F.S.

(b) This certification must be submitted electronically to <https://districts.flimadoption.org>.

(c) The certification is due annually by March 31.

(5) Certification Requirements for Release of Funds for Instructional Materials under Section 1011.67(2), F.S.

(a) Each superintendent must certify on the form entitled "Certification of Implementation of Instructional and Library Media Materials" (Form IM-B), the following:

1. The school board has approved a comprehensive staff development plan that supports fidelity of implementation of instructional materials and includes a process for verifying completion of the training;

2. Instructional materials are being implemented as designed;

3. All instructional materials for core courses used in the school district are aligned to applicable state academic standards;

4. Core reading materials and reading intervention materials used in kindergarten through grade 5 meet the requirements of Section 1001.215(8), F.S.; and

5. Any material objected to by a parent or resident of the county where the school district is located during the preceding school year, under the provisions of Section 1006.28, F.S., has been identified, along with the reason for the objection and the grade and courses for which the material was removed or discontinued, in accordance with the requirements of Rule 6A-7.0714, F.A.C.

(b) This certification must be submitted electronically to <https://districts.flimadoption.org>.

(c) The certification is due annually by July 1.

(6) Selection, Training and Certification Requirements Regarding School District Library Materials under Sections 1006.28(2)(d) and 1006.29(6), F.S.

(a) Media Specialist. Materials maintained in a school district library media center that are accessible to students or included in a recommended or assigned school or grade-level reading list must be selected by a school district employee who holds an Educational Media Specialist Certificate, as described in Rule 6A-4.0251, F.A.C.

(b) Training Requirements. School librarians, educational media specialists and other persons employed by a school district who are involved in the selection of school district library materials must complete the online training, entitled Library Media Training, before selecting library materials. This training must be completed annually and can be accessed at <https://www.fldoe.org/academics/standards/instructional-materials/>.

(c) Certification of Training. In accordance with Section 1006.29(6), F.S., each superintendent must certify that school librarians and media specialists who are employed by the school district and who are involved in the selection of library media materials for students, have completed the Library Media Training incorporated in this rule.

1. This certification must be made on the form entitled "Certification of Library Media Training" (Form IM-C) and include the number of those who completed the training by job code.

2. This certification must be submitted electronically to <https://districts.flimadoption.org>.

3. The certification is due annually by July 1.

(7) Documents Incorporated by Reference. The following documents are incorporated by reference and may be obtained at <https://www.fldoe.org/academics/standards/instructional-materials/>.

(a) Certification of Alignment and Adoption of Instructional Materials, Form IM-A, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-15149>) effective February 2023, due annually on or before March 31.

(b) Certification of Implementation of Instructional and Library Media Materials, Form IM-B, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-15150>) effective February 2023, due annually on or before July 1.

(c) Certification of Library Media Training, Form IM-C, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-15151>) effective February 2023, due annually on or before July 1.

(d) Library Media Training, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-15152>) effective February 2023.

Rulemaking Authority 1001.02(1), (2)(n), 1006.28 FS. Law Implemented 1006.28(3), 1006.283(1), (4), 1006.29(6), 1011.67(2) FS. History—New 2-21-23.

Exhibit 6

Notice of Development of Rulemaking

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: RULE TITLE:

6A-7.0713 Elementary School Website Listing of Library Materials and Reading Lists

PURPOSE AND EFFECT: To describe the process and format for school district elementary schools to post materials maintained in elementary school media centers and materials found on a required school or grade-level reading list in a searchable format.

SUBJECT AREA TO BE ADDRESSED: Procedures relating to library media in elementary schools.

RULEMAKING AUTHORITY: 1001.02(1), (2)(n), and 1006.28(2)(d)3., F.S.

LAW IMPLEMENTED: 1006.28(2), F.S.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: August 26, 2022, 11:00-11:30 a.m. EDT or upon conclusion of business.

PLACE:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzhiOGU3ZTItZDM4NS00NGUzLWEyY2UtYTE2ZWl3ZjFhNjh%40thread.v2/0?context=%7b%22Tid%22%3a%2263bf107b-cb6f-4173-8c1c-1406bb5cb794%22%2c%22Oid%22%3a%2295bc51d1-7f63-422f-8ac1-3e524e721905%22%7d, Meeting ID: 221 988 959 388 Passcode: 2jzDv6

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Cathy Seeds, Director of Library Media and Instructional Materials, Bureau of Standards and Instructional Support, cathy.seeds@fldoe.org. To comment on this rule development or to request a rule development workshop, please go to <https://web02.fldoe.org/rules> or contact: Chris Emerson, Director, Office of Executive Management, (850)245-9601 or email Christian.Emerson@fldoe.org.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

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Exhibit 7

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Notice of Proposed Rule

DEPARTMENT OF EDUCATION State Board of Education

RULE NO.: RULE TITLE:

6A-7.0713 Elementary School Website Listing of Library Materials and Reading Lists

PURPOSE AND EFFECT: To describe the process and format for school district elementary schools to post materials maintained in elementary school media centers and materials found on a required school or grade-level reading list in a searchable format.

SUMMARY: This new rule describes the searchable format for books, ebooks, periodicals, videos, and all other materials, as well as reading lists. In addition, the rule contains definitions to identify schools that must comply with the posting requirements.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The proposed rule is not expected to have any adverse impact on economic growth or business competitiveness, or increase regulatory costs or any other factor set forth in s. 120.541(2), F.S., and will not require legislative ratification. This is based upon the nature of the proposed rule, which describes the process and format for school district elementary schools to post library media materials on their website.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 1001.02(1), (2)(n), 1006.28(2)(d)3., F.S.

LAW IMPLEMENTED: 1006.28(2) F.S.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: October 19, 2022, 9:00 a.m.

PLACE: Caribe Royal, 8101 World Center Drive, Orlando, Florida 32821.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Amber Baumbach, Bureau of Standards and Instructional Support, 850-245-9115 or Amber.Baumbach@fldoe.org.

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-7.0713 Elementary School Website Listing of Library Materials and Reading Lists.

(1) Purpose. The purpose of this rule is to provide school districts with the requirements for the format districts must use on elementary school websites in order to post, and permit searches of, materials maintained in elementary school library media centers and materials found on a required school or a grade-level reading list in an elementary school.

(2) Definitions. In this rule, the following definitions apply:

(a) "Elementary school" means a district-run public school that includes one or more grade levels from prekindergarten through grade five or a district-run school that includes any elementary school grade level;

(b) "Elementary school grade level" means kindergarten through grade five;

(c) "Library media center" means any collection of books, ebooks, periodicals, and videos maintained and accessible on the site of an elementary school including classrooms.

(d) "School or grade-level reading list" means a list of required reading material for a student in an elementary school; it must be required at one or more elementary school grade levels; and

(e) "School District" means the Florida Virtual School under s. 1002.37, F.S. the Florida School for the Deaf and the Blind under s. 1002.36, Developmental research (laboratory) schools under s. 1002.32, F.S. and districts set forth in Article IX, Section 4, of the Florida Constitution.

(3) Format. The format that must be used by school districts for materials maintained in an elementary school library media center which can be checked-out or used by a student in any elementary school grade level must:

(a) Identify the type of material maintained in the library media center by category, such as books, ebooks, periodicals and videos; and

(b) List, at a minimum, the following information;

1. The title and author for books and ebooks;

2. The name or title for periodicals and videos; and

3. The title for any other material maintained in the media center.

(c) Books and ebooks must be searchable by, at a minimum, author and title. All other materials must be searchable by, at a minimum, title.

(4) Reading Lists. A school or grade level reading list must meet the same requirements set forth in subsection (3) of this rule.

Rulemaking Authority 1001.02(1), (2)(N), 1006.28(2)(D)3, FS. Law Implemented 1006.28(2) FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE: Amber Baumbach, Bureau of Standards and Instructional Support.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Manny Diaz Jr., Commissioner, Department of Education.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 23, 2022

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: August 12, 2022

Exhibit 8

6A-7.0713 Elementary School Website Listing of Library Materials and Reading Lists.

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(d) "School or grade-level reading list" means a list of required reading material for a student in an elementary school, or required at one or more elementary school grade levels; and

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(b) List, at a minimum, the following information;

1. The title and author for books and ebooks;

2. The name or title for periodicals and videos; and

3. The title for any other material maintained in the media center.

(c) Books and ebooks must be searchable by, at a minimum, author and title. All other materials must be searchable by, at a minimum, title.

(4) Reading Lists. A school or grade level reading list must meet the same requirements set forth in subsection (3) of this rule.

Rulemaking Authority 1001.02(1), (2)(n), 1006.28(2)(d)3. FS. Law Implemented 1006.28(2) FS. History--New 11-22-22.