

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DOUGLAS A. CHARITY,)
)
 Petitioner,)
)
 vs.)
) CASE NO. 94-5973RP
 FLORIDA STATE UNIVERSITY,)
)
 Respondent.)
 _____)

FINAL ORDER

Following notice to all parties, Don W. Davis, a duly designated Hearing Officer of the Division of Administrative Hearings held a formal hearing in this cause in Tallahassee, Florida on May 2, 1995. The following appearances were entered:

APPEARANCES

For Petitioner: Douglas A. Charity, Pro Se
290 Starmount Drive
Tallahassee, Florida 32303-4217

For Respondent: Gregory A. Chaires
Assistant Attorney General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUES

The issues are twofold in this proceeding. The first issue is whether various publications, documents, forms, etc., that comprise the content of proposed Rule 6C2-5.0021 address curricula for purposes of Section 120.52(16)(c)5., Florida Statutes, and are thereby exempt from rule making. The second issue is whether the proposed rule is an invalid delegation of legislative authority as defined by Section 120.52(8), Florida Statutes.

PRELIMINARY STATEMENT

Initially, Petitioner filed three separate actions with the Division of Administrative Hearings. On October 19, 1994, Petitioner filed petitions for the "Determination of the Invalidity of an Emergency Rule," and the "Determination of the Invalidity of a Proposed Rule;" and on October 24, 1994, Petitioner petitioned for the "Determination of the Invalidity of Rule(s)." The Petitions were assigned Case Numbers 94-5972RE, 94-5973RU and 94-5974RP respectively.

By Order dated October 28, 1994, all three cases were set for hearing on November 9, 1994 in Tallahassee, Florida. Petitioner requested a continuance of the final hearing which was granted. Final hearing was rescheduled for February 22, 1995.

Petitioner requested a continuance of the February 22, 1995 hearing, also granted. The hearing was rescheduled for May 2, 1995. On Respondent's Motion, Case No. 94-5972RE was dismissed as moot.

By Notice of Voluntary Dismissal, Case No. 94-5974RU was dismissed on April 6, 1995.

On April 17, 1995, Respondent's Motion for Summary Final Order was denied and the parties were directed to confer, prepare a prehearing stipulation, and inform the Hearing Officer if the presentment of live testimony at the final hearing was necessary.

The parties submitted a prehearing stipulation on April 28, 1995, and pursuant to telephonic conference informed the Hearing Officer that the presentment of live testimony, other than that of Petitioner, would not be required at the final hearing.

At the final hearing, Petitioner submitted 46 exhibits and testified on his own behalf. Respondent submitted one exhibit and no witnesses.

A transcript of the final hearing was filed with the Division of Administrative Hearings on May 17, 1995. The parties requested and were granted leave to submit proposed final orders twenty days thereafter, thereby waiving provisions of Rule 28-5.402, Florida Administrative Code. Proposed findings of fact submitted by the parties have been reviewed and are addressed in the appendix to this Final Order.

FINDINGS OF FACT

1. This proceeding arises from a petition filed pursuant to Section 120.54, Florida Statutes, that challenges the validity of Proposed Rule 6C2-5.0021.

STIPULATED FACTS

Findings contained in paragraphs 2-9 were stipulated by the parties, and with minor editorial changes, are set forth as follows:

2. Petitioner is Douglas A. Charity, a former doctoral graduate student in the Department of Economics at Florida State University. The parties have stipulated to Petitioner's standing to bring this action.

3. Respondent is Florida State University.

4. Respondent began a review of academic rules during 1992. By memorandum dated December 10, 1992, Steve Edwards, Dean of the Faculties, wrote to all Academic Deans on the subject of academic rules in the Florida Administrative Code. In this memorandum, Dean Edwards refers to the repeal of the academic rules and the incorporation of the University bulletin by reference. Attached to Dean Edward's memorandum is a draft list of those academic rules in Rule Chapter 6C2 - Academic Matters proposed to be repealed. An additional attachment to

Dean Edwards' memorandum is a "Notice of Proposed Rule Amendment (Repeal)."
[T]he memorandum provides [t]he purpose and effect of the proposed rule is:

In that section 120.52(16), Florida Statutes, excludes curricula from the definition of a rule, all rules setting out university curricula are being repealed, as are the rules setting out admission requirements and graduation requirements. All subject matter set out in the repealed rules are contained in the various university bulletins, which are being adopted by reference.

(Prehearing Stipulation paragraph 20).

5. On April 1, 1992, Gerald B. Jaski [Respondent's General Counsel] wrote a memorandum on the subject of Administrative Rule Revisions to Dr. Robert B. Glidden, Provost and Vice President for Academic Affairs, and Dr. Steve Edwards, Dean of the Faculties. In this memorandum, Mr. Jaski states "Dean Elizabeth Muhlenfeld and Dr. Pete Metarko have suggested rule revisions which will greatly streamline the university rule scheme. According to Dr. Metarko, Mr. Carraway has been consulted and concurs with the suggestion." Mr. Jaski's memorandum also refers to the specific rules to be repealed and provides that rule 6C2-5.002 will be amended to adopt by reference the General Bulletin, the Graduate Bulletin and the Florida State University Bulletin: Directory of Classes. Attached to Mr. Jaski's memorandum is a draft list of those academic rules in Rule Chapter 6C2 - Academic Matters, proposed to be repealed. An additional attachment to Mr. Jaski's memorandum is a "Notice of Proposed Rule Amendment (Repeal)". The purpose and effect of the proposed rule is provided as:

In that section 120.52(16), Florida Statutes, excludes curricula from the definition of a rule, all rules setting out university curricula are being repealed, as are the rules setting out admission requirements and graduation requirements. All subject matter set out in the repealed rules are contained in the various university bulletins, which are being adopted by reference.

The summary of this attachment provides that:

The repeals shall be accommodated by the simultaneous amendment of 6C2-5.002, Florida Administrative Code, adopting by reference the university bulletin series. The various bulletins cover all subject matter presently addressed in the rules which are being repealed.

(Prehearing Stipulation paragraph 21).

6. By memorandums dated February 7, and 14, 1994, Gerald B. Jaski, advised the University President, Provost and various Vice Presidents on an update of the FSU Rule proposal. Mr. Jaski's memorandum of February 7, 1994, contained attachments titled "The Rulemaking Process Summary," "Document Requirements For Rulemaking," "Rulemaking Time Line," and "JAPC Checklist." (Prehearing Stipulation paragraph 22).

7. By memorandum dated March 31, 1994, Gerald B. Jaski and Bjarne Andersen wrote to various academic program administrators, such as Dr. Charles F. Cnudde, Dean of the College of Social Sciences, on the subject of University FAC Rule update. This memorandum requested the administrators to review their rules currently published in the Florida Administrative Code as part of the process of repealing academic rules in the F.A.C. and incorporating the university catalogs and bulletins by reference. (Prehearing Stipulation paragraph 23).

8. By memorandum dated April 8, 1994, Dean of the Faculties Steve Edwards wrote to Academic Deans on the subject of Academic Rules in the Florida Administrative Code. In this memorandum, Dean Edwards refers to his previous memorandum of December 10, 1992, on the same subject and requests a response to whether the Academic Deans object to repealing their applicable rules in the Florida Administrative Code and incorporating them by reference in the University Bulletin. (Prehearing Stipulation paragraph 24).

9. Proposed rule 6C2-5.0021 repeals some of the current rules in Rule Chapter 6C2-5 - Academic matters, which rules contain university curricula, and other rules which contain admission/readmission requirements and procedures, graduation requirements, retention requirements, etc. The proposed rule additionally provides for incorporation by reference of University Catalogs and Bulletins and other various publications which "establish, contain or prescribe various academic and curriculum matters that include admission and degree requirements, course offerings, fields of study, academic calendars, facilities available to students, faculty and staff of the university, and other matters of educational delivery." (Prehearing Stipulation paragraph 26).

OTHER FACTS

10. The proposed rule reads:

6C2-5.0021 Academic and Curriculum Information;
Course Offerings, University Bulletins, Catalogs,
and Applications

(1) In addition to the adopted Florida State University administrative and operational rules published in the Florida Administrative Code pursuant to Florida Statutes, Chapter 120, the University publishes the following listed documents that are incorporated herein by reference which establish, contain or prescribe various academic and curriculum matters that include admission and degree requirements, course offerings, fields of study, academic calendars, facilities available to students, faculty and staff of the University, and other matters of educational delivery:

(a) Florida State University General Bulletin, 1994/1995.

(b) Florida State University General Bulletin, Graduate Edition 1993/1995.

(c) The Florida State University College of Law 1994-1995, Catalogue & Application.

(d) Study Abroad Programs.

1. Florence Study Center Course Descriptions, Fall Semester 1994 and Spring Semester 1995.

2. London Program Course Description, Fall

Semester 1994 and spring Semester 1995.

3. Costa Rica Program Course Description and Meeting times, Summer 1994

(e) Information Guide to the Florida State University Panama Canal Branch, with the 1994-1995 Academic Calendar FSU Panama Canal Branch.

(2) Those portions of the University Bulletins or Catalogs, which are not included in, or addressed by, a specific University rule as published in the Florida Administrative Code, have the force and effect of a rule by the incorporation of the text of the documents listed herein. In the event of a conflict or an inconsistency between any provisions of a Bulletin or Catalog and any adopted rule of Florida State University as published in the Florida Administrative Code, such published rules of the University shall prevail.

(3) The Bulletins and Catalogs of the University may also contain the academic calendar as set by the Florida State University within the general guidelines of the Board of Regents.

(4) Copies of the catalogs or bulletins can be obtained from the Florida State University, Office of the Registrar, Tallahassee, Florida 32306-1011.

(5) The University utilizes the following referenced application forms which may be obtained from the Florida State University, Office of Admissions, Tallahassee, Florida 32306-1009, for admission consideration to Florida State University:

(a) The "Application for Admission, State University System of Florida, Entering Freshman or Undergraduate Transfer" and instructional information contained therein (Revised 1993). See BOR rules 6C-1.012, F.A.C.

(b) The "Application for Admission to a Graduate Program, Florida State University" (Eff. 8/94), including instructions.

(c) "Application for Admission as an International Student to Florida State University" (Revised 4/93), with the accompanying forms "Confidential Report on International Applicant" (3/92) and "Confidential Financial Statement" (3/92) including instructions and the attached document entitled "International Student Information 1993/1994."

(d) Study Abroad Programs, Application for Admission (Florence, London, or Costa Rica), Form SAPA-001 (Eff. 9/94).

(6) The University bulletins and catalogs shall have prospective effect only. A student entering an academic program of the University before the published catalog date, when requirements for degree programs were different from those under newer incorporated Bulletin catalog dates may elect to remain under the earlier requirements for such

a program if the pursuit of such degree or program requirements are continuous.

(7) Curriculum of the institution and academic policies and procedures of a particular school, college, department or division, including among other academic subjects admission, registrations, withdrawal, readmission, and graduation or certification requirements of particular academic programs are also currently described in various University documents available or supplied to each applicant for admission, a currently-enrolled student, or other interested parties. These publications include both the Florida State University Bulletins, or Catalogs, and informational documents such as term or semester class schedules, the student handbook or the faculty handbook and all such other similar type documents which represent a means to notice the flexible nature of the current curriculum, educational plans, offerings, and requirements which may be altered from time to time in order to carry out the purposes, mission and objectives of the University. The University reserves the right to change by rule, or order of the President or his Academic Designee, any provision, offering, or requirement at any time within the student's period or study at the University. Material changes to the content of a currently incorporated document will be noted by supplemental amendments to this rule. The University further reserves the right to require a student to withdraw from the University for cause at any time.

11. Pursuant to Section 240.227(1), Florida Statutes, Respondent has the authority, through the President of Florida State University, to promulgate rules for the operation and administration of the University. Section 240.227(1), Florida Statutes, provides in pertinent part that each university president shall:

Develop and adopt rules governing the operation and administration of the university. Such rules shall be consistent with the mission of the university and statewide rules and policies and shall assist in the development of the university in a manner which will complement the missions and activities of the other universities for the overall purpose of achieving the highest quality of education for the citizens of the state.

12. Respondent agrees that the phrase "and all such other similar type documents which represent a means to notice" contained in subparagraph (7) of the proposed rule is vague. Respondent has filed a notice of change regarding subparagraph (7) which is now proposed to read as follows:

Curriculum of the institution and academic policies and procedures of a particular schools, college, department or division, including among other academic subjects admission, registration, with-

drawal, readmission, and graduation or certification requirements of particular academic programs are also currently described in various University documents available or supplied to each applicant for admission, a currently-enrolled student, or other interested parties. These publications include both the Florida State University Bulletins, or Catalogs, and informational documents such as term or semester faculty handbook, all such other similar type documents which represent a means to notice the flexible nature of those referenced in paragraph (1) of this rule. These documents reflect the current curriculum, educational plans, offerings, and requirements which and may be altered from time to time in order to carry out the purposes, mission and objectives of the University. The University reserves the right to change by rule, or order of the President or his Academic Designee, any provision, offering, or requirement at any time within the student's period of study at the University. Material changes to the content of a currently incorporated document will be noted by supplemental amendments to this rule. The University further reserves the right to require a student to withdraw from the University for cause at any time.

13. With the exception of Respondent's admission to the vagueness of subsection (7) of the rule as originally proposed, no evidence has been presented, and accordingly no finding can be made, that the proposed rule exceeds the grant of rule-making authority contained in Section 240.227(1), Florida Statutes; or that the proposed rule enlarges, modifies or contravenes specific provisions of law implemented.

14. The evidence presented, other than the change proposed and acknowledged by Respondent to resolve the ambiguities contained in subsection (7), does not provide a basis for a finding that proposed rule 6C2-5.0021 fails to establish adequate standards for agency decisions or vests unbridled discretion in the agency.

15. In the absence of evidence that proposed rule 6C2-5.0021 is not supported by facts or logic, or that Respondent seeks to promulgate this rule without thought or reason, no finding of the proposed rule's infirmity on that basis may be made. The proposed rule, with consideration given the change noticed by Respondent for subparagraph (7), is not arbitrary or capricious.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction of this matter pursuant to Subsection 120.54(4), Florida Statutes.

17. A proceeding challenging a proposed rule pursuant to Section 120.54, Florida Statutes, is a singular proceeding. The gravamen of Petitioner's opposition to the proposed rule is that all university practices are not within the documents adopted by the proposed rule. Relief appropriate to such situations must be sought, dependent upon circumstances, by affected individuals in proceedings brought pursuant to provisions of Section 120.57, Section 120.56 or Section 120.535, Florida Statutes.

18. The term invalid exercise of delegated legislative authority is defined at Subsection 120.52(8), Florida Statutes, and reads in pertinent part as follows:

"Invalid exercise of delegated legislative authority" means action which 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 or more of the following apply:

(a) The agency has materially failed to follow the applicable rulemaking procedures set forth in s. 120.54;

(b) The agency has exceeded its grant of rule-making authority, citation of which is required by s. 120.54(7);

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(7);

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

(e) The rule is arbitrary or capricious.

19. Chapter 120 mandates that statements of general applicability be promulgated as rules. Section 120.52(16), Florida Statutes, provides that the definition of a rule is:

[A]n agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule.

20. Section 120.52(16)(c)5., Florida Statutes, provides that curricula by an educational unit is not a statement of general applicability subject to formal rule promulgation. The determination of whether the contents of the statement by Respondent identified as proposed rule 6C2-5.0021 is curricula is a threshold issue. If the proposed rule's content is "curricula of an educational unit," then the various pamphlets, bulletins and documents enumerated in proposed rule 6C2-5.0021 are exempt from the rule-making requirements of Sections 120.535 and 120.54, Florida Statutes.

21. Respondent's assertion that the proposed rule sets forth "curricula of an educational unit" is supported by the United States Supreme Court which has considered curriculum to cover school-sponsored activities, including school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school. *Hazelwood v. Kulmeier*, 108 S.Ct. 562, 569 (1988). Specifically, in *Hazelwood*, the Supreme Court found no infringement on student First Amendment rights to freedom of speech since the publication involved was within the ambit of "legitimate pedagogical concerns." Since the subject matter of proposed rule 6C2-5.0021 would appear to be encompassed within

the boundaries of curriculum identified in Hazelwood, the various publications set forth in the rule qualify for exemption from rule-making pursuant to Section 120.52(16)(c)5., Florida Statutes.

22. As previously noted, the phrase "and all such other similar type documents which represent the means to notice. . ." contained in subsection (7) of proposed rule 6C2-5.0021 is vague. Respondent agrees and has filed a Notice of Change regarding subsection (7) of the proposed rule. No evidence has been presented that any other portion or part of the proposed rule is vague, or that individuals of common intelligence necessarily must guess as to its meaning. See *Cummings v. State*, 365 So. 2d 153 (Fla. 1978).

23. Petitioner has presented no evidence that the proposed rule 6C2-5.0021 fails to establish adequate standards and reserves to the agency the arbitrary power to determine private rights. See *Barrow v. Holland*, 125 So. 2d 749 (Fla. 1960). As such the proposed rule does not vest unbridled discretion in Respondent. *Id.* The plain meaning of the rule clearly demonstrates that the agency is not vested unbridled discretion as alleged by Petitioner.

24. Petitioner presented no evidence that proposed rule 6C2-5.0021 exceeds the grant of rule-making authority contained within Section 240.227(1), Florida Statutes.

25. Petitioner presented no evidence that proposed rule 6C2-5.0021 enlarges, modifies, or contravenes the specific provisions of law implemented. The proposed rule meets the technical requirements of Section 120.54(7), Florida Statutes, in that the challenged proposed rule cites to the specific authority and law implemented. The proposed rule meets the requirements of Section 120.54(8), Florida Statutes, in that it only incorporates documents containing subject matter within the scope of the operation and administration of Florida State University and thus complies with the single-subject requirement.

26. The validity of a challenged rule must be upheld if it is reasonably related to the purpose of the legislation interpreted and is not arbitrary and capricious. *Department of Professional Regulation, Bd. Of Medical Examiners v. Durrani*, 455 So. 2d 515, 517 (Fla. 1st DCA 1984). Petitioner presented no evidence that proposed rule 6C2-5.0021 is not supported by facts or logic, or that Respondent seeks to promulgate this rule without thought or reason. *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981), *rev. deni.*, 415 So. 2d 1359 (Fla. 1982).

27. Agencies are accorded wide discretion in the exercise of that lawful rule-making authority which is clearly conferred or fairly implied and consistent with the agency's general statutory duties. This is particularly true in the area of academics and curriculum. See *Michael Cortes, et al. v. State of Florida, Board of Regents*, Case No. 93-1886 (Fla. 1st DCA April 25, 1995).

28. Petitioner's argument is premised on whether Respondent currently employs policies that are not contained in the documents incorporated within the proposed rule. Petitioner contends that Respondent's failure to include such policies in the proposed rule invalidates the proposed rule and demonstrates that the proposed rule is arbitrary and capricious.

29. At best, Petitioner has established that he sincerely believes Respondent has unfairly treated and misapplied policies to Petitioner during Petitioner's enrollment as a student at Florida State University. The fact that

an agency may have wrongfully or erroneously applied an administrative rule does not invalidate the rule. *Hasper v. Department of Administration*, 459 So. 2d 398, 400 (Fla. 1st DCA 1984).

30. Petitioner has challenged the validity of proposed Rule 6C2-5.0021 in this proceeding, and thus must establish that the agency has exceeded its authority, that the requirements of the proposed rule are not appropriate to the ends specified in the legislative act, and that the requirements contained in the proposed rule are not reasonably related to the purpose of the enabling legislation, but are arbitrary or capricious. *Department of Professional Regulation, Board of Professional Engineers v. Florida Society of Professional Land Surveyors*, 475 So. 2d 939 (1st DCA 1985); *Department of Professional Regulation, Board of Medical Examiners v. Durrani*, 455 So. 2d 515 (1st DCA 1985). The burden is on the Petitioner to prove invalidity by a preponderance of the evidence. *Dravo Basic Materials Company v. State*, 602 So. 2d 632 (Fla. 2d DCA 1992); *Adam Smith Enterprises v. Department of Environmental Regulation*, 533 So. 2d 1260 (Fla. 1st DCA 1990); and *Agrico Chemical Company v. State*, 365 So. 2d 759 (Fla. 1st DCA 1978). Petitioner has not met this burden.

CONCLUSION

In view of the foregoing findings of fact and conclusions of law, it is ORDERED that, upon implementation of the change to subparagraph (7) of the proposed rule, the Petition is DISMISSED.

The foregoing DONE and ORDERED this 22nd day of June, 1995.

DON W. DAVIS, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of June, 1995.

APPENDIX

In accordance with requirements of Section 120.59, Florida Statutes, the following constitutes my rulings on the proposed findings of fact submitted by the parties.

Petitioner's Proposed Findings.

- 1.-2. Accepted.
- 3.-18. Rejected, unnecessary, redundant, relevance.
- 19.-37. Rejected, unnecessary to result.
- 38.-39. Rejected, relevance.

- 40.-45. Accepted.
- 46. Rejected, redundant.
- 47.-54. Accepted in substance, not necessarily verbatim.
- 55.-56. Rejected, relevance.
- 57.-58. Rejected, argument, statement of party positions.

Respondent's Proposed Findings.

- 1.-2. Accepted.
- 3. Incorporated by reference.
- 4. Accepted, not verbatim.
- 5. Not treated, recitation of stipulation.
- 6.-12. Accepted in substance, not necessarily verbatim.

COPIES FURNISHED:

Douglas A. Charity
290 Starmount Drive
Tallahassee, FL 32303-4217

Gregory A. Chaires
Assistant Attorney General
Office of the Attorney General
The Capitol - PL01
Tallahassee, Florida 32399-1050

Liz Cloud, Chief
Bureau of Administrative Code
Department of State
The Elliott Building
Tallahassee, Florida 32399-0250

Carroll Webb, Executive Director
Administrative Procedures Committee
Holland Building, Room 120
Tallahassee, FL 32399-1300

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF THE NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DIVISION OF ADMINISTRATIVE HEARINGS AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

=====

DISTRICT COURT OPINION

=====

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DOUGLAS A. CHARITY,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 95-2553
DOAH CASE NO. 94-5973RP

THE FLORIDA STATE,
UNIVERSITY,

Appellee.

_____ /

Opinion filed March 13, 1996.

An appeal from an order of the Division of Administrative Hearings.

Douglas A. Charity, pro se, Tallahassee, for Appellant.

Gregory A. Chaires, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

In this appeal, Douglas Charity (hereafter petitioner, or appellant) seeks reversal of a final order of the Division of Administrative Hearings rendered in a rule challenge proceeding pursuant to section 120.54(4), Florida Statutes. The order declares valid proposed rule 6C2-5.0021 promulgated by The Florida State University (hereafter University, or appellee). We affirm.

The parties stipulated in the proceeding below to certain facts which the hearing officer incorporated into his final order. For the most part, these facts deal with the communications and discussions between various deans and other officials of the University, including its general counsel, concerning the review and possible repeal or revision of the University's Rule 6C2-5, Florida Administrative Code, entitled "Academic Matters." As stated by the hearing officer in his order, proposed rule 6C2- 5.0021 repeals some of the current rules in Chapter 6C2-5, which rules contain University curricula, and other rules pertaining to admission and readmission requirements and procedures, graduation and retention requirements, and other matters. The proposed rule additionally provides for incorporation by reference of University catalogs, bulletins, and other publications specifically identified in the proposed rule. 1/ According to the language of the proposed rule, these publications "establish, contain or prescribe various academic and curriculum matters that include admission and degree requirements, course offerings, fields of study,

academic calendars, facilities available to students, faculty and staff of the University, and other matters of educational delivery. . . 2/

Upon consideration and review of the facts as stipulated and the evidence presented below, which consisted of documentary exhibits and published materials, together with the testimony of the petitioner, the hearing officer found that the petitioner had failed to establish that the proposed rule constituted an invalid exercise of delegated legislative authority as the term is defined in section 120.52(8)(a)-(e), inclusive, Florida Statutes. 3/ The final order contains an analysis and discussion of the proposed rule in the light of each factor included within the statutory definition, and appellant has failed to demonstrate any error in the hearing officer's conclusions. We therefore affirm without further discussion the findings and conclusions of the hearing officer concerning the validity of the rule.

We note, however, as found by the hearing officer, that petitioner's primary concern expressed in his testimony below appears to be focused on his contention that the University currently employs policies that are not contained in the documents incorporated within the proposed rule. We agree with the further conclusion of the hearing officer that such concerns do not provide grounds upon which to invalidate the proposed rule in this proceeding. The extent to which this (or other practices about which petitioner, as a student or former student, might complain) would afford grounds for relief under other provisions of Chapter 120, Florida Statutes, is not before us in this appeal. We express no opinion regarding the availability of other remedies, except to note that the provisions of section 120.57 do not apply "to any proceeding in which the substantial interests of a student are determined by the State University System." Subsection 120.57(5)(a), Florida Statutes. See *Metsch v. University of Florida*, 550 So.2d 1149(Fla. 3rd DCA 1989) (applicant denied admission to law school was not entitled to administrative hearing under section 120.57(1), Florida Statutes).

One additional aspect of the final order merits our consideration. Under the heading "Conclusions of Law," the hearing officer, in paragraph 21 of the order, states, in part:

Since the subject matter of proposed rule 6C2-5.0021 would appear to be encompassed within the boundaries of curriculum identified in Hazelwood, 4/ the various publications set forth in the rule qualify for exemption from rule making pursuant to Section 120.52(16)(c)5., Florida Statutes.

Petitioner devotes virtually his entire argument on appeal to an attack upon the correctness of this portion of the order. Clearly, as petitioner argues on appeal, if the proposed rule encompasses matters beyond the scope of "curriculum," which is exempt from rulemaking under section 120.52(16)(c)5., it follows that, to the extent the University is required by law to adopt rules governing its operation and administration, the University must comply with the rulemaking procedures of section 120.54. 5/ We find it unnecessary to address this portion of the order other than to note that, if the hearing officer had concluded that the subject matter of the proposed rule was exempt from rulemaking, the denial of the petition would have been based on that ground. That the hearing officer did not base his order on this ground is evident from the extensive findings and conclusions justifying his decision on the merits. Because these findings and conclusions provide a correct and independent basis

for the decision reached by the hearing officer, the inclusion in the order of an erroneous reason or rule for the same result would not be grounds for reversal. See *Springfield v. Dep't of Env'tl. Protection*, 648 So.2d 802, 804 (Fla. 1st DCA 1994)("the law is so well settled as to require no citation of authority to the effect that a correct result or judgment, though based on an erroneous reason or rule, requires affirmance on appeal"), quoting from *Jones v. Dove*, 300 So.2d 758, 758-59 (Fla. 1st DCA 1974)(on rehearing)

We also observe that, in the context of the proceedings before us, the discussion in petitioner's brief concerning what is or is not embraced within the term "curricula" is irrelevant. This is so because the proposed rule does not, as petitioner urges, "exempt" matters other than curricula from rulemaking. To the contrary, the rule clearly specifies that academic and curriculum matters that include "admission and degree requirements, course offerings, fields of study, academic calendars, facilities available to students, faculty and staff of the University, and other matters of educational delivery . . . ," are contained in existing catalogs, bulletins, application forms and instructions promulgated by the University, all of which are specifically listed, identified, and incorporated by reference in the proposed rule.

Petitioner presents no legal argument or authority on appeal indicating that the proposed rule contravenes or exceeds the authority conferred by section 120.54(8), Florida statutes, which provides in part for incorporation of material by reference. We find no evidence in the record of the proceedings below, other than petitioner's own opinion, that this method of informing students and prospective students is inadequate to provide fair notice of the University's procedures, policies and standards concerning the matters referred to in the proposed rule. 6/ It is also significant that the present dispute does not concern the interpretation or application of any specific provision of any of the University's publications incorporated by the proposed rule.

Agencies are accorded wide deference in the exercise of lawful rulemaking authority which is clearly conferred or fairly implied and consistent with the agency's general statutory duties. *Agrico Chemical Co. v. State*, 365 So.2d 759 (Fla. 1st DCA 1978), cert. den., 376 So.2d 74 (Fla. 1979). Section 240.227(1), Florida Statutes, cited by both parties as the statutory authority for the rule in question, imposes duties upon and confers authority to the University, through its president, in the broadest possible terms. The challenger's burden to demonstrate an invalid exercise of delegated legislative authority "is a stringent one indeed." *Arico*, 365 So.2d at 763.

Finding no reversible error in the order adjudicating the validity of the challenged rule, we AFFIRM.

BARFIELD and KAHN, JJ., and SMITH, Senior Judge, CONCUR.

ENDNOTES

- 1/ Section 120.54(8), Florida Statutes, provides in part:
Pursuant to rule of the Department of State,
a rule may incorporate material by reference
but only as such material exists on the date
the rule is adopted.

2/ The proposed rule contains provisions giving precedence to rules published in the Florida Administrative Code where such rules are in conflict with the content of the incorporated publications. The rule also provides that the various publications shall have prospective effect only, and that material changes to the content of any incorporated document will be noted by supplemental amendments to the rule.

3/ Both the University of Florida and the University of South Florida have adopted rules similar to the Florida State University's proposed rule 6C2-5.0021. See Rules 6C17.P51, and 6C4-1.005, F.A.C.

4/ *Hazlewood v. Kuhlmeier*, ____ U.S. ____, 108 S. Ct. 562(1988)

5/ Section 240.227(1), Florida Statutes provides in pertinent part that each University president shall:

Develop and adopt rules governing the operation and administration of the University. Such rules shall be consistent with the admission of the university and statewide rules and policies and shall assist in the development of the University in a manner which will complement the admissions and activities of the other universities for the overall purpose of achieving the highest quality of education for the citizens of the state.

6/ see section 120.535(1)(b), Florida Statutes, providing, in part, that rulemaking shall be presumed practicable "to the extent necessary to provide fair notice to affected persons of relevant agency procedures and applicable principles, criteria or standards for agency decisions . . .," unless the agency proves that detail or precision is not reasonable under the circumstances, or that a more specific resolution of the matter is impractical outside of adjudication.