

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CENTER FOR EDUCATION ADVOCACY,)
INC., ROSEMARY N. PALMER, AND)
DONNA LORMAN,)
)
Petitioners,)
)
vs.) Case No. 08-3496RP
)
STATE BOARD OF EDUCATION AND)
DEPARTMENT OF EDUCATION,)
)
Respondents.)
_____)

FINAL ORDER DISMISSING CHALLENGE
TO PROPOSED RULES

A final hearing was not conducted in this case.

APPEARANCES

For Petitioners: Michael L. Boswell, Esquire
All Florida Firm Legal Clinic
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For Respondents: Steven S. First, Esquire
Florida Department of Education
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STATEMENT OF THE ISSUE

Whether the Respondents' Motion to Dismiss should be granted.

PRELIMINARY STATEMENT

The Petitioners filed a challenge to the agency's proposed rules 6A-6.03028, 6A-6.03311, 6A-6.03312, and 6A-6.03411 on July 18, 2008. The case was scheduled for final hearing for August 14-15, 2008. The Unopposed Motion for Continuance was granted and the hearing was canceled and rescheduled for October 8-10, 2008.

On July 29, 2008, the Respondents filed a Motion to Dismiss that alleged the challenge to the proposed rules was not timely filed. The Response in Opposition to Motion to Dismiss (filed August 11, 2008), the comments of counsel, and the responses to the Request for Admissions have been fully considered.

FINDINGS OF FACT

1. The Petitioners did not timely file the challenge to proposed rules.
2. The Petitioners admit they were aware of the rule-making process and did not challenge the proposed rules within the statutory time guidelines.
3. The date of publication (as corrected) was May 30, 2008. The date of the rule challenge filing was July 18, 2008.
4. The date of the final public hearing was June 17, 2008. The rule challenge was not filed within ten days of this date.

CONCLUSIONS OF LAW

3. Section 120.56(2)(a), Florida Statutes, states, in part:

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.- -

(a) Any substantially affected person may seek an administrative determination of the invalidity of any proposed rule by filing a petition seeking such a determination with the division within 21 days after the date of publication of the notice required by s. 120.54(3)(a), within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(c), within 20 days after preparation of a statement of estimated regulatory costs required pursuant to s. 120.541, if applicable, or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petition shall state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority.

4. Petitions challenging a proposed rule must be filed with the Division of Administrative Hearings "within 21 days after the date of publication of the notice required by Section 120.54(3)(a), Florida Statutes." § 120.56(2)(a), Fla. Stat. (2008).

5. The Petitioners admit in paragraphs 2 and 3, on page 2 of the Petition, that publication of the Notice of Proposed Rulemaking occurred on May 23, 2008, and was corrected on May 30, 2008. The Petitioners further admit in paragraph 3, on

page 7 of the Petition, that they received notice of these publications.

6. The Notices of Proposed Rulemaking are required by Section 120.54(3)(a), Florida Statutes.

7. The 21-day filing deadline set forth in the statute is jurisdictional and cannot be waived by the Division of Administrative Hearings.

8. Section 120.56(2)(c), Florida Statutes, allows a challenge to a proposed rule to be filed "within 10 days after the final public hearing is held on the proposed rule as provided by Section 120.54(3)(c), Florida Statutes." The Petitioners also did not meet or comply with this deadline.

ORDER

Based on the foregoing, the Petitioners' challenge to the proposed rules is dismissed.

DONE AND ORDERED this 10th day of September, 2008, in Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of September, 2008.

COPIES FURNISHED:

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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 the original Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a 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.