

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**FLORIDA EDUCATION ASSOCIATION and
UNITED FACULTY OF FLORIDA,**

Petitioner,

vs.

CASE NO.:

**STATE OF FLORIDA DEPARTMENT OF
EDUCATION,**

Respondent.

_____ /

**PETITION TO DETERMINE THE INVALIDITY OF STATE OF FLORIDA
DEPARTMENT OF EDUCATION PROPOSED RULE 6A-14.092**

COMES NOW, the FLORIDA EDUCATION ASSOCIATION and UNITED FACULTY OF FLORIDA (collectively, “Petitioners”) by and through their undersigned counsels and pursuant to Section 120.56(2), Florida Statutes, and Rule 28-106.20, Florida Administrative Code (“F.A.C.”), and hereby file this Petition to Determine the Invalidity of STATE OF FLORIDA DEPARTMENT OF EDUCATION Proposed Rule 60CC-6.104 (“Rule” or “Proposed Rule”). Petitioners seek a determination that the Proposed Rule constitutes an invalid delegation of legislative authority and in support thereof states:

1. Petitioner, the FLORIDA EDUCATION ASSOCIATION (“FEA”) is a professional association comprised of more than 150 affiliated local education employee organizations that represent educators and education support employees. The FEA and its affiliated locals represent over 110,000 unified member educators in Florida. 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, UNITED FACULTY OF FLORIDA (“UFF”) is a direct affiliate of FEA with over 9,600 members in colleges and universities throughout the State of Florida. Its mailing address is 115 N. Calhoun Street, Suite 6, Tallahassee, FL 32301.

3. The affected state agency is the STATE OF FLORIDA DEPARTMENT OF EDUCATION (“Department” or “Respondent”), which is located at 325 West Gaines Street, Tallahassee, Florida 32399.

4. In its Petition, Petitioners are seeking a determination that the aforementioned Proposed Rule constitutes an invalid delegation of legislative authority.

Background Facts

5. The Florida Constitution, adopted in 1968, provides in Article I (“Declaration of Rights”), Section VI (“Right to Work”) as follows: “The right of employees, by and through a labor organization to bargain collectively, shall not be denied or abridged.” In response to this constitutional provision, the Legislature enacted Ch. 447, Part II, Florida Statutes, the intent of which is “to promote the harmonious and cooperative relationships between government and its employees, both collectively and individually; and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government.” See §447.207, Fla. Stat.

6. Per Section 1001.02(1), Florida Statutes, the Department, “...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.”

7. FEA is a non-profit labor union affiliated with more than 150 local associations, the majority of which are “employee organizations” under PERA, as that term is defined in Section 447.203(11), Florida Statutes, as follows:

any labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer.

FEA and its local affiliates operate under a system of unified membership. FEA provides services to its members and also provides support and resources to its local affiliates’ efforts, including local affiliates’ actions and requirements pursuant to their roles as collective bargaining representatives of public education employees.

8. UFF is a professional association and direct affiliate of FEA committed to a future for higher education in which thinking, teaching, learning, discourse and academic freedom thrive.

9. Section 1004.085(5) and (6), Florida Statutes, provide:

(5) Each institute approved pursuant to this section shall submit to the Department of Education annual performance evaluations that measure the effectiveness of the programs.

(6) Instructors and supervisors of field experiences in which participants demonstrate an impact on student learning growth for a certification program approved pursuant to this section must meet the same qualifications as those required in s. 1004.04(5).

10. The Rule proposed by the Department states as follows:

6A-14.092 Textbook and Course Material Affordability and Transparency.

(1) Purpose. In order to maximize informed student choice, The purpose of this rule sets is to set forth the adoption, posting, and reporting requirements for Florida College System institutions

relating to textbook and course material affordability and transparency.

(2) Textbook and Instructional Material Adoption Requirements.

(a) Each Florida College System institution is required to select textbooks and instructional materials through cost-benefit analyses that enable students to obtain the highest-quality product at the lowest available price. Pursuant to Section (s.) 1004.085(1), Florida Statutes (F.S.), the term “instructional materials” means educational materials for use within a course which may be available in printed or digital format.

(b) The cost-benefit analysis must include consideration of the items listed in s. Section 1004.085(6)(g), F.S., and:

1. through 2. No change.

(c) Prior to the adoption of the selected textbook and instructional materials, instructors must confirm the intent to use all materials pursuant to s. Section 1004.085(6)(b), F.S.

(d) No change.

(e) Development, adaptation, and review of open educational resources and instructional materials must be a collaborative process pursuant to s. Section 1004.085(6)(e), F.S.

(f) For textbooks and instructional materials for use in dual enrollment courses, institutions must consult with school districts as outlined in s. Section 1004.085(6)(f), F.S.

(g) Institutions must have options in place to make textbooks and instructional materials available to students who may not be able to afford the cost pursuant to s. Section 1004.085(6)(d), F.S.

(3) Textbook and Instructional Materials List Forty-Five (45) Day and Five-Year (5) Posting Requirements. Each Florida College System institution is required to prominently post and make publicly accessible ~~publish~~ on its website and in its course registration system a list of required and recommended textbooks and instructional materials as early as feasible but at least forty-five (45) days before the first day of class for each term for at least ninety-five (95) percent of all scheduled course sections and maintain the list for the preceding five (5) academic years. The five-year (5) list must be updated annually by September 1 to include the preceding Fall, Spring, and Summer Terms.

(a) The list of required and recommended textbook and instructional materials must provide the International Standard Book Number (ISBN) or other identifying information, which must include, at a minimum: the title, all authors listed, publishers, edition number, copyright date, published date, and other relevant information necessary to identify the specific textbooks or instructional materials required and recommended for each course ~~meet the requirements of Section 1004.085(5)(a), F.S., and must be~~

searchable by:

1. General education status;

1. through 6. renumbered 2. through 7. No change.

(b) The list of required and recommended textbook and instructional materials must be publicly accessible from the institution's consumer information website and easily downloadable by current and prospective students.

(c) Sections where no textbook is required or no-cost open educational resources are used must have an icon to indicate their status as zero cost. The Zero Textbook Cost Indicator developed by the Florida Postsecondary Academic Library Network may be used for this purpose pursuant to s. Section 1006.73(4), F.S.

~~(d) For course sections added after the forty five (45) day notification deadline, including course sections with a reasonable exception under paragraph (3)(e), textbook and instructional material information must be posted immediately as such information becomes available.~~

(d)(e) Limited Exceptions to the Forty-Five (45) Day Textbook and Instructional Materials List Posting Requirements. For course sections with a limited exception under this paragraph, textbook and instructional material information must be posted immediately as such information becomes available. Limited exceptions requirement are as follows:-

1. through 5. No change.

~~(4) Textbook and Instructional Materials Five Year (5) Posting Requirements. Each Florida College System institution is required to maintain and publish a list of required and recommended textbooks for the preceding five (5) academic years.~~

~~(a) The five year (5) list must be inclusive of the components required under paragraph (3)(a) and must be easily accessible from the institution's consumer information website.~~

~~(b) By May 1, 2023, each Florida College System institution must publish the textbooks and instructional materials list for academic years 2017-18, 2018-19, 2019-20, 2020-21, and 2021-22.~~

~~(c) Beginning in 2023 for academic year 2022-23, and thereafter, the five year (5) list must be updated annually by September 1 to include the preceding Fall, Spring, and Summer Terms.~~

(4)(5) General Education Core Course Forty-Five (45) Day Syllabi Posting Requirements. Each Florida College System institution is required to prominently post and make publicly accessible publish course syllabi for each course section of a general education core course identified in Rule 6A-14.0303, F.A.C., as early as feasible but at least forty-five (45) days before the first day of class for each term. All course syllabi should be publicly accessible and easily downloadable by current and prospective

students.

(a) ~~Minimally, All general education core~~ course syllabi must include:

1. The course cCurriculum;
2. The gGoals, objectives, and student expectations of the course;
3. The required and recommended textbooks and instructional materials Objectives;
4. Student assignments, including at a minimum, the assignment title, a brief narrative description of the assignment, and, if applicable, any required readings expectations of the course; and
5. How student performance will be measured and evaluated, including the grading scale and methodology.

(b) No change.

(c) ~~Each institution is required to publish the syllabus for each general education core course section. For general education core course sections added after the forty-five (45) day notification deadline, including course sections with a reasonable exception under paragraph (5)(d), master course syllabi, where available, may be posted. Master course syllabi include course content, learning outcomes, and requirements that must be followed by all instructors who teach the course. Master course syllabi must be replaced immediately as soon as final course section syllabi become available.~~

~~(c)(d)~~ Limited Eexceptions to the Fforty-Ffive (45) Dday Ssyllabi Pposting Requirements requirement are as follows. For course sections with a limited exception under this paragraph, master course syllabi, where available, may be posted. Master course syllabi include course content, learning outcomes, and requirements that must be followed by all instructors who teach the course. Master course syllabi must be replaced immediately as soon as final course section syllabi become available. Limited exceptions are as follows:

1. A faculty member has not yet been assigned to teach the course section before the forty-five (45) day notification deadline; and-

2. No change.

(5) Individualized courses, such as directed independent studies, internships, and performance, are exempt from the requirements in subsections (3) and (4).

(6) Reporting Requirements. Each Florida College System institution is required to report by September 30 of each year to the Chancellor of the Florida College System, in a format determined by the Chancellor, the following:

(a) through (d) No change.

(e) Procedures implemented regarding the posting of ~~general~~

~~education-core~~ course syllabi for ~~at least ninety-five (95) percent of~~ all courses and course sections forty-five (45) days before the first day of class; and

(f) Evidence of compliance with the ~~general education-core~~ course syllabi posting requirement.

11. The Proposed Rule quite plainly creates a condition not contemplated by the statute. There is nothing in the statutory language nor in an *in pari materia* reading of the statute and ones related that would result in the formulation of a rule with such specificity addressing course syllabi. Had the legislature contemplated as much, it would have crafted such language and made it a part of the statute.

12. By not including such specific syllabus language, the only logical assumption is that the Legislature never intended to include the same. Even if the Legislature contemplated doing so, it could and should have explicitly authorized the Department to do so. This is itself would have been fraught with controversy as the Legislature simply cannot abdicate any of its duties to an executive agency. See *Sloban vs. Florida Bd. Of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008). No matter how expansive of a reading in which the Department may attempt to engage, there is no credible basis for the promulgation of this rule, without either expanding on the statutory language or usurping the authority of the Legislature.

13. While the Department is authorized by statute to promulgate rules necessary to effectuate statutes it administers, there is no authority granted whereby the Department may either subvert legislative intent or expand statutory language to create conditions or impose requirements not stated plainly in the statute or even alluded to when similar statutes are read in conjunction with each other.

Standing

14. An association is “substantially affected by a rule” if it demonstrates that (1) “a substantial number of its members, although not necessarily a majority, are ‘substantially affected’ by the challenged rule,” (2) “the rule [is] within the association’s general scope of interest and activity,” and (3) “the relief requested [is] of the type appropriate” for an association to obtain for its members. *Fla. Home Builders Ass’n v. Dep’t of Labor & Empl. Sec.*, 412 So. 2d 351, 353–54 (Fla. 1982).

15. Professional associations have standing to challenge rules that affect their members. “The fact that [an association’s] members will be regulated by the proposed rules is alone sufficient to establish that their substantial interests will be affected.” *Coal. of Mental Health Professions v. Dep’t of Professional Regul.*, 546 So. 2d 27, 28 (Fla. 1st DCA 1989) (concluding that mental-health-professional association had standing to challenge proposed rules that would regulate the practices of its social-worker, therapist, and mental-health-counselor members); *cf., e.g., Prof. Firefighters of Fla., Inc. v. Dep’t of Health & Rehab. Servs.*, 396 So. 2d 1194, 1196 (Fla. 1st DCA 1981) (parties “engaged in [an] occupation or profession” newly subject to a “licensing or certification” requirement were substantially affected by a rule and had standing to challenge its validity).

16. The Proposed Rule substantially affects a substantial number of Petitioners’ FEA’s members, including UFF, and affiliates, and the Rule is within the scope of Petitioner’s interest and activity.

Argument

17. The Florida Administrative Procedures Act 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), Fla. Stat.

18. 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].

19. The Proposed Rule violates these provisions in that it effectively enlarged, modified, and contravened the statute; the Department exceeded its grant of rulemaking authority; the Proposed Rule is vague; and the Proposed Rule is arbitrary.

20. The impact of this Proposed Rule cannot be understated. In violating the APA's rulemaking, the impact of the Proposed Rule, as drafted, also violates the due process rights of those affected by the Proposed Rule.

I. The Rules Exceed the Grant of Rulemaking Authority

21. In drafting the language of the Proposed Rule, the Department went beyond the authority it was delegated, thus rendering the Proposed Rule invalid under Section 120.52(8)(b), Florida Statutes.

22. 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). 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.

23. 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 Central Park Master Association, Inc., Petitioner v. South Florida Water Management District, Respondent and Florida Department of Environmental*

Protection, Southwest Florida Water Management District, St. J., 2022 WL 4117700, 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”); *cf.* 120.54(3)(a)(1) (requiring that rules “reference . . . the grant of rulemaking authority pursuant to which the rule is adopted”).

24. 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. Dist. Ct. App. 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).

25. 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.

26. The Proposed Rule cites Sections 1001.02(1) and (2)(n), 1004.085(5) and (6) and 1006.73(4), Florida Statutes, as rulemaking authority for the Proposed Rule. These subsections do

not authorize the Department to mandate course syllabi to the extent which is contemplated and articulated in the Proposed Rule.

27. The legislature chose to authorize the Department 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. South Marion Real Estate Holdings, LLC D/b/a Oxford Downs, and Darold R. Donnelly v. the Department of Business and Professional Regulation, Division of Pari-mutuel Wagering*, No. 22-000968RX, 2022 WL 2111212, at ¶ 39, *6 (Div. of Admin. Hearings 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.”).

28. The Proposed Rule is thus an invalid exercise of delegated legislative authority under Section 120.58(8)(b), Florida Statutes, since the Department exceeded its authority when it chose to promulgate the Proposed Rule.

II. The Proposed Rule Enlarges, Modifies, and Contravenes the Statute

29. An administrative rule enlarges, modifies, or contravenes the specific provisions of the law implemented when it fails to follow the explicit statutory provisions it purports to implement. *See Golden West Financial Corp. v. Dep't of Revenue*, 975 So. 2d 567 (Fla. 1st DCA 2008).

30. The Proposed Rule on its face both enlarges and modifies Sections 1001.02(1) and (2)(n), 1004.085(5) and (6) and 1006.73(4), Florida Statutes, and its application would contravene those statutes. There is no language in those statutes that authorizes the Department to regulate course syllabi with such minutiae as to make them unworkable and inflexible to those preparing

and utilizing them. When applied, the Proposed Rule contravenes the statute because it imposes a requirement/condition, the absence of which could allow the Department to impose a violation on an employee member of Petitioner.

31. The power to interpret the meaning and reach of a statute rests with the legislature, unless otherwise specifically articulated in statute, rather than the agency, and rules are valid only if they are substantively consistent with legislative intent.¹ 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).

32. 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 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

¹ 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).

“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.

33. 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).

34. The Proposed Rule enlarges, modifies and contravenes the aforementioned statutes and thus it constitutes an invalid exercise of delegated legislative authority under Section 120.58(8)(c), Florida Statutes.

III. The Proposed Rule is Vague

35. Under §120.52(8)(d), Florida Statutes, a rule is an invalid exercise of delegated legislative authority if it is vague, fails to establish adequate standards, or vests unbridled discretion in the agency.

36. The proposed rule is vague and violates the Florida Administrative Procedure Act because:(a) It fails to provide persons of ordinary intelligence fair notice of what conduct is required or prohibited; (b) It contains undefined and subjective terms such as “[list vague terms]” without objective criteria; and (c) It invites arbitrary and discriminatory enforcement by granting the agency unfettered discretion.

37. The term “instructional materials,” is not defined in the rule or governing statutes. With no clear definition there is no guidance for any of the parties affected by this rule. “Instructional materials,” for example, could include a prepared power point, imagery, organizational charts, diagrams, or something as simple as an instructor using any prop close at hand to better explain a concept on an ad hoc basis depending on whether the students are able to grasp a concept. Without clear guidance, it is conceivable that an instructor would/could violate the rule by using such a prop “on the fly.”

38. Florida courts have consistently held that rules must contain clear standards to guide both regulated parties and agency enforcement. See *St. Francis Hospital, Inc. v. Dep’t of Health & Rehabilitative Servs.*, 553 So. 2d 1351 (Fla. 1st DCA 1989); *State Board of Administration v. Huberty*, 46 So. 3d 1144 (Fla. 1st DCA 2010); and *Consolidated-Tomoka Land Co. v. St. Johns River Water Mgmt. Dist.*, 717 So. 2d 72 (Fla. 1st DCA 1998).

IV. The Proposed Rule is Arbitrary and Capricious

39. An agency rule is arbitrary if it is “not supported by logic or the necessary facts” and capricious if it is “adopted without thought or reason” or if it is “irrational.” Section 120.58(8)(e), Florida Statutes.

40. The Proposed Rule is arbitrary and capricious because it is not supported by logic or necessary facts and adopted without thought or reason for failure to logically connect with the

enabling statutes. The Proposed Rule fails for impermissibly and irrationally linking the detailed syllabus requirements to the statute.

41. Furthermore, affected faculty members have argued the syllabus requirement that, “Student assignments, including at a minimum, the assignment title, a brief narrative description of the assignment, and, if applicable, any required readings,” is unreasonable. There are no facts to support such a requirement that must be achieved 45-days prior to the start of a class and defies practical logic as most courses are taught by adjunct faculty members who are typically hired sometimes only two weeks prior to the start of a class. In addition, the rule fails to logically account for the natural fluidity of class progression throughout any semester, that most oftentimes requires the professor to alter the syllabus prior to a given class, thus causing assignments and assigned reading to deviate from the initial course syllabus. Practically, it can be assumed that almost every instructor would violate the rule at multiple instances throughout the semester by making simple deviations from the syllabus.

42. In the State of Florida, throughout the hurricane season there are also instances where the state closes these institutions for the safety of campus personnel and students due to unpredictable weather. Should such an event occur, there would be a necessary course correction to account for such closures, and the initial syllabus would no longer be effective as most, if not all, requirements would need to be corrected.

43. With no stated rule allowing for approval of any deviations by faculty chairs or deans, each instructor at each institution could again violate this rule on multiple occasions throughout the semester.

44. If the language of a rule is contrary to facts on the ground, 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).

45. Creating a new requirement by linking the syllabi to the statute is irrational, and in creating the new requirement, the Department did not provide any basis or reasoned explanation. The Department has essentially engaged in policymaking under the guise of rulemaking to create a requirement, a violation of which would impose sanctions on an employee organization and has done so without a specific grant of legislative authority. Without a specific grant of delegated legislative authority, the Department's effort to render a policy decision through the rulemaking process is improper. *Smith v. Fla. Dep't of Corr.*, 920 So. 2d 638, 641–42 (Fla. 1st DCA 2005) (“While one may argue that this is appropriate public policy, such a policy decision should be made by the Legislature rather than the executive branch.”).

V. Conclusion

46. In light of the aforementioned arguments, there is a concern and fear that should this Proposed Rule be deemed valid, it would create a pathway for the Department to flout the rulemaking requirements of Ch. 120, Florida Statutes, and continue to creatively expand on the language of its enabling statutes, enlarge its authority and in so doing create policies, in the guise of rules, that essentially contravene the statutes under which it is charged by the State of Florida to operate. The Department would become its own authority, operating not as an executive branch of government, but as its own legislature, crafting rules/policies as it deems appropriate and depriving the citizens of the State of Florida of the transparency, predictability and authority of having a legislature that operates at the will of the people. The Department could, under a ruling

that authorizes this Proposed Rule, be an unregulated, and unchecked arm of the Executive Branch, operating at the whim of the Executive Branch while at the same time violating the Separation of Powers doctrine. That is the main purpose rulemaking is codified in Ch. 120, Florida Statutes, to ensure that executive agencies operate and create rules as mandated by the legislature and not by the executive.

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V. Request for relief

WHEREFORE, Petitioners request:

- a. The Division of Administrative Hearings (“Division”) assume jurisdiction over this matter and assign an Administrative Law Judge to conduct a formal administrative hearing;
- b. A Final Order be entered: determining that the Proposed Rule is an invalid exercise of delegated legislative authority; awarding reasonable attorneys’ fees and costs in favor of Petitioners pursuant to Section 120.595(2), Florida Statutes, or other such authority as the Division deems appropriate; and,
- c. Providing such other relief as the Administrative Law Judge deems appropriate.

RESPECTFULLY SUBMITTED this 24th day of November, 2025.

 Colin M. Roopnarine, B.C.S. Grossman, Roopnarine & Bayo, LLC 2022-2 Raymond Diehl Road Tallahassee, FL 32308 Ph.: (850) 385-1314 Fax: (850) 385-4240 Email: c.roopnarine@grblawfirm.com	<u><i>/s/ Virginia Edwards</i></u> Virginia Edwards General Counsel FL. Bar No. 1003243 Florida Education Association 213 S Adams Street Tallahassee, Florida 32301 Ph: (850) 201-2800 Email: virginia.edwards@floridaea.org
 Christopher Dierlam Grossman, Roopnarine & Bayo, LLC 2022-2 Raymond Diehl Road Tallahassee, FL 32308 Ph.: (850) 385-1314 Fax: (850) 385-4240 Email: c.dierlam@grblawfirm.com	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following party via electronic mail on this 24th day of November, 2025. Colin M. Roopnarine, Esq.



Colin M. Roopnarine

W. David Chappell
General Counsel
Florida Department of Education
1544 Turlington Building
Tallahassee, Florida 32399-0400
Phone: 850-245-0442

E-mail: David.Chappell@fldoe.org