

**FLORIDA ADMINISTRATIVE LAW**  
**LAW 6521**

**FALL 2018**

**COURSE SYLLABUS**

Honorable Cathy M. Sellers  
[ch120@ufl.edu](mailto:ch120@ufl.edu)  
(850) 980-1210 (cell)

**I. COURSE CONTENT AND GOALS/OBJECTIVES**

This course is about Florida state executive branch agencies, executive branch governmental power, and the processes and standards applicable to the exercise of executive branch agency power with respect to persons regulated by the executive branch.

This course aims to provide students with a comprehensive understanding of various administrative processes established in Chapter 120, Florida Statutes (the Florida Administrative Procedure Act, or "APA"), and to provide students with an understanding of the role of the Florida APA in creating and determining the substantive and procedural legal rights of persons regulated by the executive branch agencies of Florida government.

To that end, this course will examine the respective roles of the Florida Legislature in establishing statutory due process with respect to the exercise of delegated statutory authority by Florida executive branch agencies; the Florida executive branch agencies in interpreting and implementing that delegated statutory authority; and the Florida courts in enforcing statutory due process under the APA.

By the end of this course, students should :

1. Possess a fundamental understanding, and a basic working knowledge, of each of the administrative processes established in Chapter 120, Florida Statutes, including the purpose of, and the standards and requirements applicable to, each of these administrative processes.

2. Be able to identify the specific administrative process or processes in Chapter 120 that are pertinent to particular sets of circumstances involving agency action, and to apply these processes in determining and discussing pertinent administrative remedies and/or courses of action under Chapter 120, Florida Statutes.
3. Have a basic understanding of the respective roles of the Florida Legislature, Florida executive branch agencies, and Florida courts, and to be able to apply this understanding in order to determine appropriate remedies and/or courses of action in the administrative law context.

## **II. COURSE INFORMATION**

**A. Class Time and Location:** This course meets from 10:00 a.m. to 11:40 p.m. on Fridays, beginning on August 17, 2018 and ending on Tuesday, November 20, 2018, in Holland Hall Room 382 (HOL 382). The class will not meet on November 2, 2018 (Homecoming Friday) or on November 23, 2018 (Friday after Thanksgiving).

**B. Course Credit:** This is a two (2) academic credit hour course.

**C. Materials:**

Florida Administrative Law/LAW 6521 (Fall 2018) Statutes and Rules Booklet (available for purchase at College of Law Bookstore)

Cases and Other Materials posted for each week's class on our UF E-Learning Course Page

Optional Reading and other optional resources posted on our UF E-Learning Course Page

**D. Course Websites:**

\* An E-Learning Course Page (hereafter "Course Page" ) has been created for Florida Administrative Law, LAW 6512 (Fall 2018). To access it, go to <http://elearning.ufl.edu/> , log in, and find the course page for Florida Administrative Law, LAW 6521.

\* In addition, I use TWEN to post all materials. The materials posted on TWEN

are the same as those posted on the Course Page.

Therefore, you may use either the Course Page or TWEN or both to access all assignments and course materials.

### **E. Course Communications, Assignments, and Announcements**

The Course Page for Florida Administrative Law, LAW 6521, and the TWEN page for Florida Administrative Law, LAW 6521, are the primary means by which I will formally communicate with you outside of class.

The class assignments, course-related announcements, assigned cases, and any supplemental or additional course materials will be posted on our Course Page and in TWEN. Therefore, please regularly check the Course Page or TWEN for these items. You will be alerted by email when I post class assignments, assigned cases, other class materials, supplemental course materials, and announcements.

I am also available on an informal basis by email at [ch120@ufl.edu](mailto:ch120@ufl.edu) and on my cell phone, which is 850-980-1210. My only stipulations are that you please do not contact me before 8:00 a.m. or after 10:00 p.m., unless it is an emergency, and that you please understand that it may be several hours before you get a response, depending on my professional and personal schedules.

### **F. Instructor Availability and Office Hours**

I have scheduled office hours for 12 noon to 1:00 pm on the Fridays on which we have class, and I will work with you to schedule other appointment times as necessary, based on my availability. Because I am not in Gainesville other than on Fridays, I strive to otherwise make myself as accessible as possible, within reason. Once I have obtained my office room number, I will post that information on our Course Page and in TWEN.

### **G. University of Florida Policy on Accommodating Students with Disabilities**

Students requesting accommodations for disabilities must first register with the Disability Resource Center (352-392-8565; <http://www.dso.ufl.edu/drc/>) by providing appropriate documentation. Once registered, students will receive an accommodation letter, which must be presented to the College of Law Office of Student Affairs when requesting accommodation. Students with disabilities should

follow this procedure as early as possible in the semester.

## **H. University of Florida Policy on Academic Misconduct**

Academic honesty and integrity are fundamental values of the University community. Students are expected to understand and adhere to the UF College of Law Honor Code. The Honor Code is set forth at:

<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>

## **III. COURSE POLICIES AND GRADING**

### **A. Attendance/ Participation/ Decorum**

Class attendance is required, subject to the University of Florida Attendance Policies established at

<https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>.

Roll will be taken each class, and you are expected to be in attendance. If you anticipate missing class, please notify me by email before class. Except in cases involving excused absences for the reasons set forth the UF Attendance Policies (link above), which includes the observance of religious holidays, absences that exceed 15% of the hours in which our course meets will result in ineligibility to receive credit for the course.

You are expected to be prepared for class and to participate in class discussions, both voluntarily and when called on to contribute. As noted below, class participation is considered in your final course grade, up to half of a letter grade.

During class, your cell phones must be turned off or placed on "quiet" mode, and you are requested to please not make or receive telephone calls, send or receive text messages, or engage in internet surfing, social media use, instant messaging, playing games, checking email, or any other non-course related activity. These activities are a distraction to you, your fellow students, and the professor. Furthermore, they are discourteous and are a violation of University of Florida College of Law rules.

## **B. Course Grade**

Your course grade primarily will be determined based on a final examination, which is an essay/short answer format exam, and for which you may use your computers. The exam is “open book” and you will be permitted to use your written outline, class notes and materials, cases, and statute and rules booklet.

Class participation (which includes being prepared for class) is also factored in, up to half a letter grade, in determining your final course grade.

Per College of Law faculty policy, the mandatory mean grade for all course sections having over 15 students is 3.15 – 3.25, inclusive. Please refer to the College of Law's Academic Policies posted on the College of Law Office of Student Affairs webpage.

Grade points are awarded according to the following scale.

<b>Letter Grade</b>	<b>Point Equivalent</b>
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

## **C. Final Exam Format and Schedule**

The final exam for this course consists of two (2) essay questions and several short answer questions. It is open book and open notes. This means that you will be permitted to use your written outline, class notes and materials, cases, and statute and rules booklet. A sample exam will be posted on our course's Canvas webpage.

The final exam is scheduled for Wednesday, December 5, 2018, from 1:00 pm to 5:00 p.m. (location to be announced). Note: the full scheduled time is rarely

needed to complete the exam. The exam takes most students three hours to three-and-a-half hours to complete.

#### **D. Course Evaluation**

Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations typically are open the last two or three weeks of the semester but students will be given specific times when they are open. Summary results of these assessments are available to students at <http://evaluations.ufl.edu/results/>.

#### **IV. OPTIONAL FLORIDA ADMINISTRATIVE LAW RESOURCES**

Florida Administrative Practice, Florida Bar CLE Manual (Book and CD). This treatise is an excellent primer for most Florida Administrative Law topics. This book is available from LexisNexis.com. (The 11th edition is the most recent edition, but editions as far back as the 9th edition are sufficiently current for this course.)

Issues of the Florida Law Review, the Florida Bar Administrative Law Section's Newsletter, and The Florida Bar Journal contain excellent articles on Florida Administrative Law. (These materials also generally are available on Westlaw and LEXIS.) From time to time, I will post pertinent articles from these and other sources for optional reading on our Course Page, and I will alert you when I do so.

#### **V. FLORIDA GOVERNMENT RESOURCES ONLINE**

MyFlorida.com <http://www.myflorida.com/>

Gov't Categories <http://www.myflorida.com/taxonomy/government/>

##### **A. Florida Executive Branch**

Agency Listing <http://www.myflorida.com/directory/>

State Agencies and Organizations  
<http://www.myflorida.com/taxonomy/government/executive%20branch/>

Division of Administrative Hearings <http://www.doah.state.fl.us/ALJ/>

Florida Administrative Code/Florida Administrative Register  
<https://www.flrules.org/>

Office of the Governor      <http://www.flgov.com/>

Executive Orders      <http://www.flgov.com/all-executive-orders/>

Rules and Rulemaking  
[http://floridahasarighttoknow.myflorida.com/regulation\\_rulemaking](http://floridahasarighttoknow.myflorida.com/regulation_rulemaking)

The Governor and Cabinet      <http://www.myflorida.com/myflorida/cabinet/>

Florida Office of the Attorney General

Attorney General (Home)      <http://myfloridalegal.com/>

Open Government  
<http://www.myfloridalegal.com/pages.nsf/Main/314BA231F89C0C8A8525791B006A54E2>

Attorney General Opinions  
<http://www.myfloridalegal.com/pages.nsf/Main/4FF72ECF62927EEA85256CC6007B4517>

**B.      Florida Legislature**

Florida Legislature - Online Sunshine  
<http://www.leg.state.fl.us/Welcome/index.cfm?CFID=21382363&CFTOKEN=16706481>

Joint Admin Procedures Committee      <http://www.japc.state.fl.us/>

Chapter 120 Legal Research  
<http://www.japc.state.fl.us/Pages/Research.aspx>

Chapter 120 Annotated  
<http://www.japc.state.fl.us/Pages/ResearchPages/Annotated120.aspx>

Office of Program Policy Analysis & Government Accountability  
<http://www.oppaga.state.fl.us/government/storgchart.aspx>

**C. Florida State Courts**

Florida State Courts <http://www.flcourts.org/>

Florida Supreme Court  
<http://www.flcourts.org/florida-courts/supreme-court.stml>

District Courts of Appeal  
<http://www.flcourts.org/florida-courts/district-court-appeal.stml>

**D. Other Resources**

Florida Bar Journal <https://www.floridabar.org/news/tfb-journal/>

Administrative Law Section <http://www.flaadminlaw.org/>

Admin Law Section Publications  
<http://www.flaadminlaw.org/publications.php>

Admin Law Resource Links  
<http://www.flaadminlaw.org/resources.php>

Environmental & Land Use Section <http://eluls.org/>

Environmental Links <http://eluls.org/links/>

**VI. STATEMENT OF COMPLIANCE WITH ABA STANDARD 310**

As noted above, this is a two (2) credit course. We meet for a class period of 1 hour and 40 minutes per week (10:00 a.m. to 11:40 a.m.) on Fridays, as specified above. Additionally, the reading assignments for each of the course topics set forth below (which also will be posted/updated on our Course Page and TWEN page on a weekly basis) will require a minimum four (4) hours of out-of-class work consisting of reading and/or other class preparation as assigned, thus meeting the American Bar Association Standard 310 requirement.



**FLORIDA ADMINISTRATIVE LAW (LAW 6521) —FALL 2018**  
**TOPICS AND CASE LAW ASSIGNMENTS**

**I. Introduction to Florida Administrative Law and Florida's Nondelegation Doctrine**

Article II, s. 3, Florida Constitution

Case —Bush v. Schiavo

Other materials: 2003-418, Laws of Florida (House Bill 35E)

**II. Agencies Subject to Chapter 120, F.S.**

Statute/Rule: F.S. 120.52(1); Rule 28-101.001, F.A.C.

Cases: *Booker Creek v. Pinellas Planning Council*, 433 So. 2d. 1306 (Fla. 2d DCA 1983)

*Department of Insurance v. Florida Association of Insurance Agents*, 813 So. 2d 981 (Fla. 1st DCA 2002)

*First Quality Home Care, Inc. v. Alliance for Aging, Inc.*, 14 So. 3d 1149 (Fla. 3d DCA 2009)

**III. Administrative Adjudication under ss. 120.569 and 120.57, F.S.**

**Introduction to Administrative Adjudication**

Statute/Rule: FS. 120.569, 120.57(1) & (2); Chapter 28-106, FAC, Parts I-III

**"Agency Action" and Clear Point of Entry**

Statute/Rule: F.S.120.569(1); Rules 28-106.111 and 28-106.104, FAC.

Cases

*Capeletti v. Department of Transportation*, 362 So. 2d 346 (Fla. 1st DCA

1978)

*General Development Utilities v. Department of Env'tl Reg.*, 417 So. 2d 1068 (Fla. 1st DCA 1982)

*Friends of the Hatchineha, Inc. v. Department of Env'tl Reg.*, 580 So. 2d 267 (Fla. 1st DCA 1991)

*Gopman v. Department of Education*, 908 So. 2d 1118 (Fla. 1st DCA 2005)

### **Timely Requesting an Administrative Hearing**

Statute/Rule: FS. 120.569(2)(a); Rules 28-106.104, 28-106.201

#### Cases

*Manasota-88, Inc. v. Department of Env'tl Regulation*, 417 So. 2d 846 (Fla. 1st DCA 1982)

*Accardi v. Department of Env'tl Protection*, 824 So. 2d 992 (Fla. 4th DCA 2002)

*Cann v. Department of Children and Family Services*, 813 So. 2d 237 (Fla. 2nd DCA 2002)

*Brown v. Department of Financial Services*, 899 So. 2d 1246 (Fla. 4th DCA 2005)

### **Standing to Request Administrative Hearings under ss. 120.569 and 120.57**

Statute/Rule: F.S. 120.569(1), F.S.; Rules 28-106.201, 28-106.205, F.A.C.

#### Cases

*Agrico Chemical Co. v. Department of Env'tl Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981)

*Village Park Mobile Home Owners Ass'n v. Department of Bus. Reg.*, 506 So.

2d 426 (Fla. 1st DCA 1987)

*Boca Raton Mausoleum v. Department of Banking & Finance*, 511 So. 2d 1060 (Fla. 1st DCA 1987)

*Mid-Chattahoochee River Users v. Department of Env't'l Protection*, 948 So. 2d 794 (Fla 1st DCA 2007)

*Florida Soc'y of Ophthalmology v. Board of Optometry*, 532 So. 2d 1279 (Fla. 1st DCA 1988)

*Friends of the Everglades v. Board of Trustees*, 595 So. 2d 186 (Fla. 1st DCA 1992)

*Florida Home Builders Ass'n v. Department of Labor*, 412 So. 2d 351 (Fla. 1982)

*W. Frank Wells Nursing Home v. Agency for Health Care Admin.*, 27 So. 3d 73 (Fla. 1st DCA 2010)

### **Administrative Hearings under Sections 120.569 and 120.57, F.S.**

#### **A. "Formal" Administrative Hearings in General**

Statute/Rule: F.S. 120.57(1), F.S.; Rule Chapter 28-106, Part II

#### **B. De Novo Proceeding, Burden of Proof, and Standard of Proof**

Statute/Rule : F.S. 120.57(1)(c), (j); Rule 28-106.213

#### **Cases**

*Agrico Chemical Co. v. Department of Env't'l Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981)

*Village Park Mobile Home Owners Ass'n v. Department of Bus. Reg.*, 506 So. 2d 426 (Fla. 1st DCA 1987)

*Boca Raton Mausoleum v. Department of Banking & Finance*, 511

So. 2d 1060 (Fla. 1st DCA 1987)

*Mid-Chattahoochee River Users v. Department of Env'tl Protection*, 948 So. 2d 794 (Fla 1st DCA 2007)

*Florida Soc'y of Ophthalmology v. Board of Optometry*, 532 So. 2d 1279 (Fla. 1st DCA 1988)

*Friends of the Everglades v. Board of Trustees*, 595 So. 2d 186 (Fla. 1st DCA 1992)

*Florida Home Builders Ass'n v. Department of Labor*, 412 So. 2d 351 (Fla. 1982)

### **C. Recommended and Final Orders**

#### **Findings of Fact and Conclusions of Law**

Statute/Rule: F.S. 120.569(2)(1), 120.57(1)(1); Rules 28-106.215, 28-106.216

#### **Cases**

*Heifetz v. Department of Business Regulation*, 475 So. 2d 1277 (Fla. 1st DCA 1985)

*Schrimsher v. School Board of Palm Beach County*, 694 So. 2d 856 (Fla. 4th DCA 1997)

*Gross v. Department of Health*, 819 So. 2d 997 (Fla. 5th DCA 2002)

*B.B. v. Department of Health and Rehab. Svcs.*, 542 So. 2d 1362 (Fla. 3d DCA 1989)

*Florida Power & Light Co. v. Siting Board*, 693 So. 2d 1025 (Fla. 1st DCA 1997)

*Barfield v. Department of Health*, 805 So. 2d 1008 (Fla. 1st

DCA 2001)

**Exceptions and Responses to Exceptions**

Statute/Rule: F.S. 120.57(1)(b), (k); Rule 28-106.217

**E. Administrative Hearings Not Involving Disputed Facts**

F.S. 120.57(2); Rule 28-106, Part III

Cases

*Spuza v. Department of Health*, 838 So. 2d 676 (Fla. 2d DCA 2003)

*Autoworld Corp. v. Department of Highway Safety*, 754 So. 2d 76 (Fla. 3d DCA 2000)

**IV. Agency "Policy" as Applied in Adjudicatory Proceedings**

Statute/Rule: F.S. 120.57(1)(e)

**V. Rulemaking and Rule Challenges**

**A. Definition of "Rule"**

Statute: F.S. 120.52(15), 120.536, 120.54

Cases

*Amos v. Department of Health and Rehab. Services*, 444 So. 2d 43 (Fla. 1st DCA 1984)

*Austin v. Department of Health and Rehab. Services*, 495 So. 2d 777 (Fla. 1st DCA 1986)

*Environmental Trust v. Department of Env't'l Protection*, 714 So. 2d 493 (Fla. 1st DCA 1998)

*McCarthy v. Department of Insurance*, 479 So. 2d 135 (Fla. 2d DCA 1985)

**B. Retroactivity of Rules under s. 120.54**

Statute/Rule: F.S. 120.54(1)(f)

Cases — See *Environmental Trust, McCarthy*

**C. Petitions for Rulemaking**

Statute/Rule: F.S. 120.54(7), 120.54(3)(d)

**D. Rulemaking under s. 120.54, F.S.**

**i. Rulemaking Process in General**

Statute/Rule: F.S. 120.536, 120.54; Rule 28-103

**ii. Statement of Estimated Regulatory Cost**

Statute/Rule: F.S. 120.54(3)(b), 120.541

**iii. Small Business Impact**

Statute/Rule: F.S. 120.54(3)(b)

**iv. Emergency Rules**

Statute/Rule: F.S. 120.54(4)

Cases

*Florida Health Care Assoc. v. Agency for Health Care Admin.*, 734 So. 2d 1052 (Fla. 1st DCA 1998)

*Florida Democratic Party v. Hood*, 734 So. 2d 1148 (Fla. 1st DCA 2004)

**E. Rule Challenges under S. 120.56, F.S.**

**i. Basic Principles of Rule Challenges**

Statute/Rule: F.S. 120.56

**ii. Challenging Proposed and Existing Rules**

Statute/Rule: F.S. 120.52(8), 120.53(6), 120.536, 120.56(1), 120.56(2), 120.56(3)

Cases

*Department of Administration v. Stevens*, 344 So. 2d 290 (Fla. 1st DCA 1977)

*Financial Services Commission v. Florida Insurance Council*, 938 So. 2d 545 (Fla. 1st DCA 2006)

*Florida League of Cities v. Department of Env'tl Regulation*, 603 So. 2d 1362 (Fla. 1st DCA 1992)

*St. Johns River Water Management District v. Consolidated-Tomoka*, 717 So. 2d 72 (Fla. 1st DCA 1998)

*Department of Business and Professional Reg. v. Calder*, 724 So. 2d 100 (Fla. 1st DCA 1998)

*Southwest Florida Water Management District v. Save the Manatee Club*, 773 So. 2d 321 (Fla. 1st DCA 594 2000)

*Board of Trustees v. Day Cruise Association ("Day Cruise I")*, 794 So. 2d 696 (Fla. 1st DCA 2001)

*Board of Trustees v. Day Cruise Association ("Day Cruise II")*, 798 So. 2d 847 (Fla. 1st DCA 2001)

*Department of Health & Rehab. Services v. McTigue*, 387 So. 2d 454

(Fla. 1st DCA 1980)

*Cortes v. Board of Regents*, 655 So. 2d 132 (Fla. 1st DCA 1995)

*Florida Board of Medicine v. Florida Academy of Cosmetic Surgery*,  
808 So. 2d 243 (Fla. 1st DCA 2002)

*Department of Health v. Merritt*, 919 So. 2d 561 (Fla. 1st DCA 2006)

**iii. Challenging Agency Statements as Unadopted Rules**

Statute/Rule: F.S. 120.56(4)

Cases — See Environmental Trust, Day Cruise I, Day Cruise II

**F. Standing to Challenge Rules under S. 120.56, F.S.**

Statute/Rule: F.S. 120.56(1) - (4)

Cases

*Florida Medical Assoc. v. Department of Professional Regulation*,  
426 So. 2d 1112 (Fla. 1st DCA 1982)

*Board of Optometry v. Florida Soc'y of Ophthalmology*, 538 So. 2d  
878 (Fla. 1st DCA 1988)

*Ward v. Board of Trustees*, 651 So. 2d 1236 (Fla. 1st DCA 1995)  
*Coalition of Mental Health Professions v. Department of Business  
Reg.*, 546 So. 2d 27 (Fla. 1st DCA 1989)

**VI. Declaratory Statements; Variances and Waivers**

**A. Declaratory Statements**

Statute/Rule: F.S. 120.565; Rule 28-105



Case

*Department of Bus. and Prof. Reg. v. Investment Corp. of Palm Beach*, 747 So. 2d 347 (Fla. 1999)

**B. Variances and Waivers**

Statute/Rule: F.S. 120.542

**VII. Judicial Review of Agency Action under S. 120.68, F.S.**

**A. Judicial Review in General**

Statute/Rule: F.S. 120.68

**B. Standing to Seek Judicial Review**

Statute/Rule: F.S. 120.68(1)

Cases

*Florida Chapter of the Sierra Club v. Suwannee American Cement Co.*, 803 So. 2d 520 (Fla. 1st DCA 2001)

**C. Standards of Judicial Review**

Statute/Rule: F.S. 120.68(7)

**VIII. Exhaustion of Administrative Remedies**

Case

*Key Haven v. Board of Trustees*, 427 So. 2d 153 (Fla. 1983)