

6A-1.094125, Special Magistrate for Unresolved Student Welfare Complaints.

(1) Purpose. As an alternative to filing a declaratory judgment action in court against a school district, a student's parent may request a Special Magistrate be appointed to address a parent's dispute involving the requirements described in s. 1001.42(8)(c), F.S. The purpose of this rule is to provide information about the process to request appointment of a Special Magistrate.

(2) Definitions. In this rule, the terms have the following meaning:

(a) "Days" means business days and excludes state, federal and school district holidays;

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

(c) "Parental Request for Appointment of a Special Magistrate" or "Parental Request" means the written form adopted by and incorporated into this rule.

(d) "Parent" means the definition of that term provided in s. 1000.21, F.S.;

(e) "Parties" means the parent who submitted a request for appointment of a special magistrate and the school district;

(f) "Special Magistrate" means an administrative law judge provided by the Division of Administrative Hearings under s. 120.65(6), F.S., or a person appointed by the Commissioner of Education who is a member of the Florida Bar in good standing with a minimum of five years of administrative law experience;

(3) Parental Obligations. In order to request appointment of a special magistrate, a parent must:

(a) Complete the form entitled "Parental Request for Appointment of a Special Magistrate;"

(b) Describe the nature of the dispute;

(c) Describe the resolution or relief sought at the school and school district level;

(d) Describe the resolution sought from the special magistrate and the State Board of Education;

(e) Demonstrate that before filing for the appointment of a special magistrate, resolution of the dispute was sought by the parent with the student's principal and subsequent to that, resolution was sought by the parent at the school district level, all in accordance with the procedures adopted by the school district for resolution of the dispute; and

(f) Provide and maintain accurate contact information such as an email address, telephone number and mailing address for the parent.

(4) School District Obligations. Each school district must:

(a) Designate at least one person responsible for responding to Departmental inquiries regarding a request for appointment of a special magistrate and notify the Department of the name and email address of the individual;

(b) Within five (5) days of receipt of notice that a parent has requested the appointment of a special magistrate as described in subsection (3), provide to the Department a statement addressing whether any of the grounds for dismissal as described in paragraph (5)(b) of this rule apply to the parental request for appointment of a special magistrate; and

(c) Expeditiously contract for payment of a special magistrate appointed by the Commissioner of Education and notify the Department within no more than twenty (20) days after receiving notice of the appointment of a Special Magistrate that an agreement has been reached for payment with the appointed special magistrate.

(5) Department of Education Obligations.

(a) Review of "Parental Request for Appointment of a Special Magistrate." Upon receipt of the form entitled "Parental Request for Appointment of a Special Magistrate," the Department will:

1. Review the form and provide an opportunity for the parent to provide missing or supplemental information within twenty (20) days of receipt of a Departmental notice that missing or supplemental information is needed;

2. Notify the school district of receipt of the Parental Request for Appointment of a Special Magistrate; and

3. Provide written notice to the parent and school district that the request has been provided to the Commissioner of Education for consideration or provide notice of dismissal of the Parental Request.

(b) Dismissal of Parental Request for Appointment of Special Magistrate by the Department. The Department will dismiss a Parental Request under the following circumstances:

1. The parent notifies the Department that the dispute has been resolved or withdrawn;

2. The Parental Request form has not been substantially completed, after the opportunity to provide missing or supplemental information has been provided;

3. The parent has not demonstrated full and complete use of any school and school district procedures adopted by the district under s. 1001.42(8)(c)7., F.S., for resolving the dispute;

4. The matter in dispute falls under the Individuals with Disabilities Education Act, as amended, and its implementing regulations, or under s. 1003.56, F.S., and rules adopted by the Department to implement s. 1003.56, F.S., or is otherwise outside of the scope of the student welfare requirements set forth in s. 1001.42(8)(c)1.-7., F.S.;

or

5. The parent has failed to maintain accurate contact information with the Department or the Special Magistrate.

(c) Obligations Post Appointment of Special Magistrate. Upon appointment of a special magistrate by the Commissioner under subsection (6) of this rule, the Department will:

1. Provide the parties notice of the appointment of a Special Magistrate and advise the parties of the following:

a. the name and contact information of the special magistrate;

b. the time frame when the special magistrate is expected to provide a written recommendation to the State Board of Education; and

c. the requirement to maintain accurate contact information with the Department and the Magistrate;

2. Provide to the Special Magistrate the following:

a. The Parental Request and any supplemental information received by the Department upon review of the Parental Request; and

b. In order to allow sufficient time for review by the State Board of Education of a recommendation rendered by the Special Magistrate, the time frame(s) when a recommended decision is expected to be provided by the Special Magistrate to the parties and the State Board of Education. This timeframe may be extended by agreement of the parties.

(6) Commissioner of Education. The Commissioner of Education will review each pending completed Parental Request and decide whether to appoint a special magistrate utilizing the following factors:

(a) Whether there is authority and the ability to provide effective relief to the parent through the special magistrate process;

(b) Whether the parent is seeking or has already sought relief in court;

(c) Whether due to a change in circumstances, such as a change in a student's school or grade level or a change in procedures or training, the dispute is moot or not ripe; and

(d) Whether grounds for dismissal of the Parental Request, as described in paragraph (5)(b) of this rule, are found to exist.

(7) Special Magistrate Procedures.

(a) Where an administrative law judge provided by the Division of Administrative Hearings is available and assigned to act as the Special Magistrate, proceedings before the Special Magistrate will be held in accordance with

the rules of the Division of Administrative Hearings, except where inconsistent with this rule or s. 1001.42(8)(c), F.S.

(b) Where a Division of Administrative Hearings administrative law judge is unavailable or the Commissioner appoints the Special Magistrate, the following procedures apply:

1. The special magistrate shall set and notify all parties of the time and place of the hearings.

2. Any party directly involved in the proceeding may appear at the hearing with or without counsel or by other representative.

3. The parties or the magistrate may call, examine, and cross-examine witnesses and enter evidence into the record. Witnesses shall be examined under oath. Evidentiary matters before the special magistrate shall be governed by the Administrative Procedure Act.

4. The magistrate may permit the submission of written memorandum by the parties.

(c) Following the close of the hearing, the Special Magistrate shall prepare a recommended decision, determining whether a parent has demonstrated a violation of the requirements of s. 1001.42(8)(c), F.S., by the school district. The Special Magistrate's recommended decision shall be based upon the evidence presented and argument made before the special magistrate. The recommendation shall include findings of fact and recommendations for resolution of the dispute by the parties.

(d) The Special Magistrate's recommended decision is due within thirty (30) days of the date a parent request is received by the special magistrate from the Department. The 30-day time frame can be extended upon agreement of the parent and school district. A party may be deemed to have agreed to an extension if unavailable for hearing at the date and time set or where a party fails to timely respond to scheduling orders issued by the magistrate.

(8) The following form is incorporated by reference and may be obtained at <https://www.fldoe.org/schools/k-12-public-schools/>: Parental Request for Appointment of a Special Magistrate, Form No. SM-1 (effective September 2022).

Rulemaking Authority 1001.02(1), (2)(n), 1001.42(8)(c)7.b., FS. Law Implemented 1001.42(8)(c)7.b., FS. History -

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