

**6A-1.094127 Special Magistrate for Teacher Empowerment.**

(1) Purpose. A teacher may request a Special Magistrate be appointed if the teacher was directed by his or her school or school district to violate general law or State Board rules as described in s. 1015.06, 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 below 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) “Teacher Request for Appointment of a Special Magistrate” or “Teacher Request” means the written form adopted by and incorporated into this rule;

(d) “Teacher” means a classroom teacher as defined in s. 1012.01(2)(a), F.S.;

(e) “Parties” means the teacher who submitted a request for appointment of a Special Magistrate and the school district;

(f) “School District Procedure or Practice” means a written or unwritten, generally applicable policy or procedure established by the school or school district that guides, attempts to guide, or is used to guide teacher conduct, or a written or unwritten directive or request from an employee of the school or school district with supervisory authority over the teacher or from another employee when credibly backed with the threat of disciplinary action; and

(g) “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 (5) years of administrative law experience.

(3) Teacher Obligations. To request appointment of a Special Magistrate, the teacher must:

(a) Complete the form entitled “Teacher Request for Appointment of a Special Magistrate;”

(b) Describe the nature of the dispute, including the school district procedure or practice in question and the general law(s) or State Board rule(s) the school district is allegedly directing the teacher to violate through its procedure or practice;

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

(d) Describe the resolution sought from the Special Magistrate and the State Board of Education (State Board);

(e) Demonstrate that before filing for the appointment of a Special Magistrate, resolution of the dispute was sought by the teacher with the teacher’s principal and subsequent to that, resolution was sought by the teacher at the school district level, all in accordance with the procedures adopted by the school district for resolution of the dispute. In order to meet this requirement, the teacher must demonstrate that he or she has, in writing, pointed the principal and school district personnel to the specific

provision(s) of general law or State Board rule the district is requiring him or her to violate and how that act or omission would violate that specific provision of general law or State Board rule; and

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

(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 by a teacher and notify the Department of the name and email address of the individual;

(b) Within fifteen (15) days of receipt of notice from the Department that a teacher has requested the appointment of a Special Magistrate, provide to the Department a statement addressing the following:

1. Whether the person requesting the appointment of a Special Magistrate is a classroom teacher employed by the school district;

2. A description of the district's procedures for resolution, including citations where the procedures can be found;

3. Whether the district's procedures for resolution were fully utilized at the school and district level and whether any school district remedies continue to be available for resolution;

4. Whether any of the grounds for dismissal as described in paragraph (5)(b) of this rule apply to the request for appointment of a Special Magistrate; and

5. Any other information which would assist the Department with the request for appointment.

(c) Expeditiously contract for payment of a Special Magistrate appointed by the Commissioner of Education (Commissioner) 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 "Teacher Request for Appointment of a Special Magistrate." Upon receipt of the form entitled "Teacher Request for Appointment of a Special Magistrate," the Department will:

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

2. Provide the completed request for appointment of a Special Magistrate to the school district and provide notice to the district when the district statement required by paragraph (4)(b) is due to the Department; and

3. Provide written notice to the teacher and school district of the appointment of a Special Magistrate or notice of dismissal of

the Teacher's Request by the Department.

(b) Dismissal of a Teacher Request for Appointment of Special Magistrate by the Department. The Department may dismiss the Teacher's Request under the following circumstances:

1. The teacher notifies the Department that the dispute has been resolved or withdrawn;
2. The Teacher Request has not been substantially completed, after the opportunity to provide missing or supplemental information has been provided;
3. The teacher has not demonstrated full and complete use of any school and school district procedures adopted by the district under s. 1015.06, F.S. for resolving the dispute;
4. The request was not made by a teacher or the request does not involve a matter that can be heard by a Special Magistrate; or
5. The teacher 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 must:

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; and
  - c. The requirement to maintain accurate contact information with the Department and the Special Magistrate;
2. Provide to the Special Magistrate the following:
  - a. The Teacher's Request, the district's statement required by paragraph (4)(b), and any supplemental information received by the Department upon review of the Teacher's Request; and
  - b. A timeline for the Special Magistrate to submit the Recommendation to the State Board for the purpose of allowing sufficient time for the State Board to review the Recommendation and facilitating the efficient scheduling of State Board meetings. The timeline may only exceed the 30-day limit in s. 1015.06(1)(a), F.S., and (7)(d) of this rule if agreed to by the parties.

(6) Commissioner of Education. Any request that has not been dismissed by the Department, will be considered by the Commissioner for appointment of a Special Magistrate utilizing the following factors:

- (a) Whether there is authority and the ability to provide effective relief to the teacher through the Special Magistrate process;
- (b) Whether the teacher is seeking or has already sought relief in court;
- (c) Whether grounds for dismissal of the Teacher Request as described in paragraph (5)(b) of this rule exist.
- (d) Whether the teacher retired, left the education field, or is no longer employed by the school or school district party to the

Teacher Request.

(e) Whether a referral to a Special Magistrate would interfere with an investigation, or any other administrative, civil, or criminal proceeding.

(f) Whether resolution could be accomplished more expeditiously through other means.

(7) Special Magistrate Procedures.

(a) Where an administrative law judge provided by the Division of Administrative Hearings (DOAH) is available and assigned to act as the Special Magistrate, proceedings before the Special Magistrate will be held in accordance with DOAH rules, except where inconsistent with this rule or s. 1015.06, F.S.

(b) Where an administrative law judge from DOAH is unavailable or the Commissioner appoints the Special Magistrate, the following procedures apply:

1. The Special Magistrate must 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 and the Special Magistrate may call, examine, and cross-examine witnesses and enter evidence into the record.

Witnesses must be examined under oath. Evidentiary matters before the Special Magistrate will be governed by the Administrative Procedure Act and DOAH rules.

4. The Special Magistrate may permit the submission of written memorandum by the parties; however, the submission of written memorandum may not extend the 30-day timeline established by s. 1015.06(1)(a) and (7)(d) of this rule unless agreed to by the parties.

(c) Following the close of the hearing, the Special Magistrate must prepare a recommended decision (Recommendation), determining whether the teacher has demonstrated that a school or school district directed the teacher to violate general law or State Board rule. The Special Magistrate's Recommendation must be based on the evidence presented and argument made before the Special Magistrate. The Recommendation must include findings of fact, conclusions of law, and recommendations for resolution of the dispute by the parties. The Special Magistrate's findings of fact must be accepted by the State Board unless they are not supported by competent, substantial evidence admitted at the hearing. The Special Magistrate's conclusions of law must be accepted by the State Board unless a contrary conclusion is more reasonable.

(d) The Special Magistrate's Recommendation is due within thirty (30) days of the date the Teacher Request is received by the Special Magistrate from the Department. The 30-day time frame can be extended upon agreement of the parties. 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 Special Magistrate.

(8) Other Procedures.

(a) Initiating a Special Magistrate proceeding described in this rule does not affect an ongoing employment action against a teacher, nor does it prevent a school or school district from initiating employment action against a teacher. However, the Special Magistrate's Recommendation, if approved by the State Board, as well as the State Board's order on the Recommendation, can be used as evidence in an employment action if otherwise permitted by law.

(b) In its order on the Special Magistrate's Recommendation, the State Board may, pursuant to s. 1015.06(1)(c), F.S., order the school district to withhold the superintendent's salary until the school or school district has submitted a statement to the Department in writing that it is no longer directing any teacher to follow the school district procedure or practice the State Board found to violate general law or State Board rule.

(c) If at any point after a Teacher Request is filed and before the State Board votes on the Special Magistrate's Recommendation, the school or school district notifies the Department or the Special Magistrate that the school or school district is no longer directing the teacher to act or refrain from acting as alleged in the Teacher Request, the Department or the Special Magistrate may dismiss the Teacher Request if it finds that the school or school district is unlikely to direct a teacher to act or refrain from acting in the same way in the future.

(9) The following form is incorporated by reference and may be obtained at [https://www.fldoe.org/schools/k-12-public-schools/Teacher's Request for Appointment of a Special Magistrate, Form No. TRSM-1](https://www.fldoe.org/schools/k-12-public-schools/Teacher's%20Request%20for%20Appointment%20of%20a%20Special%20Magistrate) (enter new link) (effective August 2023).

Rulemaking Authority 1001.02(1), (2)(n) FS. Law Implemented 1015.06, FS. History—New \_\_\_\_\_