

6A-1.094126 Special Magistrate for Materials Used in Classroom or School Libraries.

(1) Purpose. The purpose of this rule is to describe the process for a parent to request the appointment of a Special Magistrate to determine whether a school district properly considered a parental objection to the use of specific material in school under s. 1006.28(2)(a)2., F.S.

(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 for Materials used in Classroom or School Libraries” 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(6), 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 (DOAH) under s. 120.65(6), F.S., or a person appointed by the Commissioner of Education (Commissioner) who is a member of the Florida Bar in good standing with a minimum of five years of administrative law experience.

(3) Types of Materials Potentially Subject to the Special Magistrate Process.

(a) Except as set forth in paragraph (3)(b), the appointment of a Special Magistrate will be considered for parental objections to any type of material made available to a student in a school library, included on a school, grade, or classroom reading list, or used in a classroom.

(b) A special magistrate will not be appointed for parental objections to instructional materials that were adopted by a school district or are in the process of adoption by a school district using district procedures for public review and comment as required by ss. 1006.40(4) and 1006.283(2)(b)8., 9., and 11., F.S.

(4) Relief Potentially Available under the Special Magistrate Process. The special magistrate process is available to determine whether a district considered a parental objection under procedures that meet the requirements of s. 1006.28(2)(a), F.S. Relief available to a parent under the special magistrate process does not include the removal of material or limiting student access to material.

(5) Parent Obligations. To request appointment of a Special Magistrate, a parent must:

(a) Complete the Parental Request form referenced in subsection (10) of this rule;

(b) Demonstrate that before filing the Parental Request, the parent filed an objection with the school board and the school board has either ruled on the objection or has failed to timely process the objection under s. 1006.28(2)(a)2., F.S., and the procedures adopted by the school board;

(c) Describe the nature of the original objection submitted to the district, including the title and ISBN of the specific material objected to and the reason for the objection;

(d) Describe how the district failed to establish an adequate policy to address objections to materials as required by s. 1006.28(2)(a)2., F.S., or failed to follow that policy when resolving the objection; and

(e) Describe the resolution sought from the Special Magistrate and the State Board of Education.

(6) 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 fifteen (15) days of receipt of notice from the Department that a parent has requested the appointment of a Special Magistrate as described in subsection (5), provide to the Department the following:

1. The procedure adopted by the school board to address the parent's objection, including a web address where the procedures can be found;

2. A description of the parent's use of these procedures, including the nature of the objection submitted to the district and the district's decision on the objection;

3. A description of any school district remedies that remain available to the parent to resolve the objection; and

4. A statement identifying any of the grounds for dismissal of the request for appointment of a special magistrate, as described in paragraph (7)(b) of this rule.

(c) Expeditiously contract for payment of a Special Magistrate appointed by the Commissioner and notify the Department within 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.

(7) Department of Education Obligations.

(a) Review of Parental Request. Upon receipt of the Parental Request, 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 mailing of a Departmental notice that missing or supplemental information is needed;

2. Notify the school district of receipt of the Parental Request; and

3. Provide written notice to the parent and school district if a Special Magistrate has been appointed or the request has been dismissed.

(b) Dismissal of Parental Request. The Department may dismiss the Parental Request under the following circumstances:

1. The parent notifies the Department that the objection 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 school and school district procedures adopted by the district under s. 1006.28(2)(a), F.S., for resolving the objection;

4. The parent fails to allege that the district either failed to create a policy as required by s. 1006.28(2)(a)2., F.S., or did not follow the policy when ruling on the objection; or

5. The parent 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 (8) 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 must provide a written recommendation to the State Board of Education; 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 Parental Request and any supplemental information received by the Department upon review of the Parental 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 paragraph (9)(d) of this rule if agreed to by the parties.

(8) Commissioner of Education. The Commissioner of Education will review each completed Parental Request that has not been dismissed by the Department under paragraph (7)(b) of this rule 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 the school or district removed the specific material objected to or the district has agreed to reconsider the objection and remedy any procedural errors; and

(d) Whether grounds for dismissal of the Parental Request, as described in paragraph (7)(b) of this rule, are found to exist.

(9) Special Magistrate Procedures.

(a) Where an administrative law judge provided by 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. 1006.28(2)(a)6., 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 paragraph (9)(d) of this rule unless agreed to by the parties.

(c) Following the close of the hearing, the Special Magistrate must prepare a written recommendation (Recommendation), determining whether a parent has demonstrated that the school district has failed to create an adequate policy as required by s. 1006.28(2)(a)2., F.S., or has materially failed to follow that policy. The Special Magistrate's Recommendation must be based upon 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 or stipulated by the parties. 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 Special Magistrate receives the Parental Request 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.

(10) 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 for Materials Used in Classroom or School Libraries, Form No. SM-MAT (DOS Link) (effective September 2023).

Rulemaking Authority 1001.02(1), (2)(n), 1006.28(2)(a)6. FS. Law Implemented 1006.28(2)(a)6. FS. History–New