



Board Agenda Item #	III B: Action Item
Date:	November 12, 2020
To:	Magnolia Board of Directors
From:	Alfredo Rubalcava, CEO & Superintendent
Staff Lead:	Erdinc Acar, CAO; Artis M. Callaham, Dir. SPED and Support
RE: Special Education Services	MPS Special Education Policy Bulletin for Alternative Dispute Resolution Process

Proposed Board Motion

I move that the board approve the Special Education Policy Bulletin Alternative Dispute Resolution Procedures for Magnolia Public Schools.

Introduction

The purpose of this policy is to provide opportunities for parents, students and schools to provide an additional level of accountability and procedures for resolving matters prior to a dispute resulting in a lawsuit. The impact of the policy is to reduce the number of Due Process Cases brought upon Magnolia Public Schools thereby creating more prudent usage of public funding.

Background

Parents of children with learning disabilities may sometimes disagree with how schools manage their children's programs. Fortunately, many of those disagreements can be resolved informally. When problems are severe, parents may need to take formal actions to get them resolved. If this happens, the parents have the right to do so at the School's expense. Parents are not held to the "Frivolous Lawsuit Clause" when using Due Process to sue a Local Education Agency (School). Consequently, this is having a significant impact on schools' budgets. If we can encourage parents to adhere to our Alternative Dispute Resolution (ADR) policy, it can help reduce the exorbitant legal fees for our schools.

Budget Implications

The approval of this item can save schools in legal fees which average 25-30k per Due Process Claim.

Exhibits (attachments):

MPS Special Education Policy Bulletin: Alternative Dispute Resolution Procedures



## Special Education Policy Bulletin Alternative Dispute Resolution Procedures

*Rationale: The purpose of this policy is to provide opportunities for parents, students and schools to provide an additional level of accountability for resolving matters prior to a dispute resulting in a lawsuit. The impact is to reduce the number of Due Process Cases brought upon Magnolia Public Schools thereby creating more prudent usage of public funding.*

At Magnolia Public Schools, we pride ourselves on ensuring that All Students Achieve Academic Excellence. Magnolia Public Schools ensures that the four basic guaranteed rights under the Individuals with Disabilities Education Act (IDEA) are always provided to our students with exceptional needs.

- Free and Appropriate Public Education - Children with special needs are entitled to a public education appropriate to their needs at no cost to their families.
- Least Restrictive Learning Environment - When at all possible, students with special needs must be educated with their general education peers and have the right to choose to attend the school that is closest to their home.
- Supplemental Aids and Services - Children with special needs must be provided with support and services that assist them in benefiting educationally from their instructions program.
- Assessment - An assessment must be completed to determine the child's needs. This may only be done with the parent's informed written consent.

In order to assure that these rights are received, IDEA also includes the following protections:

- Individualized Education Program (IEP)  
The IEP must be written at least annually for all children with special needs. The IEP team consists of those who have assessed the child, school support personnel, a school administrator, general and special education teachers, (EL Teacher when applicable), and the child's parent or legal guardian.
- Due Process  
Due process rights ensure that no changes can be made in a child's program without prior notice to the parents. Further, due process provides a mechanism for the resolution of disagreements.

Parental procedural rights and safeguards are outlined in IDEA, and included in this bulletin. At Magnolia Public Schools, we provide written documentation of these rights in the beginning of

each school year, with every assessment plan and at every IEP meeting. Also, we have all documents on the school's websites for the convenience of our parents. Our Special Education team members are always available to assist parents in understanding these rights and safeguards.

Our dedicated Special Educators go above and beyond the basic requirements set forth by IDEA and IDEIA Individuals with Disabilities Education Act and Individuals with Disabilities Education Improvement Act. We adhere to Section 504 of the Rehabilitation Act of 1973, and Family Educational and Privacy Rights Act, which are the three basic governing statutes supporting our students with special needs. In our implementation of Multi-Tiered Systems of Support (MTSS) all students are entitled to participate in all school activities, academic intervention programs and tiered level supports in an effort to ensure our students achieve at their optimum levels.

However, in the event that any Parent believes the Special Education Team at any Magnolia School has failed to sufficiently comply with Special Education Guidelines or that we have violated students' right to Free and Appropriate Public Education (FAPE), we adhere to the following resolution procedures to ensure that you and your child's rights are safeguarded.

### **Special Education – Alternative Dispute Resolution**

The Individuals with Disabilities Education Act (IDEA) guarantees all children with learning and other disabilities equal educational opportunity, full participation, independent living, and economic self-sufficiency. To help implement this federal law, the IDEA includes a number of procedural safeguards that have been put in place to ensure that your child's rights are fully realized under the law. Among those safeguards are provisions designed to resolve disagreements between parents and schools regarding a child's placement.

When a dispute arises involving a child's educational plan, parents are entitled to be informed about their Procedural Safeguards regarding dispute resolution alternatives, including Alternative Dispute Resolution, arbitration, mediation and due process hearings.

Issues should be resolved by the parties at IEP Team meetings if at all possible; and only if a mutually agreeable resolution is not possible should arbitration, mediation or due process be considered.

### **Alternative Dispute Resolution (ADR)**

The 2004 amendments to the IDEA added a "resolution meeting" requirement to the due process provisions, which is meant to provide parents and the school with an opportunity to resolve the issues prior to the initiation of due process. The requirement provides that, within 15 days of receiving notice of the parent's complaint, and prior to the initiation of a due process hearing, the school must organize a resolution meeting between the parents and those members of the child's IEP Team who have direct knowledge of the facts surrounding the complaint.

A child's parents are entitled to a role in determining the members of the IEP Team that should attend. At Magnolia, an impartial Home Office Staff member must also be present. The team will consist of a parent representative from the school, a special education teacher and anyone the parent elects to attend with the exception of an attorney.

The impartial ADR team will review the concerns and attempt to reach an amicable, written, signed resolution to support the student's best interest. In the event the team does not meet resolution, the Home Office level representative will reach out to the parent within 48 hours, to provide a written offer of resolution to the parents.

If the resolution meeting fails to resolve the due process complaint to the parents' satisfaction, and if the school district otherwise fails to resolve the dispute within 30 days of the receipt of the complaint, then the parent may file a Due Process claim.

The State Department of Education is responsible for ensuring that the assigned hearing officer issues a decision no later than 45 days after the start of the due process hearings, and a copy of the decision must be mailed to both parties at that time. Attorney fees are reimbursed by the school district in a due process hearing where the parents prevail, or on those specific issues over which the parents prevail.

It is important for parents to understand that these procedural safeguards exist, and the circumstances under which these rights should be asserted. The dispute resolution process was explicitly built into the IDEA as a means for strengthening the child's right to educational equity and inclusion.

Issues should be resolved by the parties at IEP Team meetings if at all possible; and only if a mutually agreeable resolution is not possible should Alternative Dispute Resolution, mediation or due process be considered. ADR and Mediation are preferable to due process in that it is a less costly and time-consuming solution to resolving issues between the parents and the school Special Education Teams. Spending exorbitant amounts of public funds to pay for attorney fees is not the best and most effective use of public funding.

### **Arbitration**

Arbitration is a process similar to a trial. Evidence may be presented and witnesses may testify in a semi-formal setting. However, arbitration does not occur in courtrooms. Also, the decision maker is called an arbitrator instead of a judge. He or she is usually selected due to personal knowledge about special education matters instead of being randomly selected like a judge is.

Having arbitration is often a way to provide due process to families involved in a child's special education. Arbitrators are neutral third parties and should be able to decide the legal issues without having any loyalty to either party.

Arbitration often provides ample benefits to parents. It often allows them to feel like they have a greater voice in their child's education. When a case is litigated, the result is often based on the lawyer's argument and performance. Much information may be shared or revealed during the lengthy discovery process. Pretrial motions may dispose of the case before the parent ever has the ability to testify. In arbitration, the parent may be better able to communicate the family's position than litigation allows. The rules of civil procedure or evidence may be relaxed, allowing the parent to more openly communicate.

## **Mediation**

Mediation is a form of dispute resolution where a mediator—an impartial, trained third-party—helps the parties in a dispute resolve their disagreement. The mediation process differs from formal legal proceedings in that the mediator, unlike a judge or hearing officer, does not reach a decision regarding the dispute, but merely facilitates the two parties in reaching an agreement.

The mediation process, as described under the IDEA, must be entered into voluntarily by both sides, must not be used to delay or deny a parent's right to a due process hearing, and must be conducted by a qualified and impartial mediator who has been properly trained in effective mediation techniques.

Mediation does not require an attorney, but parents may choose to be represented by one. The goal of mediation is to resolve the case by coming to a mutually agreeable settlement, which then takes the form of a written contract signed by both parties.

The mediation process must be scheduled in a timely manner, held in a location convenient to the parties involved, guarantee confidentiality of the participants, and use legally binding written agreements.

MPS recognizes that effective communication is paramount in effective conflict resolution and therefore strongly encourages communication strategies that include: Taking personal responsibility for one's own feelings and needs; communication that mutually acknowledges the needs and concerns of one another; and demonstrating honesty and integrity in every interaction. MPS strives to resolve all disagreements, disputes and conflicts amicably as to the best interest of the student.

For IDEA (Revised) Parental Rights and Special Education Procedural Safeguards, please see the attached link:

[IDEA Parental Procedural Rights and Safeguards](#)

**(Sample Parent Letter)**

Date

Name

Address

City, State Zip

Phone number/ Email address

MPS Special Education Director or Home Office Level Support Person

250 E. First Street, Suite 1500

Los Angeles, CA 90012

Dear \_\_\_\_\_,

My son/daughter, \_\_\_\_\_, currently attends Magnolia Science Academy \_\_\_ and is in the \_\_\_\_\_ grade. I am writing to inform you that the school and I are in disagreement concerning: *(State the disagreement and what is being disputed).*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We have been unsuccessful in resolving this dispute, and I am requesting an Alternative Dispute Resolution hearing so that we may resolve our differences. I would like \_\_\_\_\_ (MSA Staff) to addend as my witness and I plan to bring my \_\_\_\_\_, who is not an attorney as I want to resolve this in an amicable manner and in consideration of our school funding that should be utilized to support our children’s education. Please schedule a meeting within the next 15 days to address my concerns. My best day of the week for meetings is, \_\_\_\_\_.

Thank you for your assistance in resolving this matter.

Cooperatively,

(Parent Name)

(Contact phone number and email address)

Cc: Magnolia CEO  
School Principal