

# POLICY

## BOARD OF EDUCATION OF MONTGOMERY COUNTY

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<b>Related Entries:</b>	BLB, BLB-EA, JOA-RA
<b>Responsible Office:</b>	Board of Education Special Education and Student Services
<b>Related Sources:</b>	<i>Annotated Code of Maryland</i> , Education Article, §4-401, et seq., and §8-413; <i>Code of Maryland Regulations (COMAR)</i> §13A.05.01, et seq.; <i>Individuals with Disabilities Education Act (IDEA)</i> , 20 U.S.C. §1400, et seq. Problem Solving for Student Success: Special Education Procedures

### Procedures for Review and Resolution of Special Education Disputes

#### A. PURPOSE

To establish and recognize review and resolution options that permit cooperative problem solving of disputes regarding the identification, evaluation, educational placement, or provision of a free and appropriate public education (FAPE) for a student with a disability or suspected of having a disability under the *Individuals with Disabilities Education Act (IDEA)*

#### B. ISSUE

Students with disabilities and their parent(s)/guardian(s) must be guaranteed procedural safeguards with respect to their right to a FAPE and should have available less formal options for resolution of disputes.

#### C. POSITION

##### 1. Statement of Philosophy

It is the intent of the Montgomery County Board of Education (Board) to resolve all disputes related to special education in as efficient and cooperative a manner as possible. Montgomery County Public Schools (MCPS) has established an administrative review process that may be used and encourages the use of mediation processes authorized by state and federal law.

The parent/guardian/eligible student may elect not to use an administrative review and may request mediation and/or a due process hearing in accordance with state and federal law.

2. Applicable Laws, Rules, and Regulations

Where applicable, these procedures should be read in conjunction with state and federal laws, rules, and regulations that include the following:

- a) *The Annotated Code of Maryland, Education Article, Section 8-413*
- b) *Code of Maryland Regulations (COMAR) §13A.05.01 et seq.*
  - (1) COMAR §13A.05.01 deals specifically with Programs for Students with Disabilities
  - (2) COMAR §13A.05.01.14 deals specifically with Due Process Hearing Procedures
- c) IDEA 20 U.S.C. §1400 et seq., and Rules and Regulations Implementing IDEA

3. Conflicts

In cases of conflicts between these procedures and applicable state or federal laws, rules, or regulations, the state or federal laws, rules, or regulations shall govern.

4. Administrative Review and Resolution

The parent/guardian/eligible student may select, as an alternative to mediation/due process hearing procedures, an administrative review.

The process for administrative review involves reviewing all available records on the student and obtaining information required for clarification so that a decision that attempts to resolve the dispute in a way that is satisfactory to both parties can be offered; and, if FAPE is at issue, ensures that child is provided with FAPE.

- (1) When Available

An administrative review is available whenever a parent/guardian/eligible student is dissatisfied with a decision, or lack thereof, regarding the identification, evaluation, educational placement, or provision of a FAPE for

a student with a disability or suspected of having a disability under IDEA, and has not filed a request for mediation and/or a due process hearing.

(2) Procedure

To initiate the administrative review, MCPS Form 336-43A, *Application for Informal Review*, must be completed by the parent/guardian. The form is then filed with the Department of Special Education Services.

A committee of no less than two MCPS staff members from the Equity Assurance and Compliance Unit and/or the Department of Special Education Services, at least one of whom is certificated in special education, who have had no direct involvement in the decision, will obtain relevant records and consider any information submitted by the parent/guardian/eligible student with the form or gained from other sources. The administrative review should be completed within 20 calendar days of filing. However, at any time during the process, or at the completion of the process, a party may request mediation and/or a due process hearing. If mediation and/or a due process hearing is requested, the administrative review will terminate.

When a review is completed, a representative of the Office of Special Education and Student Services will inform the parties in writing of the suggested resolution. If all parties concur, the resolution shall be committed to writing and signed.

5. Mediation/Due Process Hearing Procedures

The Board encourages the use of state provided mediation as an alternative to resolution of disputes prior to or current with a due process hearing. Mediation attempts to bring about a resolution of the dispute by the parties through the intervention of a neutral third party. Mediation is made available through the State Office of Administrative Hearings and is conducted by an impartial administrative law judge.

The Board also recognizes the availability of due process hearings through the State Office of Administrative Hearings.

A parent or MCPS may initiate mediation and/or a due process hearing concerning the identification, evaluation, educational placement, or provision of a FAPE for a student with a disability or suspected of having a disability under IDEA by making a written request to the State Office of Administrative Hearings and ensuring the opposing party receives a copy of the request. If a request is received, MCPS will

provide the individual with a request form and assist the individual in completing the form, as appropriate.

**D. DESIRED OUTCOME**

MCPS desires to seek early resolution of disputes in as informal and cooperative manner as possible.

**E. IMPLEMENTATION STRATEGIES**

1. The superintendent of schools will publicize the options for review and resolution of disputes regarding the identification, evaluation, educational placement, or the provision of a FAPE for a student with a disability or suspected of having a disability under IDEA as well as the procedures for requesting mediation and/or a due process hearing.
2. The superintendent of schools will develop regulations and other procedures as necessary to implement this policy.
3. The superintendent of schools will establish a data collection process to determine the effectiveness of the implementation of these procedures.

**F. REVIEW AND REPORTING**

1. The superintendent of schools shall inform the Board when the system appeals adverse decisions.
2. Settlement of claims related to special education legal fees and costs shall be evaluated by legal counsel and reported to the Board.
3. This policy will be reviewed in accordance with the Board of Education policy review process.

*Policy History:* Adopted by Resolution No. 399-80, June 23, 1980; amended by Resolution 429-80, July 8, 1980; amended by Resolution No. 536-84, October 9, 1984; amended by Resolution No. 590-86, November 6, 1986; reformatted in accordance with Resolution No. 333-86, June 12, 1986 and Resolution No. 458-86, August 12, 1986, and accepted by Resolution No. 550-88, October 24, 1988; amended by Resolution No. 737-95, November 14, 1995; amended by Resolution No. 472-96, July 9, 1996; amended by Resolution No. 534-13 on November 12, 2013.