

Office of Superintendent of Schools
Board Meeting of March 17, 1999

February 24, 1999

Office of School Board Attorney
Phyllis O. Douglas, Board Attorney

**SUBJECT: PROPOSED AMENDMENT OF SCHOOL BOARD RULE: FINAL
READING 6Gx13- 8C-1.064, ADJUDICATORY PROCEEDINGS**

The School Board of Miami-Dade County, Florida, announced on January 13, 1999, its intention to amend School Board Rule 6Gx13- 8C-1.064, Adjudicatory Proceedings, at the meeting of March 17, 1999.

The Notice of Intended Action was published in the *Miami Daily Business Review* on January 19, 1999, posted in various places for public information and mailed to various organizations representing persons affected by the amended rule and to individuals requesting notification.

The time to request a hearing or protest the adoption of this rule has elapsed.

In accordance with the provisions of the Administrative Procedure Act, this amended rule is presented to The School Board of Miami-Dade County, Florida, for adoption and authorization to file the rule in the official records of The School Board of Miami-Dade County, Florida.

Attached are copies of the Notice of Intended Action and the amended rule. Changes from the current rule are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, adopt amended School Board Rule 6Gx13- 8C-1.064, Adjudicatory Proceedings, and authorize the Superintendent to file the rule with The School Board of Miami-Dade County, Florida, to be effective March 17, 1999.

POD/im

K-20

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on January 13, 1999, its intention to amend Board Rule 6Gx13- 8C-1.064, Adjudicatory Proceedings, at its meeting of March 17, 1999.

PURPOSE AND EFFECT: The revision to the Board Rule will incorporate the time prescribed by law for any person petitioning for a hearing under the provisions of Chapter 120, Florida Statutes.

SUMMARY: The rule as amended will set the time frame for any adversely affected person to initiate proceedings for a hearing to resolve bid disputes.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 230.22(2); 230.23(6)(c); 230.23(17) F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: Chapter 120; 120.57(3)(b); 230.23(4)(m); 230.23(6)(c); 230.23005(2)(a); 230.2316(8); 231.3605(2)(c) F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF March 17, 1999, which begins at 1:00 p.m., in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing or who wish to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by Section 120.541(1), F.S., must do so in writing by February 9, 1999, to the Superintendent of Schools, Room 912, at the same address.

ANY PERSON WHO DECIDES TO APPEAL THE DECISION made by The School Board of Miami-Dade County, Florida, with respect to this action will need to ensure the preparation of a verbatim record of the proceedings, including the testimony and evidence upon which the appeal is to be based. (Section 286.0105, Florida Statutes)

A COPY OF THE PROPOSED AMENDED RULE is available for inspection and copying at cost by the public in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Originator: Mr. Johnny Brown
Supervisor: Ms. Phyllis O. Douglas
Date: December 16, 1999

School Board--Methods of Operation**ADJUDICATORY PROCEEDINGS****Purpose:**

The purpose of this rule is to provide due process in adjudicatory proceedings in which the School Board is a party.

I. Clerk of The School Board of Miami-Dade County, Florida

All pleadings under this rule shall be filed with the School Board Clerk who shall maintain offices in the School Board Administration Building.

II. Requests for Hearing

A. Employees covered by collective bargaining contracts.

All parties entitled to a hearing under the provisions of their applicable contract shall initiate proceedings for the hearing by filing a request with the Clerk of The School Board of Miami-Dade County, Florida, in accordance with the rules and time lines set forth in their contracts. Failure to file a timely request shall be deemed a waiver of the right to a hearing on the matter.

1. Hearings on disciplinary matters concerning instructional employees shall be conducted pursuant to Chapter 120, Florida Statutes, by a Hearing Officer assigned by the Division of Administrative Hearings.

2. Hearings on disciplinary matters concerning noninstructional employees shall be conducted by a Hearing Officer in accordance with the appropriate collective bargaining agreement.

B. Students recommended for expulsion or alternative school assignment.

Students or parents/guardians of students shall deliver their request for a hearing within 15 calendar days of the event which is claimed to give rise to the hearing right. Failure to file a timely request shall be deemed a waiver of the right to a hearing on the matter.

1. Hearings on student expulsion cases shall be conducted by local Hearing Officers pursuant to Section 230.23(6)(c), Florida Statutes.
 2. Hearings on student alternative school assignment cases shall be conducted by Hearing Officers assigned by the Division of Administrative Hearings pursuant to Section 230.2316(8), Florida Statutes.
- C. Parents or guardians of students requesting a hearing on identification, evaluation or placement relative to exceptional education shall file a request for hearing with the School Board Clerk and proceed in accordance with School Board Rule 6Gx13- 6A-1.331, Special Programs and Procedures for Exceptional Students.
- D. Any party petitioning for a hearing under the provisions of Chapter 120, Florida Statutes, including employees not covered by collective bargaining contracts, parties filing bid protests and parties requesting hearings on other actions affecting substantial interests, shall initiate proceedings for the hearing by filing a petition as set forth below.
1. The petition shall contain:
 - a. The name and address of the petitioner, and an explanation of how his/her substantial interests will be affected by the School Board determination;
 - b. A statement of when and how petitioner received the notice of the School Board decision or intent to render the decision which is claimed to affect petitioner's substantial interests;
 - c. A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
 - d. A concise statement of the ultimate facts alleged, and the rules, regulations, statutes, and constitutional provisions which entitle the petitioner to relief;
 - e. A demand for relief to which the petitioner claims to be entitled; and

- f. Other information which the petitioner contends is material.
2. The petition shall be delivered in the office of the School Board Clerk within 15 calendar days of the event which is claimed to give rise to the hearing right, e.g., receipt of notice of proposed action or action already taken or of a decision to refuse action. However, in the case of bid protests, petitions must be filed prior to the day that the Board or Superintendent is scheduled to make the award a notice of protest in writing shall be filed with the Clerk within 72 hours after the posting of the bid tabulation or receipt of notice of the Board's decision or intended decision, and formal written petitions must be filed within 10 days after filing the notice of protest. Saturdays, Sundays and legal holidays shall be excluded in the computation of the 72-hour time period. Failure to file a timely petition requesting a hearing shall be deemed a waiver of the right to a hearing on the matter.
3. Petitions requesting hearings will be granted or denied within 15 calendar days of receipt. A petition may be denied when the petitioner does not adequately state a material factual allegation, such as a substantial interest in the agency determination, or if the petition is untimely.

III. Proceedings

Once a request for a hearing is timely made, unless the School Board determines that a hearing is not warranted, the School Board shall thereafter forward the request, along with all other materials filed with the School Board, to the Division of Administrative Hearings, or to the local Hearing Officer, whichever is applicable, and shall notify all parties of its action.

In the case of bid protests, prior to forwarding the request to the Division of Administrative Hearings, the School Board shall provide an opportunity to resolve the protest by mutual agreement between the parties within seven days, excluding Saturdays, Sundays, and legal holidays, after receipt of a formal written protest.

A. Employee Disciplinary Proceedings

1. The School Board shall file a Notice of Specific

Charges, which shall contain:

- a. The name of the employee and a statement as to the applicable Collective Bargaining Agreement, if any;
 - b. An explanation of how the individual's employment status is being affected by the School Board's action;
 - c. A statement of when and how the employee received the notice of the School Board decision or intent to render the decision that is claimed to affect the individual's employment status;
 - d. A concise statement of all material facts, disputed or otherwise, and the contractual language, rules, regulations, statutes, and constitutional provisions that the School Board is relying upon in support of its action;
 - e. A demand for relief; and
 - f. Any other information that the School Board contends is material.
2. The employee shall be afforded the opportunity to submit a written answer directed to the School Board's Notice of Specific Charges, challenging the grounds used by the school system to justify its proposed action.
 3. The school system shall be afforded the opportunity to respond to any written answer/statement filed by the employee.
 4. Proceedings before all Hearing Officers shall be governed in accordance with Florida Statutes, and the applicable Model Rules and Procedures of the Division of Administrative Hearings.
- B. Student Expulsion Proceedings or Alternative Education Assignment
1. The Notice of Specific Charges shall contain:
 - a. The name of the student;

- b. An explanation of how the student will be affected by the School Board determination;
 - c. A statement of when and how the student received the notice of the School Board decision or intent to render the decision that is claimed to affect the student's status;
 - d. A concise statement of all material facts, disputed or otherwise, and the rules, regulations, statutes, and constitutional provisions that the School Board is relying upon in support of its action;
 - e. A demand for relief; and
 - f. Any other information that the School Board contends is material.
2. The student shall be afforded the opportunity to submit a written answer directed to the School Board's Notice of Specific Charges, challenging the grounds used by the school system to justify its proposed action.
 3. The school system shall be afforded the opportunity to respond to any written answer/statement filed by the student.
 4. Proceedings before local Hearing Officers assigned by The School Board of Miami-Dade County, Florida, shall be governed in accordance with Florida Statutes, and the applicable Model Rules and Procedures of the Division of Administrative Hearings.
 5. The Hearing Officer's recommended order shall be submitted to the School Board within 15 calendar days of the hearing.
- C. All other proceedings shall be governed by the rules of the Division of Administrative Hearings.
- D. Parties to all proceedings shall have all rights afforded by Chapter 120, Florida Statutes.
1. The Hearing Officer will set a mutually convenient time and place for the hearing.

2. Discovery may be had in accordance with the Florida Rules of Civil Procedure.
 3. At the time of the hearing, both parties shall be given the following opportunities:
 - a. to present written or oral evidence in support of their respective positions;
 - b. to call and cross-examine witnesses;
 - c. and to be represented by counsel.
 4. A court reporter will be provided by the school system, but the cost of preparing any transcript of the hearing shall be the financial responsibility of the party requesting the transcript.
 5. The record shall consist of that which is provided for in Chapter 120, Florida Statutes.
- E. Upon the forwarding of a matter to the Division of Administrative Hearings or a local Hearing Officer, the School Board shall exercise no further control over the proceeding until a Final Order or Recommended Order is entered by the Hearing Officer.
- F. A local Hearing Officer's Recommended Order shall be submitted to the School Board within 15 calendar days of the hearing unless this time limit is waived by mutual agreement of the parties.
- G. Exceptions to a Hearing Officer's recommended order must be filed within 15 calendar days of service of the recommended order except that in the case of bid protests, exceptions must be filed within 10 calendar days.
1. If exceptions are filed, each party will be afforded the opportunity to present oral argument, not exceeding fifteen (15) minutes in length, to the School Board prior to the entry of the final order.
 2. Exceptions filed by indigent students.
 - a. An indigent student who files exceptions in an expulsion or alternative school case and who is

financially unable to provide a hearing transcript to the School Board may petition the School Board to pay the transcript cost by filing an insolvency affidavit with the School Board Clerk. The affidavit should state that the student participates in the free or reduced price meal program of the Miami-Dade County Public Schools or that the student is eligible to participate in the free or reduced price meal program.

- b. If the student is financially unable to provide a hearing transcript but is not a participant in the free or reduced price meal program, then the student must provide the following information in the insolvency affidavit: list of all members of the student's household, the total wages, benefits, or other income received by each member of the household, and the time period during which the wages, benefits, or other income is received (yearly, monthly, or weekly).
 - c. The School Board Clerk shall then make a determination of the student's financial eligibility for the free or reduced price meal program based on the information and the current financial eligibility guidelines for free and reduced price meals.
 - d. The School Board Clerk shall verify that the student is indigent, as evidenced by the student's participation in or eligibility for participation in the free or reduced price meal program, and shall certify the student's indigency. Upon certification, the School Board Attorney shall order and pay the cost of the transcript.
 - e. A student who is denied certification as indigent may request review of the insolvency affidavit and documentation by the Superintendent or his/her designee, whose decision shall be final.
- H. Subsequent to receipt of a Recommended Order, School Board members are to vote solely on evidence which has been admitted in the hearing and is in the record.

- I. The Final Order of the School Board will be filed with the School Board Clerk who shall note the date of filing on the Order.

Specific Authority: 230.22(2); 230.23(6)(c); 230.23(17) F.S.

Law Implemented, Interpreted, or Made Specific: Chapter 120; 120.57(3)(b)
230.23(4)(m); 230.23(6)(c);
230.23005(2)(a); 230.2316(8);
231.3605(2)(c) F.S.

History

New: 6-5-96

Amended: 5-21-97; 11-18-98

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA