

Office of Superintendent of Schools  
Board Meeting of October 11, 2000

September 28, 2000

Personnel Management and Services  
Nelson E. Diaz, Deputy Superintendent

**SUBJECT: PROPOSED AMENDMENT OF BOARD RULE: INITIAL READING  
6Gx13- 1C-1.02, LEGAL SERVICES FOR EMPLOYEES OF THE BOARD**

This item is submitted for consideration by the School Board to amend School Board Rule 6Gx13- 1C-1.02, Legal Services for Employees of the Board, to comport with current statutory language, current Board practice and policies, and to broaden legal representation and indemnification to members of the Superintendent's Cabinet.

Attached are the Notice of Intended Action and the rule proposed for amendment. Changes for the current rule are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act for the amendment of Board Rule 6Gx13- 1C-1.02, Legal Services for Employees of the Board.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Board Rule 6Gx13- 1C-1.02, Legal Services for Employees of the Board.

NED:sc

K-27

## NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on October 11, 2000, its intention to amend Board Rule 6Gx13- 1C-1.02, Legal Services for Employees of the Board, at its meeting of November 15, 2000.

**PURPOSE AND EFFECT:** To comport with current statutory language, current Board practice and policies, and to broaden legal representation and indemnification to members of the Superintendent's Cabinet.

**SUMMARY:** Board Rule 6Gx13- 1C-1.02, Legal Services for Employees of the Board, changes Board Rule to comport with current statutory language, current Board practice and policies, and to broaden legal representation and indemnification to members of the Superintendent's Cabinet.

**SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED:** 230.22(2); 230.23(20) F.S.

**LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC:** 230.234; 231.06; 231.07; 111.07; 111.071; 111.072; 768.28, F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF November 15, 2000 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 November 6, 2000, 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. Scott B. Clark  
Supervisor: Mr. Nelson E. Diaz  
Date: September 28, 2000

Public Activities Involving Staff or Students**LEGAL SERVICES, PAYMENT OF JUDGMENTS, AND INSURANCE/SELF-INSURANCE PROGRAMS FOR OFFICERS, EMPLOYEES, AND AGENTS OF THE BOARD**

~~In the event that an employee of the Board is assaulted in connection with school duties, or an employee of the Board is sued in a civil action or charged in a criminal action as a result of an incident occurring while the employee is engaged in the proper performance of duties, the procedure is as follows:~~

**Assault on Employee**

~~The Board Attorney is not authorized to represent School Board employees in actions against an assailant. However, upon request by the employee, the principal or immediate supervisor shall submit a request for consultation with the Board Attorney to the appropriate deputy, area or assistant superintendent together with a description of the incident and his/her approval or disapproval of the request. If approved by the appropriate superintendent, the request is forwarded to the Board Attorney who arranges for the consultation.~~

**Legal Action against Employee**

~~All employees of the Board are covered by professional liability insurance and the carrier usually undertakes the defense of the employee sued civilly or charged criminally as a result of proper performance of his/her duties. Under some circumstances, nonemployees who are engaged in school-connected activities may also be entitled to this insurance protection (parents acting as chaperones with school approval, for example). Any employee who is sued civilly or charged criminally as a result of school activities should be urged to follow the procedure set forth below in order that the question of entitlement to coverage can be resolved as quickly as possible.~~

In addition to any insurance coverage provided by the School Board to officers, employees and agents, the School Board shall indemnify, and defend its officers, employees and agents to the fullest extent permitted by applicable law.

The School Board will indemnify and defend officers, employees and agents, when applicable, if and whenever an officer, employee, or agent is involved in any matter (including without limitation, as a party or as a witness), in any threatened, pending or completed civil or criminal proceeding arising out of and in the course of performance of assigned duties and responsibilities. The defense and indemnification obligations of the School Board shall include a full defense and indemnification for

any and all reasonable expenses and fees incurred by an officer, employee, or agent, when applicable, or on their behalf in connection with the investigation, defense settlement or appeal of any such proceeding.

The Board Attorney, in conjunction with Risk and Benefits Management, shall retain the complete right to select appropriate counsel, at reasonable expenses and fees, as determined and negotiated by the Board Attorney, and oversee, direct and control every aspect of the defense, settlement or appeal of any civil or criminal proceeding. Notwithstanding the obligation of the School Board to pay for the defense and indemnification, staff members who comprise the Superintendent's Cabinet shall retain the complete right to select the counsel of their choice at reasonable expenses and fees, and oversee, direct and control every aspect of the defense, settlement, or appeal of any civil or criminal proceeding. The defense and indemnification obligations of the School Board shall include a full defense and indemnification for any and all reasonable expenses and fees incurred by a member of the Superintendent's Cabinet, or on their behalf in connection with the investigation, defense, settlement, or appeal of any such proceeding. No initial finding by the School Board, its counsel, independent counsel, or any other person or body shall be effective to deprive indemnification to members of the Superintendent's Cabinet, as it is intended that the School Board shall pay promptly all amounts necessary to effectuate the full defense and indemnification provisions provided in this rule. However, in any case in which the officer, employee, or agent, including members of the Superintendent's Cabinet, plead guilty, nolo contendere, or is found guilty or personally liable as provided in Section 111.07, Florida Statutes, as may be amended from time to time, the officer, employee, or agent, including members of the Superintendent's Cabinet, shall reimburse the Board for any legal services which the School Board may have supplied pursuant to this rule.

### **Civil**

When the officer, employee, (or the school-related non-employee) or agent is served with a summons and a complaint, it is the officer, employee, or agent's responsibility to notify the Board Attorney's Office, telephone 995-1304, and as well as the Division Office of Risk and Benefits Management, telephone 995-7130. Notification must be made immediately upon receipt of the suit papers, and these should be delivered to the Office of the Board Attorney at once. Delay can result in the loss prejudicing the rights of any applicable of insurance protection company, or even in the entry of a default judgment against the person sued. The Division of Risk Management and the Board Attorney should be informed immediately when any formal demand for monetary damages resulting from alleged employee action or inaction is received.

## **Criminal**

When the officer, employee, (or school-related non-employee) or agent is arrested or charged criminally, it is the employee's responsibility to secure his/her own release and to notify the Board Attorney's Office, telephone 995-1304, and as well as the Division Office of Risk and Benefits Management, telephone 995-7130. Notification must be made as soon as possible after the charge is made, and the charge should be delivered to the Office of the Board Attorney at once. ~~Delay can result in the loss of insurance protection.~~

~~If the Board Attorney or retained counsel is to represent the employee in a case in which the insurance coverage does not apply, the Superintendent of Schools will make that recommendation to the Board. When time does not permit prior recommendation to the Board, the Superintendent of Schools shall authorize the Board Attorney to represent the employee and report his/her action at the next regular meeting of the Board.~~

## **Prosecution of Violators**

~~The School Board of Dade County, Florida recognizes that under the provisions of Florida Statutes, sections 231.06, 231.07, certain persons who upbraid, abuse, insult or assault instructional personnel of the Board shall be guilty of a crime, and that in appropriate instances the Superintendent of Schools or the Superintendent's designee, at the discretion of the Board, may initiate the prosecution of violators of the aforementioned statutes.~~

## Payment of Judgments or Settlements

As provided for in Section 111.071, Florida Statutes, the School Board is authorized to pay any final judgment, including damages, costs, and attorney's fees, arising from a complaint for damages or injury suffered as a result of any act or omission of action of any officer, employee, or agent in a civil or civil rights lawsuit described in Section 111.07, Florida Statutes. If the civil rights action arises under Section 768.28, Florida Statutes, as a tort claim, the limitations and provisions of s. 768.28 governing payments shall apply. If the action is a civil rights action arising under 42 U.S.C. § 1983, or similar federal statutes, payments for the full amount of the judgment may be made unless the officer, employee, or agent has been determined in the final judgment to have caused the harm intentionally.

Insurance/Self-Insurance

As provided for in Section 111.072, Florida Statutes, the School Board is authorized to be self-insured, enter into risk management programs, or to purchase liability insurance for whatever coverage it may choose or to have any combination thereof in anticipation of any judgment or settlement which its officers, employees, or agents may be liable to pay pursuant to a civil or civil rights lawsuit described in s.111.07.

Specific Authority: 230.22(2); 230.23(20) F.S.

Law Implemented, Interpreted, or Made Specific: 230.234; 231.06; 231.07; 111.07; 111.071; 111.072; 768.28, F.S.

History

THE SCHOOL BOARD OF MIAMI- DADE COUNTY, FLORIDA

Repromulgated: 12-11-74

Amended: 1-2-77