

Personnel Management and Services  
Nelson E. Diaz, Deputy Superintendent

**SUBJECT: REQUEST FOR AUTHORIZATION TO APPOINT REPRESENTATIVES FOR SCHOOL BOARD 401(K) ADVISORY COUNCIL AND AUTHORIZE THE SUPERINTENDENT TO SIGN AN AGREEMENT TO HAVE THE BOARD ASSUME ANY PERSONAL LIABILITY WHICH MAY BE PRESENT BY FUNCTION OF SERVING AS A REPRESENTATIVE**

The School Board of Miami-Dade County, Florida established a supplemental retirement plan, pursuant to the provision of Internal Revenue Service Code (IRS), Section 401(k), with an effective date of January 1, 1994. Following tax law changes which occurred in 1986, public employers could no longer establish new 401(k) plans, however, Miami-Dade County Public Schools (M-DCPS) was "grandfathered" and continues today. M-DCPS entered into an administrative agreement with VISTA Management Company (VMC) which delegates responsibility for the plan's administration to VMC. M-DCPS continues to function as the "Sponsor".

The district's responsibility under the plan, relative to investment decisions, plan design, and operation, is that of "advice and recommendations", subject to reporting by VMC to M-DCPS. To facilitate this, an advisory council was established, comprised of at least one employee from each of the six participating Florida School Districts, including Miami-Dade, Okeechobee, Pasco, Madison, Monroe and Charlotte, all of whom have same plans administered by VMC.

Counsel from VMC opined, and outside counsel concurred, that Advisory Council members could be personally liable for activities of the Sponsors (respective School districts), unless their employers held them harmless. Upon recommendation of VMC and their counsel, and after reviewing this situation with the Board Attorney's Office, it was suggested that the Board duly appoint two representatives from M-DCPS as members of the 401(k) Advisory Council, and agree to indemnify them from any personal liability associated with serving as the Board's representatives. An agreement has been drafted to accomplish this, and it is recommended that the Board authorize the Superintendent to execute this agreement on behalf of the Board for the two council members.

- RECOMMENDED: That The School Board of Miami-Dade County, Florida:
1. appoint Dr. Richard H. Hinds, Chief Financial Officer, and Mr. Patrick Peters, Finance Coordinator, Office of Risk and Benefits Management, as official representatives of the Board to serve on the Vista Management Company 401(k) Advisory Council; and
  2. authorize the Superintendent of Schools to execute the attached agreement on behalf of the Board, indemnifying Dr. Richard H. Hinds, and Mr. Patrick Peters, from personal liability while serving as the Board's duly authorized representatives on the Vista Management Company 401(k) Advisory Council.

NED:sc

RE: The School Board of \_\_\_\_\_ County (hereinafter the "Board") and \_\_\_\_\_  
hereinafter "Advisory Council Member" or "Member")

The Board acknowledges that it has appointed Member to serve as a representative of the Board's VISTA 401(k) Plan as a Member of the VISTA 401(k) Advisory Council. As a member of the VISTA 401(k) Advisory Council established by the Plan Administrator - VISTA Management Company (hereinafter "VMC"), pursuant to the Board's Administrative Agreement with VMC you will report to the Board and act on its behalf in the capacity of rendering advice and recommendations to VMC. Effective with such appointment, and your acceptance thereof, and in consideration therefore, the Board declares that:

1. It is the Board's intent that you not to be functioning in such a capacity as would cause you to be deemed a fiduciary or party in interest to the Plan. You have agreed to serve as an Advisor without additional compensation and that your service as Advisor will constitute a part of your regular employment responsibilities.

2. It is also the Board's intent that you are to be afforded all privileges of sovereign immunity available to the Board under the laws of the State of Florida with respect to your Advisory Council activities since, at all times, you are acting as an authorized agent of the Board in your capacity as a Board employee.

3. In the unlikely event that suit may be brought against you in your capacity as an Advisory Council Member for the Board, the Board will make best efforts to have such case dismissed. In the event the Board cannot successfully have you dismissed, the Board will indemnify, defend and hold you harmless to the full extent permitted by applicable law in effect on the date hereof and as such law may, from time to time, be amended (but, in the case of any such amendment, only to the extent such amendment permits the Board to provide broader indemnification rights and protection than the law permitted the Board to provide before such amendment) for any and all liabilities incurred by you in the performance of your duties as outlined herein and the VISTA 401(k) Administrative Agreement between the Board and VMC. Without in any way diminishing the scope of the indemnification provided by this section, the Board will indemnify you if and whenever you are or were involved in any manner (including, without limitation, as a party or as a witness) in any threatened, pending, or completed proceedings, including, without limitation, any such proceeding brought by or in the right of Board or any VISTA 401(k) participant, by reason of the fact that he or she is or was an agent of the Board, or by reason of anything done or not done by him or her in such capacity, against expenses and liabilities actually incurred by you or on your behalf in connection with the investigation, defense, settlement, or appeal of any such proceeding. No initial finding by the Board, its counsel, independent counsel arbitrators, or other agents of the Board, will be effective to deprive you of the protection of this indemnity, nor will a court to which you may apply for enforcement of this indemnity give any weight to any such adverse finding in deciding any issue before it, as it is intended that you will be paid promptly by the Board all amounts necessary to effectuate the foregoing indemnity in full.

In consideration of the foregoing, you agree that you will not to engage in:

- a. Any prohibited transactions as defined under ERISA
- b. Not handle any funds belonging to the Plan or any participant therein.
- c. Not render any investment advice to any existing Plan Participants or any employees of the Board eligible to participate in the Plan.

In further consideration of the forgoing you agree to provide advice and recommendations to the Plan Administrator and the Board, (which serves as Plan Sponsor).

Approved by the Board on the \_\_\_\_\_ day of \_\_\_\_\_, 2001, by:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

Accepted by: \_\_\_\_\_

\_\_\_\_\_  
(Member Signature)

\_\_\_\_\_  
(Print Name)