Office of School Board Members
Board Meeting of July 14, 2004

July 6, 2004

Mr. Agustin J. Barrera, Member

SUBJECT: **DIRECT THE SUPERINTENDENT OF SCHOOLS TO SEEK AN OPINION FROM THE FLORIDA STATE ATTORNEY GENERAL REGARDING CONFLICTING MANDATES OF THE FEDERAL NO CHILD LEFT BEHIND ACT OF 2001, THE FLORIDA A+ PLAN, AND THE CONSTITUTIONAL CLASS SIZE REDUCTION AMENDMENT**

COMMITTEE: **FACILITIES MANAGEMENT**

School districts throughout Florida are being faced with demands for accountability and student achievement as a result of the requirements of the federal No Child Left Behind Act of 2001 (NCLB) and Florida's A+ Plan, each of which measure performance differently when determining if a school will be the subject of sanctions, including student transfers. In addition, school districts must comply with the Florida's Constitution which requires that class sizes be limited in core subjects to 18 students at the elementary level, 22 students at the middle school level and 25 students at the senior high school level. Failure to meet established class size requirements also results in sanctions including the shifting of funding from operating use to capital use.

The Florida Comprehensive Assessment Test (FCAT) uses five Achievement Levels, numbered 1-5 with 1 the lowest level and 5 the highest level. Based on students' FCAT test scores and other factors, schools are graded on a scale of A through F. Under the A+ Plan, students assigned to any public school that has received two F grades in a four-year period may choose to transfer to a higher-performing public or private school.

Adequate Yearly Progress (AYP) under NCLB measures the progress of all public schools toward enabling all students to meet the State's academic achievement standards. AYP measurements target the performance and participation of various subgroups based on race or ethnicity, socioeconomic status, disability, and English proficiency. Title I schools that have not made AYP for two consecutive school years are identified as needing school improvement and students are given the option to transfer to a higher-performing public school.

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NCLB specifies that a school district may not use lack of capacity to deny students the option to transfer to a specific school, but may take capacity into consideration in deciding which choices to make available to eligible students *[34 C.F.R. 200.44(d)]*. Further, the U.S Department of Education's (USDOE) *Non-Regulatory Guidance on Public School Choice* specifies that lack of capacity and health and safety concerns, including overcrowding, do not excuse school districts from meeting the Title I public school choice requirement. If a district does not have sufficient capacity in schools not identified for improvement (or as persistently dangerous) to accommodate the demand for transfers by all eligible students, the district must create additional capacity or provide choices of other schools.

The constitutional class size amendment (CSR) and its implementing legislation call for a reduction each year until the number of students per classroom does not exceed the mandated maximums no later than 2010-2011. If a district fails to meet the reduction requirement in any given year, a portion of its class size reduction operating categorical funds will be transferred to the district's class size reduction capital outlay fund. Sanctions continue each year a district is not in compliance until 2006-2007. If a district has not complied with the required reduction of class size by 2006-2007 it forfeits more of its flexibility in the use of class-size reduction funding and must implement a constitutional compliance plan developed by the Florida Department of Education until the district class size complies with the constitutional requirements.

It is likely that students will request transfers from Title 1 schools that have failed to make AYP or double F schools where capacity is likely available, to higher-performing schools that are in many cases overcrowded, thus impacting our ability to meet class size maximums. The competing goals of NCLB, the A+ plan and CSR, clearly will place districts in precarious positions in the future. Urban districts, including Miami-Dade County, are going to be faced with the dilemma of meeting class size while complying with state and federal choice requirements that do not allow overcrowding to be indicated as basis for denial of transfer, while failure to meet any of the referenced mandates has serious fiscal implications. In order to ensure that Miami-Dade County Public Schools will not be the subject of fiscal sanctions, it is imperative that this district seek an opinion from the Florida Attorney General as to which mandate supercedes and whether the requirements under NCLB are in fact an unfunded mandate.

ACTION PROPOSED BY
MR. AGUSTIN J. BARRERA: That The School Board of Miami-Dade County, Florida, direct the Superintendent to seek an opinion from the Florida Attorney General regarding conflicting mandates of the federal No Child Left Behind Act of 2001, the Florida A+ plan, and theconstitutional class size reduction amendment.