

Office of School Board Attorney
JulieAnn Rico Allison, Board Attorney

**SUBJECT: PROPOSED AMENDMENT OF SCHOOL BOARD RULE: FINAL
READING 6Gx13- 3F-1.01, APPROVAL BY SCHOOL BOARD
ATTORNEY**

COMMITTEE: INNOVATION, EFFICIENCY & GOVERNMENT RELATIONS

At the School Board meeting of March 15, 2006, the School Board authorized the amendment of School Board Rule 6Gx13- 3F-1.01, to broaden the School Board Attorney's involvement in the contracting process.

The proposed amendment to School Board Rule 6Gx13- 3F-1.01, provides for the Board Attorney's office to review all school district contracts for legal sufficiency and to protect the Board's rights to real, personal, or intellectual property involved in the transaction being memorialized in the contract. The amended rule prohibits legal approval for contracts that fail to meet the minimum criteria set forth in the Rule, unless the specified omissions receive the approval of the Superintendent or his designee.

The Notice of Intended Action was published in the *Miami Daily Business Review* on March 20, 2006, 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.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, adopt amended School Board Rule 6Gx13- 3F-1.01, *Approval by School Board Attorney*, and authorize the Superintendent to file the rule with The School Board of Miami-Dade County, Florida, to be effective April 18, 2006.

G-2

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on March 15, 2006, its intention to amend School Board Rule 6Gx13- 3F-1.01, *Approval by School Board Attorney*, at its meeting of April 18, 2006.

PURPOSE AND EFFECT: The amendment to the Rule would ensure that the Board Attorney's office reviews all school district contracts not only as to form, but for substance.

SUMMARY: To permit the Board Attorney's office to review the legal sufficiency including considerations of legal liability, statutory compliance, and protection of the Board's rights to real, personal or intellectual property involved in transactions being memorialized in contracts. Accordingly, the amendment prohibits legal approval for contracts that fail to meet the minimum criteria set forth in the Rule, unless specified omissions receive the approval of the Superintendent or its designee.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED:
§ 1001.41(2) F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: § 1001.41(4) F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF April 18, 2006, 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 April 10, 2006, 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, at cost, to the public for inspection and copying, in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Originator: Perla Tabares Hantman
Date: March 1, 2006

Contracts and Documents**APPROVAL BY SCHOOL BOARD ATTORNEY**

In view of the considerable amount of tax funds expended in the administration of Board affairs and in order to provide for the protection of the Board and the Superintendent of Schools, the Board directs that all contracts to which the School Board is a party involving expenditure of tax funds, as well as other contracts of such nature that a prudent business man would consult an attorney, be submitted to the Board Attorney for drafting or approval as to form and to determine if such contracts meet all relevant and applicable legal requirements as to form and, content legal sufficiency. Such legal review shall focus on and address the following minimum requirements: 1) compliance with applicable Florida laws and School Board rules; 2) protection and/or retention of Board's rights to real, personal, or intellectual property; 3) specifying that venue, should the contract result in litigation, will be in Miami-Dade County, Florida; 4) stipulate that contract will be governed by and interpreted under Florida law; 5) limiting the Board's exposure to liability and ensuring that the Board's immunity as afforded by § 768.28, Fla.Stat., is not waived; 6) compliance with Florida's Public Records Act, including maintaining the confidentiality of records exempted by law from public disclosure; and 7) that if the performance of a contract is dependent, in whole or in part, on the award of a grant, such a contingency must be referenced in the contract. If the terms of a contract fail to meet legal sufficiency in general terms, or with respect to the minimum terms specified above, the contract shall not receive legal approval, unless the absence of those terms from the written contract are approved by the Superintendent or the Superintendent's designee, for contracts totaling \$100,000 or less. Nothing in the preceding provision is intended to abrogate the Board's sole authority to approve contracts that exceed the established threshold amount as set forth in Board rules.

Further, in the case of pre-drafted documents such as, but not limited to, contracts with the consulting architect and purchase contracts in which a change in wording of the form is proposed, said proposed changes shall be submitted for approval to the Board Attorney. Any requested amendments, modifications, or addenda, to existing contracts must also be submitted to the School Board Attorney for review and approval as to form and legal sufficiency. Whenever possible, standardized form contracts that have been approved by the School Board Attorney shall be employed. Once a contract has been approved as a standard form contract, any future modification to said contract must be presented to the School Board Attorney for approval.

In addition, where a recommendation is submitted to the School Board seeking the authorization of the Board to negotiate and to subsequently

formalize a contract, the Agenda Item seeking such authority should, at a minimum, provide the essential terms of the contract, including, but not limited to the following: (1) the scope of the services that are to be provided pursuant to the contract; (2) the maximum monetary value or expenditures permitted under the contract; (3) the date services are anticipated to commence under the contract along with the anticipated date of the end of such services; (4) any terms regarding the Board's option to renew or to extend the contract for an additional contract period; and (5) any significant terms that are unique/peculiar to the contract. If the proposed written contract is materially inconsistent with the terms authorized by Board action, the contract shall not receive legal approval.

Specific Authority: ~~230.22(2)~~ 1001.41(2) F.S.

Law Implemented, Interpreted, or Made Specific: ~~230.22(1)~~ 1001.41(4) F.S.

History THE SCHOOL BOARD OF DADE COUNTY, FLORIDA

Repromulgated: 12-11-74