

Office of Superintendent of Schools
Board Meeting of June 14, 2006

May 31, 2006

Rudolph F. Crew, Superintendent of Schools

SUBJECT: ANNUAL REPORT OF THE ETHICS ADVISORY COMMITTEE

COMMITTEE: INNOVATION, EFFICIENCY & GOVERNMENTAL RELATIONS

The Ethics Advisory Committee was formed by School Board Policy in March 2002 and is hereby submitting its annual report to the School Board. This report will be presented by its Chair, Frederick F. Thornburg, Esq.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, receive the Annual Report of the Ethics Advisory Committee.

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ANNUAL REPORT OF THE ETHICS ADVISORY COMMITTEE

This report is a brief digest of the endeavors of the Ethics Advisory Committee (EAC) since its founding by the School Board in March of 2002. Henceforth, the EAC will provide the School Board with an annual report of its work.

By way of background, the EAC was formed by School Board Policy adopted in March of 2002 in response to a deterioration of public trust and confidence in the Miami-Dade County Public Schools (M-DCPS) system for a variety of reasons. The State had appointed an oversight committee and frozen much needed construction dollars until there was significant financial and ethical improvement in the M-DCPS.

The Ethics Advisory Committee is composed of seven (7) independent, volunteer, voting members who are appointed for staggered terms of four years. The relevant experience, qualifications, and dedication of the members on the EAC are indeed as impressive as they are apposite to the mission of the EAC,

- Mr. Frederick F. Thornburg, Esq., EAC Chair since March 2004 and former Vice Chair, was appointed to the EAC in March 2002 by the Dade County Council PTA/PTSA. He is a former partner in the multi-state law firm of Barnes and Thornburg and served on the board of directors and as President of Wackenhut International, Inc. He is retired but continues to serve on a number of Boards and has taught ethics in both law and MBA schools.

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- Dr. Susan Mullane, Vice Chair, and a former EAC Chair was appointed by the Dean of School of Education, University of Miami and has served as an assistant professor at the University of Miami and has specialty in the discipline of ethics.
- Dr. Susan Angulo, appointed by the President of St. Thomas University, is a professor and currently serves as the Assistant Vice-President for Academic Affairs.
- Honorable Judge Seymour Gelber, was appointed to the EAC by the Chief Judge of the Eleventh Judicial Circuit of Florida. Judge Gelber served as the Mayor of Miami Beach, and currently serves on Miami-Dade Ethics Commission, and continues to periodically serve as a judge in the state judicial system.
- Mr. James Howe, was appointed by the Executive Committee of the Greater Miami Chamber of Commerce. Mr. Howe is the Executive Director of the National Conference for Community and Justice of Greater Miami and serves on several boards including the Youth Ethics Initiative, Inc. board.
- Ms. Jane W. Moscovitz, Esq., appointed by the Chief Judge of the Eleventh Judicial Circuit of Florida is a member of the law firm of Moscovitz & Moscovitz, P.A. and a former Assistant U. S. Attorney.
- Ms. Daneen Regna, appointed by the Director of Center for Labor Studies at FIU, is a former teacher and now serves as the President of the UTD retired teacher's Chapter.

The EAC has as liaisons to assist it, Mr. Allen Vann, Chief Auditor and Mr. Jose F. Montes-de-Oca, Assistant Chief Auditor. All members of the EAC are extremely

grateful to them for their very meaningful contributions and assistance and it would be remiss to not also note the terrific support of Ms. Elsie Montijo, Administrative Secretary. Additionally, the EAC wants to extend a multitude of thanks to those Board Members who frequently attend the EAC meetings for their support and dedication to improving our school system and all the School Board members for the trust they have placed in its endeavors.

The School Board charge to the EAC is to promote the public trust and confidence in the school system by among other things, educating the public, candidates for election to the board, members of the board and employees of M-DCPS as to the required standards of conduct, and recommending School Board Rules and changes to the various rules and regulations which set forth the school system governing standards of ethical conduct.

In its comparatively brief existence, the EAC has undertaken numerous diverse activities, they include:

- **Testified before the Grand Jury** – On behalf of the EAC, the Chair testified before the grand jury in respect to a number of issues and grand jury inquiries.
- **Established Board Rule Code of Ethics and Certificate of Compliance** – In 2004, the EAC drafted and the School Board unanimously passed a Code of Ethics and accompanying Certificate of Compliance for M-DCPS employees. The District administration has committed to have these certificates executed by June 2006; however due to prolonged delays by differences of opinion as to the

propriety of the Certificate of Compliance enforceability, its completion remains in limbo.

Ms. Maria Vidal, Human Resources Officer, reported at the March 10, 2006 EAC meeting that 25,688 employees have received ethics training and 14,549 employees remain to be trained. She also noted that planned on-line training sessions for April or May 2006 have already taken place.

- **Conducted Candidate Forum** - In accordance with one of its missions as established by the School Board, the EAC, in collaboration with the Miami-Dade County Commission on Ethics and Public Trust, co-hosted a series of Ethics fora for Miami-Dade County School Board candidates prior to the November 2004 elections. Additionally, the EAC co-sponsored a debate amongst School Board run off candidates and was instrumental in having the debates televised and broadcasted by WLRN television and radio stations. The EAC was also credited as a partner in The Miami Herald sponsored WLRN School Board candidates' fora.
- **Set Rules for EAC Member's Participation in Political Campaigns** - The question of whether it was ethical for EAC members to participate in political campaigns was extensively debated. As a result, the EAC proposed a rule which the School Board unanimously passed, that barred EAC members from participating or contributing to school board candidates' campaigns because of obvious potential conflicts of interest. The rule was amended, however, to allow EAC members to participate and contribute to candidates running for any other political office. The School Board voted unanimously to amend the Rule as heretofore noted.

- **Established an EAC Website** – An informational EAC website has been up and running since November 2004. The site includes resumes of the EAC members, listing of scheduled EAC meetings, agendas, minutes, and relevant School Board ethical rules.

From its inception the EAC has been very involved with several diverse ethical matters and issues affecting M-DCPS and has addressed the following topics:

- **Nepotism** - The EAC recommended that M-DCPS adopt a policy of zero tolerance in regards to nepotism. This recommendation was unanimously adopted by the School Board.

The purpose and effect of the revised Board Rule is to provide additional requirements in regards to prohibiting administrative supervisors from employing or directly supervising relatives at the same work location, the requirements to disclose the names of relatives working at the work site by the supervisor and the employee, and the consequences for failure to disclose. At the behest of the EAC, the district administration reported the status of the nepotism cases. According to this report, of the 106 cases originally reported, only 22 cases still remain open. During 2005-06, it is anticipated 3 employees will shortly be placed at different locations. Thus, there has been a marked and enviable improvement in this area of ethical and public concern.

- **Rules Governing Lobbyists** - The EAC was actively involved in promoting and drafting the School Board Rule governing lobbying and attendant required disclosures.
- **Anti Double-Dipping Rule** – An EAC recommendation was made to the School

Board, that School Board employees, when elected to public office, should take leave without pay when acting in the elected official capacity. The genesis of this recommendation was to avoid giving the impression of impropriety, by having the employee being paid by the School Board while serving in their elected capacity. The School Board adopted the EAC's recommended rule with an even more stringent requirement for its implementation.

- **The Office of the Inspector General (OIG)** – The topic of the OIG was discussed for several months and at least three workshops were conducted by the School Board to determine the direction it wanted to take with this issue. It was ultimately decided that the OIG was to report to the Audit Committee. The EAC was the first entity to endorse the maintenance and continuation of the OIG with properly funded and fully staffed office. The unanimous consensus of the EAC as published in a letter to the School Board was that an appearance of ethical impropriety could be created by having the OIG report to the Audit Committee whose members are appointed by the School Board and the Superintendent. This reporting chain raises the unwanted and obvious question of the OIG's independence. The Inspector General from the Florida Department of Education, Mr. John Franco, strongly suggested having the OIG report to the EAC. The State Attorney's Office also vigorously supported keeping the OIG's office totally independent.
- **Administrative Appointments** – The EAC was requested to address concerns and opine on the issue of the propriety of direct employee appointments by the Superintendent. The EAC made a request to Board Attorney Mr. Johnny Brown who provided a legal opinion that in accordance with Section IV.C. of School

Board Rule 6Gx13-4A-1.16, the Superintendent is authorized to make direct appointments when it is deemed to be in the best interest of the school system. Also, at the request of a School Board member the EAC opined by letter dated May 10, 2005 that administrative appointments constituted an administrative not an ethical issue and pointed out that the Superintendent has the legal authority to make such appointments under the aegis of state law.

- **Whistle-Blower Proposal** – The EAC addressed this issue and was advised by the School Board Attorney’s Office that these provisions are being incorporated into the rule governing the Office of the Inspector General. In this connection, the EAC proposed a number of revisions to the Whistle-Blower proposal.
- **EAC Issued Opinion and Other Relevant Letters**

Date	Topic
October 5, 2004	(1) Proposal to Amend the Nepotism Rule; and (2) Exempting Selected School Board Employees from the Application of the Nepotism Rule
April 28, 2005	The Ethical Propriety of the June 29, 2004 Election of the Audit Committee Chair Under School Board Rule 6Gx13-2C-1.142
May 10, 2005	(1) The Ethical Propriety of the Superintendent of Schools to Make Direct Appointments to Positions and to Bypass the Formal Management Selection Protocol Including the Advertising and Interview Process; and (2) The Possible Repercussions that Could Result from the Employment Practice of Direct Appointments
May 17, 2005	Office of the Inspector General
October 10, 2005	Office of the Inspector General
November 18, 2005	Ethics Advisory Committee Composition
May 11, 2006	Revisit Campaign Reform Proposal
May 11, 2006	School Board Workshop Re: Code of Ethics and Certificate of Compliance

- **EAC/School Board Workshop on EAC's Roles and Issues** – This workshop, was scheduled to report on major endeavors and accomplishments of the EAC, to reaffirm its role and fiduciary duties, and to provide a forum where concerns could be voiced. It was attended by several School Board members and several issues were discussed such as an ongoing rumor that the EAC was going to be eliminated and the extent of the EAC's authority. School Board members present reaffirmed their support for the EAC and the workshop was viewed as a success.
- **The EAC Chair appointed to the Selection Committee for the Inspector General** - At its September 7, 2005 meeting the School Board established a committee for the selection of the Inspector General, among whose members is the Chair of the EAC.

In addition, the EAC has acted in concert with other entities or used reports to further educate the public, as follows:

- **Grand Jury** – The Final Report of the Miami-Dade County Grand Jury, Fall A.D. 2002 was filed on August 7, 2003. The Grand Jury arrived at some of the same conclusions, independently, as the EAC had. On Wednesday, October 1, 2003, a Workshop was conducted for the School Board to address and discuss the contents of the Grand Jury Report. State Attorney Katherine Fernandez Rundle appeared before the School Board and provided background information

regarding the report. It should be noted that Mr. Frederick F. Thornburg testified on behalf of the EAC in front of the Grand Jury.

- **Cable Tap** – Cable-Tap can be used for ethics programming and making the mission and the work of the EAC known to the community. It was also suggested that the EAC should explore with Cable-Tap and possibly WLRN utilizing these media resources to expand its reach to the community. The EAC approved participation in the proposed Cable-Tap programs.
- **Youth Ethics Initiative, Inc. (YEI)** – This entity's primary mission is to provide training on ethics and promote ethics in the schools' curriculum. YEI has a diverse Board of Directors dedicated to working with the school system to help imbed ethics in education and is strongly endorsed and financially supported by the Children's Trust. The Superintendent has also actively supported the YEI's efforts and its Annual Students Ethics Conferences in Miami-Dade and Broward counties. This year nearly 500 students participated in the annual conferences and attendant ethic workshops. The YEI asked the EAC for its endorsement and support of the YEI mission. The EAC voted to recommend this program and to endorse the YEI's endeavors. Mr. Howe recused himself from voting on the YEI request for EAC endorsement. It should be noted that one School Board member expressed the view that it is unethical to serve on the EAC and be on the board of an organization that was seeking School Board support and possible funding. After thorough discussion, the members of the EAC unanimously agreed there was no ethical impropriety, since Mr. Howe fully disclosed his YEI board involvement and recused himself from voting on the YEI request for EAC endorsement. Many months after the vote of endorsing the YEI, the Chair

accepted an appointment to the YEI's Board of Directors because of his philosophical belief in the importance of incorporating ethics as a discipline in the educational curriculum.

- **Miami-Dade County Ethics Coalition** – Mr. Thornburg and Ms. Regna have been active volunteer members of the Coalition as EAC representatives.
- **Miami-Dade County Commission on Ethics and Public Trust** - The EAC has continuously interfaced with Mr. Robert Meyers, its Executive Director, who frequently attends EAC meetings and has worked with the EAC and WLRN to sponsor the debates of School Board candidates in the runoff election. As noted above, EAC member Judge Gelber also serves in the Miami-Dade Commission on Ethics.

Projects:

- **Establishment of the Outsider Code of Ethics and Certificate of Compliance**
A proposed Outsider Code of Ethics and Certificate has been drafted and will be soon submitted to the School Board for action. Its purposes is to provide ethical guidance to those individuals and entities who engage in business with M-DCPS.
- **Establishment of an EAC Executive Director** – Due to the scope of the EAC mission as defined by the School Board, and the voluntary nature of the EAC, it is respectfully suggested that M-DCPS establish a position of EAC Executive Director. The following are the envisioned roles and responsibilities of an ethics office:
 - Training Staff
 - Advising/Opining on Potential Conflicts

- Maintaining and Implementing the Employee and Outsider Codes of Ethics and Certificates of Compliance
- Developing Policies and Procedures
- Operating Help/Tips Line
- Developing/Maintaining Ethics Website
- Serving as Liaison to Other Government Ethics Commissions.

To conserve expenses and equally important to bring M-DCPS background experience to the Executive Director position, the EAC suggests such an Executive Director post could be filled on a part-time basis by a current school system employee familiar with the functions and the mission of the EAC, the OIG and Audit Committee with requisite independence.

In conclusion, the EAC wishes to acknowledge with gratitude the support it has received from the Office of Management & Compliance Audits (Mr. Allen Vann, CPA, Chief Auditor, Mr. Jose F. Montes de Oca, CPA, Assistant Chief Auditor, Ms. Elsie Montijo, Recording Secretary) and the School Board Attorney's Office (Mr. Luis Garcia, Esq.). The EAC also harbors great gratitude for the historical support which the School Board members have afforded to it.