

Freddie Woodson, Associate Superintendent
School Operations

SUBJECT: REQUEST AUTHORIZATION TO ADOPT THE CRITERIA AND APPEALS PROCESS CONTAINED IN THE NEW SCHOOL BOARD RULE JESSICA LUNSFORD ACT, TO TAKE EFFECT IMMEDIATELY

COMMITTEE: SCHOOL SUPPORT ACCOUNTABILITY

LINK TO DISTRICT STRATEGIC PLAN: ENSURE ADEQUATE AND EFFECTIVE INTERNAL CONTROLS AND OPERATIONAL EFFICIENCY

Pursuant to Florida Statute 1012.465, the Jessica Lunsford Act ("JLA"), "contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds must meet level 2 screening requirements as described in § 1012.32." The term "contractual personnel" includes "any vendor, individual, or entity under contract with the school board."

The JLA was passed in 2005 by the Florida Legislature and signed into law by Governor Bush. After the JLA came into effect, the District set forth a screening criteria and a process to comply with the JLA's requirements. Unfortunately, and through no fault of the District's established practice, numerous "contracted personnel" may be adversely impacted under the current screening process.

Consequently, Agenda Item D-50, establishing the proposed new School Board Rule 6Gx13- 3F-1.024, *Screening Criteria for Contracted Personnel in Accordance with the Jessica Lunsford Act* (attached) is being submitted for initial reading and sets forth the District's application of the JLA's requirements. However, rulemaking on this proposed new Rule will not be completed until the April 18, 2007, School Board meeting. Meanwhile numerous contracted personnel may be adversely impacted through the District's current application of the JLA's requirements.

Accordingly, this item is being submitted, in an effort to ensure that--in the interim--a rigorous and just appeals process is in place, which will also permit the District to review the background screening results of impacted individuals under the criteria being formalized through the proposed new Rule adoption.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, adopt the criteria and appeals process outlined in the proposed new School Board Rule 6Gx13- 3F-1.024, *Screening Criteria for Contracted Personnel in Accordance with the Jessica Lunsford Act*, for its immediate application to contracted personnel.

FW/lv

Freddie Woodson, Associate Superintendent
School Operations

**SUBJECT: PROPOSED PROMULGATION OF NEW SCHOOL BOARD
RULE: INITIAL READING 6Gx13- 3F-1.024, SCREENING
CRITERIA FOR CONTRACTED PERSONNEL IN
ACCORDANCE WITH THE JESSICA LUNSFORD ACT**

COMMITTEE: SCHOOL SUPPORT ACCOUNTABILITY

LINK TO DISTRICT

**STRATEGIC PLAN: ENSURE ADEQUATE AND INTERNAL CONTROLS AND
OPERATIONAL EFFICIENCY**

This item is submitted for consideration by the School Board to promulgate School Board Rule 6Gx13- 3F-1.024, *Screening Criteria for Contracted Personnel in Accordance with the Jessica Lunsford Act*. The proposed new Rule defines "contractual personnel," determines criteria for defining "crimes of moral turpitude," and provides an appeal process and other due process considerations.

Attached are the Notice of Intended Action and the proposed new Rule.

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act for the promulgation of a new School Board Rule 6Gx13- 3F-1.024, *Screening Criteria for Contracted Personnel in Accordance with the Jessica Lunsford Act*.

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 promulgate a new School Board Rule 6Gx13- 3F-1.024, *Screening Criteria for Contracted Personnel in Accordance with the Jessica Lunsford Act*.

FW/lv

D-50
(Attachment to D-51)

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on March 14, 2007, its intention to promulgate new School Board Rule 6Gx13- 3F-1.024, *Screening Criteria for Contracted Personnel in Accordance with the Jessica Lunsford Act*, at its meeting of April 18, 2007.

PURPOSE AND EFFECT: To clarify the background screening criteria employed by the school district for contracted personnel in accordance with the Jessica Lunsford Act ("JLA").

SUMMARY: This item is being presented to clarify the screening criteria that is mandated by the JLA and used for contractual personnel who are permitted access on school grounds when students are present.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1)(2); 1001.42(23); 1001.43(10) F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 1012.32; 1012.465 F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING of April 18, 2007, which begins at 1:00 p.m., in the School Board Administration Building, 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., were requested to do so in writing by April 9, 2007, 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 NEW RULE is available at cost to the public for inspection and copying in the Citizen Information Center, Room 158, 1450 Northeast Second Avenue, Miami, Florida 33132.

Originator: Mr. Freddie Woodson
Date: March 7, 2007

Contracts and Documents**SCREENING CRITERIA FOR CONTRACTED PERSONNEL IN ACCORDANCE WITH THE JESSICA LUNSFORD ACT**

Pursuant to Florida Statute 1012.465, the Jessica Lunsford Act ("JLA"), "contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds must meet level 2 screening requirements as described in § 1012.32." The term "contractual personnel" includes "any vendor, individual, or entity under contract with the school board."

As mandated by the JLA, the affected individuals must meet the screening requirements provided in § 1012.32, F.S., which provides that: "Persons . . . found through fingerprint processing to have been convicted of a crime involving moral turpitude shall not be employed, engaged to provide services, or serve in any position requiring direct contact with students. . . ." This proscription includes those individuals that are providing services through a contracted vendor.

Pursuant to the JLA, an individual, contracted by a vendor or other entity, has a criminal history record, which indicates that the contracted individual has been convicted of certain crimes (as indicated herein), the contracted individual will be disqualified from engaging in any of the three (3) activities delineated in the JLA.

DISQUALIFYING CRIMINAL OFFENSES:

The School Board has determined that individuals who have been identified through level 2 screening as having been convicted of a crime involving moral turpitude will not have access to school grounds. In Rule 6Gx13- 4C-1.021 (*Fingerprinting of All Employees Prior to Employment*), The School Board has identified the criminal offenses that disqualify individuals from being employed by the school district. In accordance with the JLA those offenses listed in Rule 4C-1.021 may also be used to comply with the JLA screening requirements and the School Board has determined that said criminal offenses will also be used for JLA screening purposes.

The following is not intended to be a complete list of all relevant qualifying criminal offenses, but it does demonstrate the types of crimes that are presently considered as requiring disqualification:

The following Level 1 criminal offenses are absolute disqualifiers subject to appeal only as to identification and final disposition:

- Child Abuse or Child Neglect (Section 827.03 F.S.)

- Contributing to the Delinquency or Dependency of a Child (Section 827.04 F.S.)
- Exhibiting a Firearm or Weapon within 1,000 feet of a school (Section 790.115 F.S.)
- Killing of an unborn child by injury to the mother (Section 782.09 F.S.)
- Manslaughter (Section 782.07 F.S.)
- Murder (Section 782.04 F.S.)
- Removing Children from the State or Concealing Children contrary to court order (Section 787.04 F.S.)
- Sexual Performance by a child (Section 827.071 F.S.)
- Sale of alcohol to a minor (Section 562.11 F.S.)

The following Level 2 criminal offenses may result in disqualification:

- Adult abuse, neglect or exploitation of aged persons or disabled adults (Section 825.103 F.S.)
- Aggravated Assault (Section 784.021 F.S.)
- Aggravated Battery (Section 784.045 F.S.)
- Arson (Section 806.01 F.S.)
- Currently has a pending case for Driving Under the Influence of alcohol (DUI) (no statute)
- Domestic Violence (Section 741.28 F.S.)
- Extortion (Section 836.05 F.S.)
- Felony Battery/Assault (Section 784.041 F.S.)
- Felony Drug Possession, Sale or Distribution (Section 893.13 F.S.)
- Incest (Section 826.04 F.S.)
- Indecent Exposure (Section 800.03 F.S.)
- Kidnapping/False Imprisonment (Section 787.01, 787.02 F.S.)
- Lewd and Lascivious Behavior (Section 798.02, 800.04 F.S.)
- Pornography (Distribute or possess to sell obscene material) (Section 847.011 F.S.)
- Prostitution/Solicitation of Prostitution (Section 796.07 F.S.)
- Robbery (Section 812.13 F.S.)
- Sexual Assault/Sexual Battery (Section 794.011 F.S.)
- Vehicular Homicide (Section 782.071 F.S.)
- Burglary (Section 810.02 F.S.)
- Possession of a concealed weapon (Section 790.01 F.S.)
- Battery/Assault (Sections 784.03, 784.011 F.S.)
- Drug and/or Paraphernalia (misdemeanor) (Section 893.13 F.S.)
- Resisting Arrest with violence (Section 843.01 F.S.)
- Disorderly Conduct (Section 870.01 F.S.)
- Driving Under the Influence/Driving While Intoxicated (Section 316.193 F.S.)
- Other Criminal Traffic offenses (various statutes)
- Resisting Arrest without violence (Section 843.02 F.S.)

The following Level 3 criminal offenses may result in disqualification if the individual is to have access to or control of school funds:

- Counterfeiting (Section 831.28 F.S.)
- Forgery (Section 831.01 F.S.)
- Fraud (Section 817.03 F.S.)
- Grand Larceny (Section 812.014 F.S.)
- Grand Theft (Section 812.014 F.S.)
- Petty Theft/Larceny/Theft to Deprive/Retail Theft/Shoplifting (Sections 812.014, 812.015 F.S.)
- Worthless Checks (Sections 831.09, 831.02 F.S.)
- Welfare/Unemployment/Worker's Compensation Fraud (Sections 443.071, 440.105 F.S.)

Any omissions, changes, or typographical errors in the statutory citations shall not be a defense for the individual undergoing the level 2 screening process.

INTERNAL JLA APPEALS PROCESS:

Contracted personnel who are disqualified due to their criminal history records will receive certified written notification by mail. Disqualified individuals have the right to request an appeal conference. A written request for an appeal conference must be submitted to the Office of Employment Standards no later than 15 calendar days from the receipt of the disqualification notice or the Post Office notice regarding the disqualification, whichever occurs first. A three-person committee made up of representatives from the Office for Employment Standards, School Operations, and Risk Management will conduct the appeal conference. The appeal shall be held within 30 workdays of the receipt of a timely request from the individual.

For Level 1 criminal offenses, an appeal is available only as to identification and final disposition. For Level 2 and Level 3 criminal offenses, the District administrator conducting the appeal may consider the specific facts, which led to the conviction, and may consider any mitigating factors in rescinding the disqualification. When considering the specific facts and mitigating factors, the District administrator's primary concern will be the impact the conviction has on the health, safety, and welfare of the students and the school community. During this internal appeals process, it will be the appellant's burden to provide verifiable documentation in support of his or her claims of mitigation. The decision of the District administrator conducting the appeal will be final.

Specific Authority: 1001.41(1)(2); 1001.42(23); 1001.43 (10) F.S.

Law Implemented, Interpreted, or Made Specific: 1012.32; 1012.465 F.S.

History
New:

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA