

Office of School Board Attorney
Walter J. Harvey, School Board Attorney

SUBJECT: PROPOSED AMENDMENTS TO SCHOOL BOARD RULES: FINAL READING 6Gx13- 4A-1.212, CONFLICT OF INTEREST, AND 6Gx13- 8A-1.041, CONFLICT OF INTEREST, SUBMITTED BY THE OFFICE OF THE INSPECTOR GENERAL AND BY THE ETHICS ADVISORY COMMITTEE

COMMITTEE: INNOVATION, EFFICIENCY & GOVERNMENTAL RELATIONS

LINK TO STRATEGIC FRAMEWORK: SCHOOL/DISTRICT LEADERSHIP

On July 16, 2009, the Office of the Inspector General ("OIG") issued its report entitled *Proposed Amendments to School Board Rules Governing Conflicts of Interests, Proposing Guidelines on Due Diligence, and Requiring Annual Certifications for Board Members and Employees Who Are Required to File Annual Financial Disclosures*, IG08-53-SB. Subsequently, at the Ethics Advisory Committee meeting of July 24, 2009, the OIG presented several recommended amendments to School Board Rules 6Gx13- 4A-1.212, *Conflict of Interest*, and 6Gx13- 8A-1.041, *Conflict of Interest*.

At its January 13, 2010 meeting, the School Board approved Agenda Item H-13 presented by Ms. Perla Tabares Hantman, School Board Vice Chair. The proposed amendments establish guidelines for the proper exercise of due diligence that will be required of school district employees and Board members prior to contracting or securing professional services from vendors. Subsequently, at its regular meeting of February 10, 2010, the Board approved Agenda Item G-6.

The Notice of Intended Action was published in the *Miami Daily Business Review* on February 16, 2010, 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 these rules have elapsed.

In accordance with the provisions of the Administrative Procedure Act, these amended rules are presented to The School Board of Miami-Dade County, Florida, for adoption and authorization to file the rules in the official records of The School Board of Miami-Dade County, Florida.

Attached are the Notices of Intended Action and the rules proposed for amendment. Changes from the current rules are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, adopt amended School Board Rules 6Gx13- 4A-1.212, *Conflict of Interest*, and 6Gx13- 8A-1.041, *Conflict of Interest*, and authorize the Superintendent to file the rules with The School Board of Miami-Dade County, Florida, to be effective March 17, 2010.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on February 10, 2010, its intention to amend School Board Rule 6Gx13- 4A-1.212, *Conflict of Interest*, at its meeting of March 17, 2010.

PURPOSE AND EFFECT: The purpose of this amendment is to require that specified school district employees exercise due diligence prior to contracting or securing the services of a vendor.

SUMMARY: This rule amendment is being recommended to require that, prior to contracting or securing the services of a vendor, school district employees who annually file a financial disclosure statement or who have the authority to make purchases on behalf of the school district, must follow the prescribed due diligence guidelines set forth in the rule.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1), (2); 1001.42(6), ~~(25)~~ (26); 1001.43(10), F.S.

Revised
subsequent
to Initial
Reading
02/10/2010.

LAW IMPLEMENTED, INTERPRETED OR MADE SPECIFIC: 112.313(2),(3), (4), (6), (7), (7)(a), (8), (9), (12); 112.317, F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING of March 17, 2010, 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 provide a proposal for a lower cost regulatory alternative as provided by Section 120.541(1), F.S., must do so in writing by March 9, 2010, 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: Ms. Perla Tabares Hantman, Vice Chair
Date: March 3, 2010

Permanent Personnel**CONFLICT OF INTEREST**

I. Statutory Provisions and Policy

School Board employees are governed by the statutory provisions contained in the "Code of Ethics for Public Officers and Employees," Part III of Chapter 112, Florida Statutes F.S., and by certain other statutes in the School Code. The following sections of this rule set forth the principles, in simplified form, in the statutory mandates. They cannot be used as definitive rules to apply to different sets of circumstances or factual situations. In any given situation, the full statutory language must be consulted for applicable definitions, and for exemptions, if any.

School Board employees are required to comply with all provisions of the Code of Ethics, including those provisions outlined below. This requirement discourages the appearance of impropriety and the perception of undue influence upon the business functions of the school district.

This Board rule applies specifically to conflicts of interest. Employees are reminded that other Board rules exist that may also address an employee's particular issue or question. It is an employee's responsibility to refer to and observe all School Board Rules that may be applicable to his or her individual situation.

II. Provisions

A. Gifts

1. School Board employees are prohibited from soliciting or accepting anything of value, such as a gift, loan, reward, promise of future employment, favor, or service that is based on an understanding that their official action or judgment would be influenced by such gift. Section 112.313(2), Florida Statute F.S.(2002).
2. No School Board employee or his or her spouse or minor child shall accept any compensation, payment, or thing of value when

he or she knows, or with the exercise of reasonable care should know, that it was

given to influence an action in which the employee was expected to participate in his or her official capacity. Section 112.313(4), Florida Statute (2002).

B. Misuse of Public Position

No School Board employee shall corruptly use or attempt to use his or her official position or perform his or her official duties to secure a special privilege, benefit, or exemption for himself, herself, or others. Section 112.313(6), Florida Statute F.S. (2002).

C. Doing Business with the School Board

1. No School Board employee acting in his or her official capacity shall directly or indirectly purchase, rent, or lease any goods or services for the School Board from any business entity of which the employee or his or her spouse or child is an officer, partner, director or proprietor, or in which such employee or his or her spouse or child, or any combination of them, has a material interest. Section 112.313(3), Florida Statute F.S. (2002).
2. Some case-specific exceptions to this provision may apply. School Board employees should review Section 112.313(12), Florida Statutes F.S., for exemptions that may be applicable to their particular situations.

D. Conflicting Employment or Contractual Relationship

1. In addition to the restrictions on outside employment that School Board Rule 6Gx13-4C-1.17, Employment - Nonschool, places on employees, no School Board employee shall hold any employment or contract with any business entity or any agency that is doing business with the School Board. This provision does not apply to organizations and their officers who, acting in their official capacity,

enter into or negotiate a collective bargaining contract with the School Board. Section 112.313(7), Florida Statute F.S. (2002).

2. In addition to the restrictions on outside employment that School Board Rule 6Gx13-4C-1.17, Employment - Nonschool, places on employees, no School Board employee shall have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties, or that would impede the full and faithful discharge of his or her public duties. Section 112.313(7)(a), Florida Statute F.S. (2002).

3. Guidelines for Avoidance of Conflict of Interest

To avoid conflicts of interests or the appearance of conflicts as it relates to personal purchases or private contracting, School Board employees who are required to file an annual statement of financial interests (financial disclosure form) or who have the authority to make purchases on behalf of the school district will adhere to the following guidelines. These guidelines do not apply to purchases made in a private capacity of goods or services at a price and upon terms available to similarly situated members of the general public.

a. When entering into a transaction or contractual relationship as described above, School Board employees subject to these guidelines will make the following inquiries to the entity with whom they are contracting:

i. Does the business entity have a contractual relationship with the School Board for more than \$500?

ii. Is the contracting individual a principal or employee of an entity with a

contractual relationship with the School Board for more than \$500?

b. If an affirmative answer is given to either inquiry above, the employee will request from the School Board Attorney guidance on whether contracting with the individual or entity would constitute a conflict of interest pursuant to "Code of Ethics for Public Officers and Employees," or other statute or School Board Rule. The School Board Attorney will issue a written opinion or will refer the employee to the Florida Commission on Ethics.

4. Clarification and opinions regarding the application of the "Code of Ethics for Public Officers and Employees" can be obtained at any time from the Florida Commission on Ethics.

E. Disclosure or Use of Certain Information No School Board employee shall disclose or use information not available to members of the general public and gained by reason of his or her official position for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity. Section 112.313(8), Florida Statutes F.S. (2002).

F. Employment After Termination

School Board employees are prohibited from personally representing another person or entity or acting as an agent or attorney for compensation in connection with any matter in which Miami-Dade County Public Schools is interested for two (2) years after the School Board employees' service terminates. Section 112.313(9), Florida Statutes F.S. (2002).

1. This restriction applies to all school senior level employees classified as Managerial Exempt Personnel, Pay Grade 22 and above, Dade County School Administrators Association, Pay

Grade 47 and above, and other equivalent positions.

2. Exception to this provision is provided by statute for the purpose of collective bargaining, and may be granted to former school district employees who are employees or agents of not-for-profit organizations, other governmental agencies or those whose business relationship is determined by the School Board to be in the best interest of the school district.
3. Miami-Dade County Public Schools shall be prohibited from entering into any business relations or continue an existing business relationship with any person or entity determined to have engaged in a violation of the restriction contained in this provision.
4. In addition to penalties outlined in Section IV below, penalties for violation of this provision include a civil penalty equal to the compensation that the employee received for the prohibited conduct.

III. Self-Reporting Requirement

All School Board employees, upon initial hire and annually thereafter, shall certify that they will abide by the requirements of this Board rule, and that they will self-report any relationship that may implicate a potential conflict of interest or other violations of this rule. The certification shall be according to a process determined by the Office of Human Resources, Miami-Dade County Public Schools.

IV. Penalties

Penalties for violation of this rule and/or violations of the Code of Ethics include dismissal from employment; suspension from employment for not more than ninety (90) days without pay; demotion; reduction in salary level; forfeiture of no more than one-third salary per month for no more than twelve (12) months; civil penalty not to exceed \$10,000; restitution of any pecuniary benefits received because of the violation committed; and public censure and reprimand. Section 112.317, Florida Statutes F.S. (2002).

Specific Authority: 1001.41(1)(2); 1001.42(6), ~~(26)~~ ~~(22)~~; 1001.43(10) F.S.
Law Implemented, Interpreted, or Made Specific: 112.313(2), (3), (4), (6), (7),
~~(7)(a)~~, (8), (9), (12); 112.317 F.S.

Revised
subsequent
to Initial
Reading
02/10/2010.

History: THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA
New: 8-21-02
Amended: 10-22-03

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on February 10, 2010, its intention to amend School Board Rule 6Gx13- 8A-1.041, *Conflict of Interest*, at its meeting of March 17, 2010.

PURPOSE AND EFFECT: The proposed amendment will require that School Board members exercise due diligence prior to contracting or securing the services of a vendor.

SUMMARY: This rule amendment is being recommended to require that, prior to contracting or securing the services of a vendor, School Board members follow the prescribed due diligence guidelines delineated in the rule.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1), (2); 1001.42(25) (26); 1001.43(10), F.S.

Revised
subsequent
to Initial
Reading
02/10/2010.

LAW IMPLEMENTED, INTERPRETED OR MADE SPECIFIC: 112.313(2),(3),(4),(6),(7),(8) and (10); 112.3143; 112.3148; 112.3149; 1001.43(10), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING of March 17, 2010, 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 provide a proposal for a lower cost regulatory alternative as provided by Section 120.541(1), F.S., must do so in writing by March 9, 2010, 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: Ms. Perla Tabares Hantman, Vice Chair
Date: March 3, 2010

School Board--Powers and Duties

CONFLICT OF INTEREST

I. Statutory Provisions

School Board members are governed by the statutory provisions contained in the "Code of Ethics for Public Officers and Employees," Part III of Chapter 112, Florida Statutes; and by certain other statutes in the School Code.

The following simplified statements set forth the principles in these statutory mandates. They cannot be used as definitive rules to apply to different sets of circumstances or factual situations. In any given situation, the full statutory language must be consulted for applicable definitions, and for exemptions, if any.

A. Standards of Conduct

1. Gifts--No Board member may either solicit or accept anything of value--including a gift, loan, reward, promise of future employment, favor, or service--that is based on any understanding that the vote, official action, or judgment of the Board member would be influenced by such gift. Sec. 112.313(2), Fla.Stat. F.S. (1991).
2. Other Prohibited Gifts--No Board member may solicit any gift, food, or beverage from a political committee or committee of continuous existence, or from a lobbyist who lobbies the School Board (or the partner, firm, employer, or principal of the lobbyist), where the gift or food or beverage is for the benefit of the Board member, another Board member, or any member of the immediate family of a Board member. No Board member or any person on behalf of the Board member may knowingly accept a gift from a political committee or committee of continuous existence, or from a lobbyist who lobbies the School Board (or the partner, firm, employer, or principal of the lobbyist), if the Board member knows or reasonably believes the gift has a value in excess of \$100--unless the gift is accepted on behalf of and transferred promptly to a governmental entity or a charitable organization, or is given to the Board member by a governmental entity

for a public purpose. Gifts from relatives are not prohibited, nor gifts associated primarily with the recipient's employment or business. Food or beverage consumed at a single sitting or event may be accepted. Sec. 112.3148, Fla.Stat. F.S. (1991).

3. Honoraria--No Board member may solicit an honorarium related to the member's public office or duties. No Board member may knowingly accept an honorarium from a political committee or committee of continuous existence, or from a lobbyist who lobbies the School Board (or from the employer, principal, partner, or firm of the lobbyist). Actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event for a Board member and spouse may be accepted. Sec. 112.3149, Fla.Stat. F.S. (1991).
4. Unauthorized Compensation--No Board member or his or her spouse or minor child may accept any compensation, payment, or thing of value which, with the exercise of reasonable care, is known or should be known to influence the vote or official action of such Board member. Sec. 112.313(4), Fla.Stat. F.S. (1991).
5. Doing Business With One's Agency--No Board member acting in his or her official capacity may, directly or indirectly, purchase, rent, or lease any realty, goods, or services from a business entity in which the Board member, his or her spouse, or child is an officer, partner, director, or proprietor, or in which the Board member, his or her spouse, or child (or any combination of them) owns a material interest. Nor may a Board member, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the School Board or any of its agencies. Sec. 112.313(3), Fla.Stat. F.S. (1991).
6. Conflicting Employment or Contractual Relationship--No Board member may hold any employment or contract with any business entity or agency subject to the regulation of or doing business with the School Board. Neither may a Board member hold any employment or contractual relationship which will

pose a recurring conflict between his or her private interests and his or her public duties or would impede the full and faithful discharge of his or her public duties. Sec. 112.313(7), Fla.Stat. F.S. (1994).

7. Misuse of Public Position--No Board member may corruptly use or attempt to use his or her official position or any property or resource within his or her trust, or perform his or her official duties, to obtain a special privilege, benefit, or exemption for the Board member or others. Sec. 112.313(6), Fla.Stat. F.S. (1994).
8. Disclosure or Use of Certain Information--No Board member may disclose or use information not available to the general public and gained by reason of his or her public position for his or her personal benefit or the benefit of others. Sec. 112.313(8), Fla.Stat. F.S. (1994).
9. Employees Holding Office--No Board employee may be a member of the Board while simultaneously continuing as an employee. Sec. 112.313(10), Fla.Stat. F.S. (1994).

B. Voting Conflicts

A Board member is prohibited from voting on any matter which would inure to his or her special private gain, or to the special gain of a principal by whom he or she is retained, or to the special gain of the parent organization or subsidiary of a corporate principal by which he or she is retained, or to the special gain of a relative or business associate. The Board member must publicly state to the assembly the nature of his or her interest, and within 15 days file a written disclosure of the interest with the recording secretary of the Board. Sec. 112.3143, Fla.Stat. F.S. (1994).

C. Instructional Materials

No Board member shall accept anything of value or any inducement, to introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional material. Sec. 1006.32 233.115, Fla.Stat. F.S. (1994).

D. Textbooks

No Board member shall receive any gift or compensation for promoting the sale or exchange of any schoolbook, map, or chart in any public school, or be an agent for the sale, or the publisher of any school textbook or reference work, or be pecuniarily interested in the introduction of any such textbook. Sec. 1006.32(8) ~~233.45~~, Fla.Stat. F.S. (1991).

- E. No contract for supplying materials, supplies, and services needed for the district school system shall be made with any member of the School Board, with the Superintendent of Schools, or with any business organization in which any Board member or the Superintendent has any financial interest whatsoever. Sec. 1001.42 ~~230.23(10)(i)~~, Fla.Stat. F.S. (1991).

II. **Additional Provisions**

The Board adopts the following regulations in addition to those required by statute.

- A. School Board members shall accept no gifts from any individual, firm, or business entity which the School Board member has reason to believe is doing business with or seeking to do business with the school district. Meals and admissions to events which relate directly to the school system may be accepted.
- B. School Board members shall not participate in trips paid by a vendor or potential vendor for the purpose of inspecting products or programs useful to the school district. Such trips, if deemed necessary, shall always be made at school district expense and approved by the Board at a public meeting.
- C. School Board members, their spouses or campaign committees shall not solicit any vendor or any employee of this school district to make contributions to any political campaign or testimonial.
- D. School Board members shall not solicit nor accept personal discounts on merchandise or services from individuals, firms or business entities which the Board member has reason to believe are doing business with or seeking to do business

with this school district unless those discounts are available to the general public.

- E. No School Board member may recommend the services of any lawyer or law firm, architect or architectural firm, public relations firm, or any other person or firm, professional or otherwise, to assist in any transaction involving the Dade County public school system, unless such recommendation is made at a public meeting of the School Board.
- F. School Board members are prohibited from acting as an agent or attorney for compensation for anyone in connection with any matter in which Dade County Public Schools is interested for two years after her or his School Board service terminates.

III. Guidelines for Avoidance of Conflict of Interest

To avoid conflicts of interests or the appearance of conflicts as it relates to personal purchases or private contracting, School Board members will adhere to the following guidelines. These guidelines do not apply to purchases made in a private capacity of goods or services at a price and upon terms available to similarly situated members of the general public.

- A. When entering into a transaction or contractual relationship as described above, School Board members will make the following inquiries to the entity with whom they are contracting:
 - 1. Does the business entity have a contractual relationship with the School Board for more than \$500?
 - 2. Is the contracting individual a principal or employee of an entity with a contractual relationship with the School Board for more than \$500?
- B. If an affirmative answer is given to either inquiry above, the School Board member will request from the School Board Attorney a written opinion indicating whether contracting with the individual or entity would constitute a conflict of interest pursuant to "Code of Ethics for Public Officers and Employees," or other state statute or School Board Rule. The School Board Attorney will issue a written opinion or will

refer the Board member to the Florida Commission on Ethics.

- C. Clarification and opinions regarding the application of the "Code of Ethics for Public Officers and Employees" can be obtained at any time from the Florida Commission on Ethics.

Specific Authority: 230.22(2) 1001.41(1) and (2); 1001.42(26); 1001.43 (10) F.S.
Law Implemented, Interpreted, or Made Specific: 112.313(2),(3),(4),(6),(7),(8)
and (10); 112.3143; 112.3148; 112.3149; 1006.32; -230.23(10)(i); 1006.32(8)
233.115; 1001.42 233.45 F.S.

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History: THE SCHOOL BOARD OF DADE COUNTY, FLORIDA

New: 8-20-86

Amended: 11-5-86; 11-1-89; 12-19-91