

July 13, 2010

Alberto M. Carvalho, Superintendent of Schools

SUBJECT: TRUTH IN GOVERNMENT/LOBBYING REFORM
PROPOSED AMENDMENTS TO SCHOOL BOARD RULES:
INITIAL READING 6Gx13- 8C-1.212, CONE OF SILENCE
AND 6Gx13- 8C-1.21, LOBBYISTS

COMMITTEE: INNOVATION, EFFICIENCY & GOVERNMENTAL
RELATIONS

**LINK TO STRATEGIC
FRAMEWORK:** SCHOOL/DISTRICT LEADERSHIP

In order to maintain transparency in the financial and business operations of Miami-Dade County Public Schools, and to ensure truth in government, revisions are being recommended to the existing School Board Rules related to the Cone of Silence and lobbying activities.

At the School Board meeting of June 18, 2003, the School Board adopted School Board Rule 6Gx13- 8C-1.212, *Cone of Silence*, presented by Mr. Agustin J. Barrera. The adoption of this rule allowed for the prohibition of communications during the procurement process regarding RFP's and bids, between potential vendors, service providers, bidders, lobbyists, consultants and school district personnel, including the Superintendent, School Board Members and their assistants. The School Board also adopted the amendment to School Board Rule 6Gx13- 8C-1.21, *Lobbyists*, presented by Dr. Marta Pérez, at its meeting of August 20, 2003. The adoption of this rule established lobbying regulations governing lobbyist activities when petitioning the School Board and the District.

} Revised

The proposed changes to this Rule were presented to the Ethics Advisory Committee at its meeting of July 9, 2010. This proposed rule amendment has been revised to incorporate certain changes recommended by the Ethics Advisory Committee.

} Revised

After reviewing relevant Board rules, it is recommended that School Board Rules 6Gx13- 8C-1.212, *Cone of Silence*, and Rule 6Gx13- 8C-1.21, *Lobbyists*, be amended to define more clearly the roles of a lobbyist and District employees and the communications among persons involved in competitive solicitation.

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

REVISED
A-2

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act for the amendment of School Board Rules 6Gx13- 8C-1.212, *Cone of Silence* and 6Gx13- 8C-1.21, *Lobbyists*.

RECOMMENDED: That The School Board of Miami-Dade County, Florida:

- (1) Authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend School Board Rule 6Gx13- 8C- 1.212, *Cone of Silence*; and
- (2) Authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend School Board Rule 6Gx13- 8C-1.21, *Lobbyists*.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on July 14, 2010, its intention to amend School Board Rule 6Gx13- 8C-1.212, *Cone of Silence*, at its meeting of September 7, 2010. } Added

PURPOSE AND EFFECT: The purpose of this amendment is to state more clearly prohibitions of communications with lobbyists among District staff and persons involved in the competitive solicitation process with Miami-Dade County Public Schools.

SUMMARY: This rule amendment is being recommended to clearly set forth the prohibitions of communications with lobbyists among District staff and persons that are involved in competitive solicitation process with Miami-Dade County Public Schools.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1), (2); 1001.42(15), (26); 1001.43(10), F.S.

LAW IMPLEMENTED, INTERPRETED OR MADE SPECIFIC: 1001.43(10), 1001.51(14), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING of September 7, 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 August 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: Mr. Alberto M. Carvalho
Date: June 30, 2010

School Board--Methods of Operation**CONE OF SILENCE**Definition:

- A. "Cone of Silence" means a prohibition on any communication regarding a particular Request for Proposals (RFP), bid, invitation to bid, or other competitive solicitation between:
1. any person who seeks an award therefrom, including a potential vendor or vendor's representative; an employee, ^{Deleted} partner, director, or officer of a potential vendor, or consultant, lobbyist, or actual or potential subcontractor or sub-consultant of a vendor, or any other individual acting through or on behalf of any person seeking an award; and
 2. any School Board member or the member's staff, the Superintendent, Deputy Superintendent and their respective support staff, or any person appointed by the School Board to evaluate or recommend selection in such the competitive procurement process.

~~The Cone of Silence shall not apply to communication with the School Board Attorney or his or her staff, or with designated school district staff who are not serving on the particular Procurement Committee, to obtain clarification or information concerning the subject solicitation. For purposes of this section, "vendor's representative" means an employee, partner, director, or officer of a potential vendor, or consultant, lobbyist, or actual or potential subcontractor or sub-consultant of a vendor, or any other individual acting through or on behalf of any person seeking an award.~~

- B. A Cone of Silence shall be applicable to each RFP, bid, invitation to bid, or other competitive solicitation during the solicitation, and review and Board action of bid proposals through final Board action as appropriate. At the time of issuance of the solicitation, the Superintendent or the Superintendent's designee shall provide public notice of the Cone of Silence and written notice, including electronic communication, to the School Board, District staff and any other person involved in the review, evaluation, recommendation, approval, rejection or award of the responses as appropriate. The Superintendent shall include in any advertisement and public solicitation for goods and services a statement disclosing the requirements of this section.

- C. The Cone of Silence shall terminate at the time the Superintendent of Schools submits School Board acts on a written recommendation from the Superintendent to award or approve a contract, to reject all bids or responses, or otherwise to takes any other action which ends the solicitation and review process.
- D. ~~Nothing contained herein~~ This rule shall not prohibit any potential vendor or vendor's representative:
1. from making public representations at duly noticed pre-bid conferences or before duly noticed selection and negotiation committee meetings;
 2. from engaging in contract negotiations during any duly noticed public meeting;
 3. from making a public presentation to the School Board during any duly noticed public meeting; or
 4. from communicating in writing with any school district employee who is not serving on the applicable evaluation Committee, or official- the School Board Attorney's office for purposes of to seeking clarification or additional information, subject to the provisions of the applicable RFP, or bid documents.

The potential vendor or vendor's representative shall file a copy of any written communication with the School Board Clerk who shall make copies available to the public upon request.

- E. ~~Nothing contained herein shall prohibit t~~ The Procurement Division Committee's representative is not prohibited by this rule from initiating contact with a potential vendor or vendor's representative and engaging in subsequent communication related thereto for the purposes of obtaining further clarifying information clarification regarding a response to an RFP, or competitive solicitation. Such contact shall be in writing and shall be provided to the members of the applicable Procurement Committee Division, including any } Revised response, thereto.
- F. Any violation of this rule shall be investigated by the School Board's Inspector General and ~~may~~ shall result in the disqualification of the potential vendor from the competitive solicitation process, rejection of any recommendation for award to the vendor, or the revocation of an award to the vendor as being void, rendering void any

previous or prior awards. ~~or any RFP award, or bid award to said potential vendor or vendor's representative being deemed void or voidable.~~—The potential vendor or vendor's representative determined to have violated this rule, shall be subject to debarment. In addition to any other penalty provided by law, violation of this rule by a school district employee shall subject the employee to disciplinary action up to and including dismissal.

Specific Authority: 1001.41(1), (2); 1001.42(~~22~~)(15), (26); 1001.43(10) F.S.

Law Implemented, Interpreted or Made Specific: 1001.43(10); 1001.51(14) F.S.

History

New: 6-18-03

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on July 14, 2010, its intention to amend School Board Rule 6Gx13- 8C-1.21, *Lobbyists*, at its meeting of September 7, 2010. } Added

PURPOSE AND EFFECT: The purpose of this amendment is to clearly define the role of a lobbyist in the competitive solicitation process with Miami-Dade County Public Schools.

SUMMARY: This rule amendment is being recommended to comprehensively define the role of lobbyists and their activities among persons involved in competitive solicitation with Miami-Dade County Public Schools.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1), (2); 1001.42(15)(26); 1001.43(10), F.S.

LAW IMPLEMENTED, INTERPRETED OR MADE SPECIFIC: 1001.41(1), (5) F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING of September 7, 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 August 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: Mr. Alberto M. Carvalho
Date: June 30, 2010

School Board--Methods of Operation**LOBBYISTS****I. Purpose**

The School Board of Miami-Dade County, Florida, hereby determines and declares that the operation of responsible government requires that the fullest opportunity be afforded to the people to petition the School Board and Miami-Dade County Public Schools to express freely their opinions on School Board actions and issues; and that to preserve and maintain the integrity of the governmental decision-making process, it is necessary that the identity, expenditures, fees, interests and activities of certain persons who engage in efforts to influence actions of School Board members and employees either by direct or indirect communication be publicly and regularly disclosed.

II. Definitions

A. "Lobbyist" means a person, firm or corporation who is employed and receives payment from, or who contracts for economic consideration with, any principal, person or organization for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. For purposes of this rule, the term "Lobbyist" specifically includes the principal as well as any agent, officer, or employee of a principal regardless of whether they are employees of the principal whose normal scope of employment does not include lobbying activities.

B. One who is not an employee of a principal is a "lobbyist" if he/she is retained as an independent contractor or otherwise for payment or economic consideration by a person or governmental entity to lobby an agency on behalf of that person or governmental entity.

Revised

If a corporation, partnership, firm, or other business organization is retained for payment or economic consideration to lobby on behalf of another person or governmental entity, only the members, partners, associates, or employees of the entity who personally lobby on behalf of that person or governmental entity are "lobbyists."

C. The terms "payment" or "economic consideration" do not include receiving only reimbursement for actual travel, lodging, and meal expenses.

~~"Lobbyist" means any individual, firm, or corporation compensated~~

~~by or who contracts for economic consideration from any principal person or organization for the purpose of lobbying. "Lobbying" means any oral or written communication, direct or indirect with the School Board, members of the School Board, School Board Committees, School Board Administrative Assistants, School Board Attorneys, or members of the Miami-Dade County Public Schools administrative staff, for the purpose of influencing any action, non-action, or decision or attempting to obtain the good will of a School Board member or employee of the school district~~

~~For purposes of this rule, the term "Lobbyist" specifically includes the principal as well as any agent, officer, or employee of a principal regardless of whether employees of the principal whose normal scope of employment does not include lobbying activities.~~

D. A lobbyist is not considered to be a person:

1. aA person representing school allied groups, e.g.: Parent Teacher Association (PTA); Educational Excellence School Advisory Councils (EESAC); bargaining units; etc., a public official acting in his or her official capacity; } Revised
2. An attorneys retained to represent individuals or entities in quasi-judicial proceedings; expert witnesses providing information in a public meeting; or representatives of non-profit organizations who only appear at meetings without compensation.
3. An attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to Chapter 120 or any other formal hearing before the Board, a committee, or administrative law judge.
4. An employee of a governmental entity or of a legislative, judicial or executive branch entity acting in the normal course of his or her duties.
5. A confidential informant who is providing, or seeks to provide, confidential information to be used for law enforcement purposes.
6. A public officer, employee or appointee who only appears in his or her official capacity.
7. A person who only appears in his or her individual capacity for the purpose of self-representation without compensation

or reimbursement, whether direct, indirect or contingent, to express support of or opposition to any item.

E. "Lobbying" means any oral or written communication, direct or indirect, with the School Board, members of the School Board, School Board Committees, School Board Administrative Assistants, School Board Attorneys, or members of the Miami-Dade County Public Schools administrative staff, including site administrators and instructional staff for the purpose of doing business with the School District, the School Board and/or schools, influencing any official action, non-action, or decision or attempting to obtain the good will of a School Board member or employee of the School District.

Revised

III. Registration

Prior to any lobbyist or principal conducting any lobbying, each principal must file a form with the School Board Clerk, signed by the principal or the principal's duly authorized representative, stating that the lobbyist is authorized to represent the principal. Failure of a principal to file the required form may be considered in the evaluation of a bid, proposal or prequalification criteria as evidence that a proposer or bidder is not a responsible contractor. Each principal shall file a form with the School Board Clerk at the time at which a lobbyist is no longer authorized to represent the principal.

Revised

A. Forms

Lobbyists, shall annually complete a Lobbyist Registration Form providing the following information:

Name;

Business phone;

Mailing address;

Principal represented;

Principal's business address and telephone number;

The subject matters which the lobbyist seeks to influence; and

Any current member of the School Board or Miami-Dade County Public Schools administrative ive staff, School Board Administrative Assistant, or School Board Attorney, with whom the lobbyist or his/her principal has any direct business association.

Revised

All lobbyists shall register with the Office of the School Board Clerk within five (5) business days of being retained as a lobbyist or

before engaging in any lobbying activities, whichever comes first. Every person required to register shall:

- (a) Register on forms prepared by the Clerk;
- (b) State under oath his or her name, business address and the name and business address of each person or entity which has employed said registrant to lobby.
- (c) Identify the corporation, if the lobbyist represents a corporation. The lobbyist shall also identify all persons employed by the School Board holding, directly or indirectly, a five (5) percent or more ownership interest in the corporation, partnership, or trust.
- (d) File a form with the Clerk prior to conducting any lobbying, on behalf of all principals.
- (e) List all individuals who may make a presentation when the person appears as a representative for an individual or firm for an oral presentation before a site administrator, or instructional personnel, or certification, evaluation, selection, technical review or similar oral presentation committee. This listing shall include:
 - (1) The Clerk's form;
 - (2) the list of presenters; and
 - (3) the indication of fee receipt.

Staff shall transmit this listing to the Clerk's office prior to the oral presentation. For the purpose of this subsection only, the listed members of the presentation team shall not be required to pay any registration fees. No person shall appear before any employee or committee on behalf of an individual or firm unless he or she has been listed as part of the firm's presentation team pursuant to this paragraph or unless he or she is registered with the Clerk's office and has paid all applicable fees.
- (f) File an appropriate notice of withdrawal on behalf of each person who withdraws as a lobbyist for a particular client. Each principal shall also file a form with the Clerk of the Board at the time the lobbyist is no longer authorized to represent the principal.

The Clerk shall publish logs on an annual basis reflecting the lobbyist registrations which have been filed in accordance with this subsection. All logs required by this rule shall be prepared in a manner substantially similar to the logs prepared for the Florida

Legislature pursuant to Section 11.045, Florida Statutes.

} Revised

B. Business Interests

In addition to the information above, every registrant shall be required to state the extent of any business, financial, familial or professional relationship, or other relationship with any current Member of the School Board or Miami-Dade County Public Schools Administration who is sought to be lobbied as identified on the lobbyist registration form filed.

C. Filing

(a) ~~This form~~ The lobbyist registration form shall be filed by the lobbyist with the Office of the School Board Clerk by July 1st of each year, or when an individual becomes a lobbyist. Registration must be renewed by July 1st of each subsequent year or lapse. A separate registration form must be filed for each principal represented. Under no circumstances will any lobbyist be permitted to address the School Board at public meetings until the Lobbyist Registration Form is filed. Further, members of the School Board, Miami-Dade County Public Schools administration, School Board Administrative Assistants, school administrators and staff and School Board Attorneys will not discuss School Board business with ~~such person when such a lobbyist who~~ is meeting to influence purchasing decisions or Board action until the lobbyist has so registered.

(b) Fee. The fee for annual registration shall be ~~\$125.00~~ 250.00. The registration fees required by this subsection shall be deposited by the School Board Clerk into an account and shall be expended for the purpose of recording, transcribing, administration and other costs incurred in maintaining these records for availability to the public. There shall be no fee required for filing a notice of withdrawal and the School Board may, in its discretion, waive the registration fee upon a finding of financial hardship.

D. Prohibited Use

} Added

No information obtained from lobbying statements required by this article shall be sold or utilized by any person for the purpose of soliciting campaign contributions or fund-raising ~~affair~~ or for commercial purposes.

~~Upon being advised by a lobbyist that he/she is no longer representing a~~ } Revised

~~principal, the School Board Clerk will cancel the applicable Lobbyist Registration Form.~~

~~Prior to any lobbyist or principal conducting any lobbying, each principal must file a form with the School Board Clerk, signed by the principal or the principal's duly authorized representative, stating that the lobbyist is authorized to represent the principal. Failure of a principal to file the required form may be considered in the evaluation of a bid, proposal or prequalification criteria as evidence that a proposer or bidder is not a responsible contractor. Each principal shall file a form with the School Board Clerk at the time at which a lobbyist is no longer authorized to represent the principal.~~

Revised

E. Duty of Personnel

All members of the School Board, and all District personnel, shall make every effort to determine whether persons required to register have complied. Board members or District personnel may not knowingly permit a person who is not registered to lobby the School Board, the relevant committee, or District employee.

Revised

III.IV. Reporting Requirements

Commencing upon final adoption, and on July 1st of each year thereafter, lobbyists shall submit to the School Board Clerk an Expenditure Report under oath as provided herein in this rule listing all School Board lobbying expenditures for the preceding calendar year. A statement shall be filed even if there have been no expenditures during the reporting period. A separate statement shall be filed for each principal represented. The statement shall list in detail each expenditure by category, including but not limited to, food and beverage, entertainment, research, communication, media advertising, publications, travel, lodging, and special events.

Prior to any lobbyist or principal engaging in any lobbying, each principal must submit to the School Board Clerk a statement under oath disclosing the terms and amount of compensation paid, and to be paid, by each principal to the lobbyist with regard to the specific School Board matters on which the lobbyist has been engaged to lobby. A statement must be filed even if no compensation has or will be paid concerning the subject lobbying services, ~~a statement shall nonetheless be filed reflecting as such.~~

The lobbyist shall submit to the Clerk of the Board a signed statement under oath, as provided in this rule, listing all lobbying expenditures in excess of twenty-five dollars (\$25.00) for the preceding calendar year. The statement shall list in detail each expenditure by category, including

food and beverage, entertainment, research, communication, media advertising, publications, travel, lodging and special events. A statement shall be filed even if there have been no expenditures during the reporting period.

The Clerk shall notify any lobbyist who fails to timely file an expenditure report. In addition to any other penalties which may be imposed, any lobbyist who fails to file the required expenditure report by September 1st shall be automatically suspended from lobbying until all fees are paid unless a review of the fine has been appealed to the Ethics Advisory Committee.

Each principal and lobbyist has a continuing duty to supply accurate information and amend said registration and reports when necessary-so needed.

IV. V. Prohibited Activities

No person shall accept employment as a lobbyist on a basis which makes that person's compensation contingent in any manner upon the approval, rejection, or modification of any action, non-action or decision of the School Board; School Board members; School Board Committee; Miami-Dade County Public Schools administrative staff; School Board Administrative Assistants, school site administrators, or School Board Attorneys. "Contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: (1) a resolution, action or decision of the Board; (2) any action, decision or recommendation of the Superintendent or committee; or (3) any action, decision or recommendation of District personnel during the time period of the entire decisionmaking process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the Board or staff.

V. VI. Investigations

The Inspector General may investigate or the Ethics Advisory Committee may request an investigation concerning any person engaged in lobbying activities who may be in violation of this rule.

~~The School Board Inspector General shall investigate any person engaged in lobbying activities who may be in violation of this rule. In the event that a violation is found to have been committed, the Inspector General shall make a recommendation to the School Board consistent with the penalties set forth in Section VI.~~

VI.VII. Penalties

In the event that a violation is found to have been committed, the Ethics Advisory Committee may make recommendations to the School Board that prohibit the person from lobbying before the School Board, any committee or District personnel and may adopt reports by the Inspector General or District personnel in support of its findings and recommendations.

Revised

~~The School Board may warn, reprimand, or censure any lobbyist violating any of the provisions of this rule, or may suspend the lobbyist from lobbying the School Board for a period of time; provided, however, that any suspension may not exceed a period of two (2) years, and no sanction shall be imposed until the lobbyist allegedly in violation has had reasonable notice and an opportunity to be heard before the School Board's Ethics Advisory Committee. The Ethics Advisory Committee will make a recommendation to the School Board provided however, any such recommendation shall be in addition to any other action recommended by the Inspector General.~~

Revised

The School Board may impose suspensions up to a period of two years from the date of determination of the violation or according to the following schedule:

Revised

1st violation: for a period of 90 days from the date of determination of violation;

2nd violation: for a period of one (1) year from the date of determination of violation;

3rd violation: for a period of two (2) years from the date of determination of violation;

Deleted

The above schedule is to be used as a guideline and in no way limits the School Board's ability to impose a penalty that is more or less severe based on the facts of each particular case or violation.

Revised

Specific Authority: 1001.41(1), (2); 1001.42(22)-(15), (26); 1001.43(10) F.S.
Law Implemented, Interpreted or Made Specific: 1001.41(1)(3), (5) F.S.

History

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

New: 8-23-89

Technical Change: 5-1-98

Amended: 8-20-03