

Dr. Lawrence S. Feldman, Board Member

SUBJECT: SCHOOL BOARD CONTRACTS

COMMITTEE: INNOVATION, EFFICIENCY AND GOVERNMENTAL RELATIONS

LINK TO STRATEGIC FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY

As per School Board Rule 6540, all contracts to which the Board is a party shall 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 legal sufficiency. This legal review addresses the following minimum requirements: A. compliance with applicable Florida laws and Board rules; B. protection and/or retention of Board's rights to real, personal, or intellectual property; C. specifying that venue, should the contract result in litigation, will be in Miami-Dade County, Florida; D. stipulate that contract will be governed by and interpreted under Florida law; E. limiting the Board's exposure to liability and ensuring that the Board's immunity as afforded by F.S. 768.28, is not waived; F. compliance with Florida's Public Records Act, including maintaining the confidentiality of records exempted by law from public disclosure; and G. that if the performance of a contract is dependent, in whole or in part, on the award of a grant, the contingency must be referenced in the contract.

The rule further states that, whenever possible, School Board Attorney-approved standardized form contracts shall be employed. Currently, Form 2453 is the standardized form contract that is used. A recent internal audit report recommends a review of this contract may lead to the strengthened structure and function of this contract used to procure services. It should be noted that these findings were based on the review of Form 2453 executed during varying time frames and revision versions. However, the underlying concern for any revision is centered on decreasing the likelihood of misunderstanding between the contract parties regarding their obligations by addressing inherent limitations in the contract design. The findings cite concerns with lack of space provided to delineate service-specific requirements and deliverables, which contribute to a lack of sufficient detail in outlining services and expected outcomes or deliverables.

This item seeks to implement the M-DCPS Audit Department's recent June 2013 recommendation, which states: "*Subject the standard contract used – AGREEMENT FORM FOR CONTRACTED SERVICES, FM 2453 – to a qualitative review for legal sufficiency, operational substance and structure, to ensure that the contract is not only legally sufficient, but is also effective in communicating the rights, duties and responsibilities of the contracting parties.*" and request the School Board Attorney's

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office conduct a qualitative review to be reported to the School Board by no later than September 2013.

The School Board Attorney's office has worked proactively during the course of the last year to address varying areas of concern in contract management, as evidenced by the revised *School Board of Miami-Dade County Guidance for Contract and Grant Management Guide* issued in November 2012 and completed revisions of Form 2453. Their efforts to strengthen business practices has no doubt led to decreased liability exposure. This item also seeks to allow for an opportunity to share these already completed initiatives and improvements.

ACTION PROPOSED BY

DR. LAWRENCE S. FELDMAN: That The School Board of Miami-Dade County, Florida, request the School Board Attorney's Office subject the standard contract used – AGREEMENT FORM FOR CONTRACTED SERVICES, FM 2453 – to a qualitative review for legal sufficiency, operational substance and structure, to ensure that the contract is not only legally sufficient, but is also effective in communicating the rights, duties and responsibilities of the contracting parties and provide a report and recommendations by no later than the September 2013 School Board meeting.

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