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

SUBJECT:

INITIAL READING: PROPOSED AMENDMENT OF POLICY 0141.2.

**CONFLICT OF INTEREST** 

COMMITTEE:

INSTRUCTIONAL ENGAGEMENT

EXCELLENCE

AND

**COMMUNITY** 

LINK TO STRATEGIC

FRAMEWORK:

SCHOOL/DISTRICT LEADERSHIP

Pursuant to Agenda Item H-2 ("Ethics Training") presented by Ms. Perla Tabares Hantman, Board Chair, at the June 19, 2013, Board meeting, the Board authorized rulemaking to include new state ethics training requirements in Board policy. Under recently passed Senate Bill 2, Chapter 2013-36, Laws of Florida, all School Board members and the Superintendent are specifically required to participate annually in a four (4) hour ethics training. The law specifies the minimum content of the course and requires the Florida Commission on Ethics (FCE) to adopt rules to establish the content of the training.

The course must address the "Ethics in Government" provisions in Section 8, Article II of the Florida Constitution, Florida's Code of Ethics for Public Officers and Employees (Part III of Chapter 112, F.S.), and state public records and meeting laws. The course may also include conflicting employment or contractual relationships, misuse of position, various disclosure requirements, gifts and honoraria, post-office holding restrictions, voting conflicts, restrictions on employment of relatives and FCE processes including complaints and obtaining advisory ethics opinions.

Attached are the Notice of Intended Action and the proposed policy amendment. Changes from the current rule are indicated by <u>underscoring</u> words to be added and <u>striking through</u> words to be deleted.

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings pursuant to the Administrative Procedure Act to amend Policy 0141.2, *Conflict of Interest*, to include the new state required ethics training.

RECOMMENDED:

That The School Board of Miami-Dade County, Florida, authorize the Superintendent to initiate rulemaking proceedings pursuant to the Administrative Procedure Act to amend Policy 0141.2, *Conflict of Interest*, to include the new state required ethics training.

**G-2** 

1	<u>MEMBERSHIP</u>
2 0141.2	Conflict of Interest
3 4 5 6 7	School Board members are governed by the Code of Ethics for Public Officers and Employees, Part III of F.S. Chapter 112 and by other statutes in the school code. <u>School Board members and the Superintendent shall annually participate in four (4) hours of ethics training as specified by law (F.S. 112.3142, 34-7.0251, C.O.E.)</u>
8 9 10	The following is a summary of the statutory mandates. They are not definitive rules and the statute must be consulted for applicable definitions and for exemptions.
11	A. Standards of Conduct
12	1. Gifts
13 14 15 16 17	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.
19	F.S. 112.313(2)

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#### 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 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 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 and gifts associated primarily with the recipient's employment or business are not prohibited. Food or beverage consumed at a single sitting or event may be accepted.

F.S. 112.3148

#### 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 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.

F.S. 112.3149

1	4.	Unauthorized Compensation
2 3 4 5 6		No Board member or his/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.
7	•	F.S. 112.313(4)
8	5.	Doing Business with One's Agency
9 10 11 12 13 14 15 16 17		No Board member acting in his/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/her spouse, or child is an officer, partner, director, or proprietor, or in which the Board member, his/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 Board or any of its agencies.
19		F.S. 112.313(3)
20	6.	Misuse of Public Position
21 22 23 24 25		No Board member may corruptly use or attempt to use his/her official position or any property or resource within his/her trust, or perform his/her official duties, to obtain a special privilege, benefit, or exemption for the Board member or others.
26		F.S. 112.313(6)
27	7.	Disclosure or Use of Certain Information
28 29 30 31		No Board member may disclose or use information not available to the general public and gained by reason of his/her public position for his/her personal benefit or the benefit of others.
32		F.S. 112.313(8)

1		8.	Employees Holding Office
2 3			No Board employee may be a member of the Board while simultaneously continuing as an employee.
4			F.S. 112.313(10)
5	В.	Votin	g Conflicts
6 7 8 9 10 11 12 13 14		which speci speci corpo speci memi	ard member is prohibited from voting on any matter a would inure to his/her special private gain, or to the al gain of a principal by whom s/he is retained, or to the al gain of the parent organization or subsidiary of a prate principal by which s/he is retained, or to the al gain of a relative or business associate. The Board ber must publicly state the nature of his/her interest, within fifteen (15) days file a written disclosure of the lest with the recording secretary of the Board.
15		F.S.	112.3143
16	C.	Instr	uctional Materials
17 18 19 20		indu	Board member shall accept anything of value or any cement to introduce, recommend, vote for, or otherwise ence the adoption or purchase of any instructional rial.
21		F.S.	1006.32
22	D.	Textl	oooks
23 24 25 26 27 28		prom chart publi	loard member shall receive any gift or compensation for acting the sale or exchange of any schoolbook, map, or in any public school, or be an agent for the sale, or the isher of any school textbook or reference work, or be niarily interested in the introduction of any such book.
29		F.S.	1006.32(8)

1 2 3 4 5	E.	No contract for supplying materials, supplies, and services needed for the District school system shall be made with any member of the Board, with the Superintendent, or with any business organization in which any Board member or the Superintendent has any financial interest whatsoever.
6		F.S. 1001.42
7	Addit	ional Provisions
8 9 10 11	A.	Board members shall accept no gifts from any individual, firm, or business entity which the Board member has reason to believe is doing business with or seeking to do business with the District. Meals and admissions to events which relate directly to the school system may be accepted.
13 14 15 16	B.	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 District. Such trips, if deemed necessary, shall always be made at District expense and approved by the Board at a public meeting.
18 19 20	C.	Board members, their spouses, or campaign committees shall not solicit any vendor or any employee of this District to make contributions to any political campaign or testimonial.
21 22 23 24 25 26	D.	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 District unless those discounts are available to the general public.
27 28 29 30 31	E.	No 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 District unless the recommendation is made at a public meeting of the Board.
32 33 34	F.	Board members are prohibited from acting as an agent or attorney for compensation for anyone in connection with any matter in which the District is interested for two (2) years

after his/her Board service terminates.

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1 <b>Gu</b> :	idelines for Avoidance of Conflict of Interest
3 or 4 prices 5 ma	e following guidelines are intended to avoid conflicts of interests the appearance of conflict as it relates to personal purchases or vate contracting. These guidelines do not apply to purchases de in a private capacity of goods or services at a price and upon ms available to similarly situated members of the general public.
7 A. 8 9	When entering into a transaction or contractual relationship as described above, Board members will make the following inquiries to the entity with whom they are contracting:
10 11	<ol> <li>Does the business entity have a contractual relationship with the Board for more than \$500?</li> </ol>
12 13 14	2. Is the contracting individual a principal or employee of an entity with a contractual relationship with the Board for more than \$500?
15 B. 16 17 18 19 20 21 22	If an affirmative answer is given to either inquiry above, the Board member will request from the 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 Board rule. The Board Attorney will issue a written opinion or will refer the Board member to the Florida Commission on Ethics.
23 C. 24 25	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.

#### NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on July 17, 2013, its intention to amend Board Policy 0141.2, *Conflict of Interest*, at its meeting of September 3, 2013.

PURPOSE AND EFFECT: The purpose of the recommended amendment is to include in the policy the statutory requirement that School Board members and the Superintendent participate in annual ethics training on state ethics provisions, public records, and public meetings laws.

SUMMARY: The amendment includes in policy a new legislative requirement that School Board members and the Superintendent participate in annual ethics training on state ethics provisions, public records, and public meetings laws.

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

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 112.3142, F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE SCHOOL BOARD MEETING OF September 3, 2013, 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 wish to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided in Section 120.54(1), F.S., must do so in writing by August 14, 2013, to the Superintendent, 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 POLICY 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, Board Chair

Date: June 19, 2013